Legislative Research Department August 14, 1975

M I N U T E S

SPECIAL COMMITTEE ON ENERGY AND NATURAL RESOURCES

July 28 and 29, 1975

Members Present

Senator Vincent Moore, Chairman
Representative Ansel Tobias, Vice-Chairman
Senator Dan Bromley
Senator Don Christy
Senator Leslie Droge
Representative Kenneth Althaus
Representative Gus Bogina
Representative Theo Cribbs
Representative Donald Mainey
Representative W. Edgar Moore
Representative Irving Niles
Representative Rip Reeves
Representative Fred Rosenau

Staff Present

Doug Crandall, Legislative Research Department
Russ Mills, Legislative Research Department
Don Hayward, Revisor of Statutes' Office

Others Present

Richard C. Thayer, Division of Planning and Research
Chris McKenzie, Division of Planning and Research
Walt Plosila, Division of Planning and Research
Dennis McCartney, Division of Planning and Community Development, KDED
Ruth Wilkin, Representative, District No. 56
Dale H. Williams, Southwest Kansas Irrigation Association
R. H. Trostle, Southwest Kansas Irrigation Association
Philip Stover, EKOGA
Larry Keller, Lawrence
Harold Shoaf, Kansas Electric Cooperatives
Joe Detrixhe, Kansas Association of Wheat Growers
Sister M. Noel Walter, Kansas Catholic Conference

Others Present (Cont'd)

Sister Janet Kennedy, Leavenworth
Bill Abbott, The Boeing Company
Frank Applegate, Division of Architectural Services
Charles Beardmore, Division of Architectural Services
Perry Miller, Committee Farm Organization
John K. Blythe, Kansas Farm Bureau
Don Schnacke, Kansas Independent Oil and Gas Association
Dwight F. Metzler, Department of Health and Environment
Mel Gray, Department of Health and Environment
Gerald Stoltenberg, Department of Health and Environment
Jack Milligan, Kansas Motor Carriers Association
Bud Grant, KACI
Jim Hurley, Wichita Area Builders Association
S. M. (Sandy) Wilkin, Sandy Wilkin Insulation
Charles D. Carey, Jr., Mechanical Contractors Association of Kansas
William G. Landry, Johns-Manville Products Corporation
S. L. Matthews, Wichita Area Home Builders Association
Dick Swargson, Amoco Oil Company, Topeka
J. B. Sippel, Amoco Oil Company, Topeka
Roy Heintz, Amoco Oil Company, Kansas City, Kansas
Don Bell, Kansas Oil Marketers Association
Robert Anderson, Mid-Continent Oil and Gas Association
Bob Pearson, Kansas Co-op Council, Beloit
Neil Hutton, Kansas Oil Marketers Association
C. A. Swinney, Skelly Oil Company, Tulsa
J. W. Howorth, Skelly Oil Company, Topeka
Dick Carlson, Skelly Oil Company, Kansas City, Missouri
John J. Kalahucke, Amoco Oil Company, Pittsburg
William L. Mitchell, Trans-American Oil Corporation, Hutchinson
W. H. Pyke, Amoco Oil Company, Overland Park
Clayton Murphy, Amoco Oil Company, Girard
Donald W. Potter, Phillips Petroleum, Lawrence
George A. Sims, Mobil Oil Company, Hugoton
Jack Hillmen, Amoco Oil Company, Topeka
Bill Humphry, Phillips Petroleum, Lansing
Harold Swift, Lawrence
Leon Sowyer, Texaco Oil, Lawrence
William L. Overton, APCO, Kansas City, Kansas
Roy L. Frost, Kansas Petroleum Council
Steve J. Koloch, Champlin, Kansas City, Kansas
Thomas K. Faulkner, Mobil Oil, Topeka
John A. Costello, Mid-America Gas Dealers Association
Gary Brown, Conoco, Topeka
T. L. Doolittle, Amoco, Kansas City, Kansas
B. T. Burnhard, Champlin, Kansas City, Kansas
R. A. Whitener, Jr., Fina, Topeka
K. M. VonFeldt, Mobil Oil, Topeka
Marke Payne, Skelly, Topeka
Bruce McConnell, Mobil Oil, Topeka
Harvey Buehler, Champlin, Topeka
Francis Gordon, Representative, District No. 48

Others Present (Cont'd)

Bud Grant, KACI
Dick Swanson, Amoco, Topeka
C. Conoley, Overland Park
Robert C. Hurst, Mission

July 28, 1975
Morning Session

The meeting was called to order by the Chairman shortly after 10:00 a.m. The Chairman announced that the September field hearings had been cancelled because the Legislative Coordinating Council had not authorized them. It was the consensus of the Committee that further discussion in regard to the field hearings would be held near the end of the meeting.

Proposal No. 14 - Groundwater Use and Proposal No. 15 - Soil and Sediment Control

Mr. Dwight Metzler, Division of Environmental Health, gave introductory remarks concerning Proposal No. 14 on Groundwater Use. Mr. Metzler explained that P.L. 92-500, the Federal Water Pollution Control Act of 1972, has major importance in regard to study Proposal No. 14 and Proposal No. 15. Section 208 of the Act places considerable emphasis on sediment control. Mr. Metzler reported that in actuality, Kansas has three years to develop a soil and sediment control plan. He indicated, however, that work should begin now on such a plan.

Next to speak was Mr. Mel Gray, Chief Engineer and Director, Division of Environmental Health (Attachment No. I). P.L. 92-500 requires a status report on water quality in the state and he said the Division of Environmental Health is the planning and water control agency for Kansas. It is estimated that it would take in excess of $6 billion for Kansas to comply in all respects with P.L. 92-500 in meeting proper quality standards, of which $1.5 billion relates to rural and agricultural runoff. From an environmental standpoint, Mr. Gray said, land runoff is the most significant factor in Kansas today in water quality control.

On a statewide basis, Kansas has less than one ton per year per acre erosion at the present time. The Water Quality Control Acts set a zero pollution level as its ultimate goal. Mr. Gray indicated that the zero pollution level would be wonderful, but it is not feasible. Mr. Gray said that Kansas needs to evaluate existing controls, the costs associated with each type of control and the benefits to be incurred. A decision then needs

to be made as to what types of controls are feasible with the money available to the state. There are several factors in that regard that need to be considered, Mr. Gray said. One of the most significant factors to consider is that water in our reservoirs becomes contaminated immediately after leaving the reservoir.

Mr. Gray is of the opinion that S.B. 12 is a good vehicle for public education in the area of soil and sediment control, but he indicated that he felt the bill is about three years premature.

Mr. Gerald Stoltenberg, Division of Environmental Health, State Board and Department of Health, was the next conferee. Mr. Stoltenberg said he also felt that S.B. 12 was a good vehicle for public education but that it is two or three years premature. He said the state as yet has no determined policy relative to soil and sediment control.

In response to a question, Mr. Stoltenberg said he has no firm reason to believe that the federal government will make funds available for soil and sediment control. Responding to another question, relative to water quality, Mr. Stoltenberg said streams in Kansas are generally of equal cleanliness or better than those on the eastern seaboard. He noted there are exceptions, however.

Mr. Stoltenberg was asked who he felt should be charged with soil and sediment control planning. He replied that he would rather not try to implement a statewide system of control. No one agency can wheel the type of authority to do this throughout the state. Mr. Stoltenberg said he feels planning should be done at the local level, but there needs to be some authority at the state level.

Mr. Stoltenberg went on to explain that the Water Quality Control Act requires that all waters of the state be amenable for fishing and other types of recreation by 1983. The 1985 goal is to have zero discharge into the waters. The planning work to achieve this admittedly impossible goal is to be done in two phases:

1) In January, 1976 public hearings are to be held; and

2) efforts will be made to identify various levels of control.

This action should allow the State of Kansas to begin implementation of a plan that is economically feasible.

Proposal No. 62 - Insulation and Energy Consumption Standards

Mr. Dennis McCartney, Chairman, Advisory Committee on Statewide Building Codes, was the first conferee to speak on

Proposal No. 62. Mr. McCartney made reference to certain terms defined in the Interim Report of the Advisory Committee on Statewide Building Codes, excerpts of which may be found in the Committee notebooks.

Mr. McCartney said the Advisory Committee conducted a survey of the cities and counties in the state as to their position on building codes. There are several modern codes that have been put together over a number of years which try to standardize building requirements. Mr. McCartney said most of the larger communities have the mechanics for enforcing their building codes, but smaller communities do not have such power. Without the proper enforcement of the codes by trained and qualified inspectors, building code programs are futile

Mr. McCartney said several state agencies have some control over buildings. The Division of Architectural Services has control over state buildings and public schools, and the Fire Marshall's Office has authority over new construction and maintenance of fire protection systems. In addition, the federal government has certain requirements for children's and old age homes.

It was the consensus of the Advisory Committee, Mr. McCartney said, to recommend the adoption of a statewide building code. Basically there is not a lot of difference between the Uniform Building Code and the Basic Building Code. One of the reasons for having a uniform code is that contractors going into different communities will not have to change plans and raise costs. Building codes, however, presently are primarily for the purpose of providing for safety rather than energy conservation. Modern codes do not has yet contain standards for heat loss.

In response to a question, Mr. McCartney said a draft report will be ready by the middle of this fall and will be made available to the Legislature and the Governor by the beginning of the 1976 Legislative Session.

A member of the Committee asked who is in charge of insulation inspections in "do-it-yourself projects". Mr. McCartney replied that this is the responsibility of the central building committee of the community.

Mr. McCartney was asked if a proposed statewide building code should be mandatory or permissive. He replied that the Advisory Committee has no feeling as yet as to whether or not building codes should be permissive or mandatory.

Following Mr. McCartney's appearance the Committee recessed for lunch.

Afternoon Session

The meeting was called back to order following lunch by the Chairman at 1:45 p.m. to continue the hearing on Proposal No. 62.

The first order of afternoon business was a staff review on the proposed insulation bill draft (Attachment No. II). Following the bill review, the Chairman introduced State Representative Dick Brewster, District No. 51. Representative Brewster said he wanted it to be clear that he was speaking in an informational capacity and not as a legislator. Representative Brewster spoke on the mobile home insulation standards. He said K.S.A. 75-1211 et. seq., the Mobile Home and Recreational Vehicle Code, establishes a standard code for mobile homes sold at retail in the State of Kansas. The insulation standards established in the mobile home code are based on 1972 American National Standards Institute (ANSI) recommendations and need to be updated. Representative Brewster said representatives of the mobile home industry will be speaking to the 1976 Session of the Legislature in an effort to promote adoption of the 1975 ANSI Code. The vast majority of mobile home manufacturers do meet the 1975 edition of the standards which basically encompass the ASHRAE 90-P standards. Most states automatically adopt the current mobile home insulation codes, but the Kansas Supreme Court has effectively prohibited such automatic updates.

When asked how Kansas compares with surrounding states in the area of mobile home insulation standards, Representative Brewster replied that Kansas compares favorably with other states except for the inability to automatically update by statutory reference.

Next to speak was Mr. Charles Beardmore, Architectural Services Division, Department of Administration. Mr. Beardmore said the Architectural Services Division administers building codes and standards for:

1) All state buildings;

2) schools; and

3) mobile homes and recreational vehicles.

Mr. Beardmore was asked if he saw any necessity in requiring that agricultural buildings maintain certain insulation standards. Mr. Beardmore replied that he did not.

Mr. W. G. Landry, McPherson Plant Manager, Johns-Manville Products Corporation, was the next conferee (Attachment No. III). Mr. Landry also distributed copies of several publications, entitled "HUD-FHA Building Insulation Standards", "Residential Energy Savings Potential: Effects, Implications and Methods" and Professional Builder. All of these publications are on file in the Legislative Research Department. Mr. Landry made the following recommendations to the Committee:

1) Make the public aware of the huge quantities of energy being wasted in the home;

2) follow the lead of many other states by passing legislation to immediately adopt FHA minimum property standards for all new construction;

3) provide tax incentives for existing homeowners to purchase thermal protection materials;

4) consider giving investment tax credits to the commercial, industrial and institutional sectors; and

5) allocate natural gas in accordance with S.B. 564.

Mr. Landry was asked if it was advantageous to have an exhaust fan. He replied affirmatively and went on to point out that insulation techniques generally pay for themselves in one to three years.

Mr. Stan Mathews, President, National Mineral Wool Insulation Association, was the next conferee. Mr. Mathews suggested the use of FHA insulation standards as minimum standards. He said he had helped in the development of the ASHRAE 90-P Standard. Mr. Mathews said it would cost about $55 million to reinsulate old homes and he would, therefore, suggest tax credits for such insulation measures. Mr. Mathews said that the approach to insulation requirements should be aimed at: (a) stringent standards for new construction; and (b) enforcement of existing or improved standards in existing structures.

Mr. Charles Carey, Jr., Executive Director, Mechanical Contractors Association of Kansas, was the next conferee. He said he feels the ASHRAE standards should be used to determine any new standards. Mr. Carey then showed the Committee several examples of how to use the ASHRAE formula for determining insulation standards for various sections of the country. The type of materials and the design of the house or building will determine what materials must be used to meet certain standards.

General Committee discussion ensued. It was moved by Senator Droge and seconded by Representative Rosenau to recommend to the Special Committee on Assessment and Taxation, by letter, to give serious consideration to some kind of tax incentive for improving insulation in existing homes. The motion carried. In further Committee discussion it was determined that the Legislative Coordinating Council had rejected the September field hearings in regard to S.B. 12 because they had erroneously been informed that the Committee intended to go in subcommittees. It was the consensus of the Committee that another letter be sent by the Chairman again requesting authorization for the Committee as a whole to hold the September field hearings.

July 29, 1975
Morning Session

Proposal No. 16 - Energy Study

The meeting was called to order by the Chairman at 9:15 a.m. The first conferee was Senator George Bell, District No. 4. Senator Bell spoke in favor of 1975 S.B. 84. He said the bill protects the independent dealer. The bill is an attempt to prevent the wholesale cancellation of leases with as little as 30 days notice without just cause. Senator Bell then introduced John Costello, Executive Secretary, Mid America Gasoline Dealers Association, Inc., (MAGDA) for more specific testimony (Attachment No. IV).

Mr. Costello said his Association consists of 275 independent members and has been in existence for 15 years. He said he feels that some type of mandatory rules of fairness between suppliers and dealers must be provided. A "dealer day in court" bill is needed in Kansas. The profit that can be made in a retail station is very attractive to the company and this is why they want local operations.

Mr. Costello said he feels the "divorcement" part of S.B. 84 sould be eliminated. However, dealers should have the right to arbitrate and should have the right for a day in court.

Mr. Costello then opened his presentation for questions. When asked if he thought the action he advocated could be achieved by state law or federal law, Mr. Costello said he felt both state and federal laws should be enacted to achieve his desires. Passage of state laws was the first step, Mr. Costello said. Mr. Costello said he thinks three states have already enacted legislation similar to S.B. 84, but he did not know which states. In response to another question, Mr. Costello said by "divorcement" he meant removing the major oil companies entirely from the retail gasoline business.

Mr. Torrance Doolittle, Standard dealer, was the next conferee. Mr. Doolittle said he had been with Standard Oil for 35 years and at his present location for 23 years. He said his relationship with the company has been good, but he would still like to see a "dealer day in court" bill and passage of S.B. 84. Mr. Doolittle said he presently has a one year renewable contract, with a 60 day cancellation clause.

In response to questions, Mr. Doolittle said there is no contract negotiation - you either sign your lease or you do not have one. He said he has had a one year lease for each of the last ten years.

Mr. Steve Kolich, a Champlin dealer from Kansas City, was the next conferee to appear in favor of S.B. 84. Mr. Kolich said Champlin forced him to sign, with 30 minutes notice, a

cancellation clause or they would stop selling him gas. He said he had been with Champlin 30 years and did not feel this was fair treatment. Mr. Kolich said Champlin also dropped the monthly station rental to $1 a month.

Mr. Ray Whitener, Topeka Fina dealer, appeared next. He said he was asking only for the right to negotiate his contract. He said he thought S.B. 84 would prohibit the major oil companies from terminating contracts for no reason.

Mr. Don Bell, Kansas Oil Marketers Association, was the first conferee to appear in opposition to S.B. 84. Mr. Bell said he represents 325 jobbers and dealers in the state - 70% of which operate their own station as well as act as jobbers. He said S.B. 84 does not provide relief from the injustices the proponents of S.B. 84 are complaining about. S.B. 84 would do four things: (a) prohibit retail operations by the major oil companies; (b) allow for uniform equipment and supply charges; (c) provide for allocation by majors in emergencies; and (d) provide injunctive relief for violators of the act. It is not a "dealer day in court" bill. A similar bill was declared unconstitutional in Florida. Mr. Bell said the proponents of S.B. 84 are actually looking for a dealer's rights bill and a "dealer day in court" bill.

Mr. Bob Pearson, Farmway Co-op, spoke next (Attachment No. V). He said he was representing the 285 cooperatives of Kansas, 196 of which are engaged in the petroleum business. He said it was his opinion that S.B. 84 would hamper production, refining, and marketing.

Mr. Neal Hutton, Kansas Oil Marketers Association, spoke next. Mr. Hutton said he had been requested to bring letters from Derby Refining Company and Vickers Petroleum Corporation expressing their opposition to S.B. 84 (Attachment No. VI). Enclosed with these letters is the final judgement rendered in the Florida case, alluded to by Mr. Bell in his remarks. The Florida law was found to be discriminatory, contrary to the public welfare, an impermissible restraint upon competition, a denial of equal protection under the law, a denial of the right to carry on a legitimate business, and an undue restriction of the right to enter into lawful contracts.

Following Mr. Hutton's presentation the Committee recessed for lunch.

Afternoon Session

The meeting reconvened at 1:30 p.m. and the Chairman introduced Mr. Robert Anderson, Mid-Continent Oil and Gas Association, as the first afternoon conferee. Mr. Anderson said he thought there are fewer than 20 company owned stations in the

state and he does not feel S.B. 84 would have any real effect. He said also that he knew of no threats or coercion by any of the major oil companies.

Mr. Don Schnacke, Executive Vice-President, Kansas Independent Oil and Gas Association, spoke next (Attachment No. VII). Mr. Schnacke said KIOGA represents a diverse membership with members throughout Kansas doing business in at least 92 counties. He said S.B. 84 is discriminatory between classes of properties and activities and raises a serious constitutional question.

The major oil companies are not setting high prices, Mr. Schnacke said. Crude oil supplies coming from outside the U.S. are nearly 38% of the total consumed. In regard to the price difference between stations identified with major oil companies and independents, Mr. Schnacke explained that a refinery sells gas at various grades or various steps of refining. The less refining, the cheaper the price. The independent stations often receive the lower grade gasoline. The difference in price can also be attributed to the amount of service given at a particular station.

The next conferee was Mr. Joe Lavender, Division Sales Manager, Conoco (Attachment No. VIII). Mr. Lavender said he is opposed to S.B. 84 because it would be a disservice to both the service station dealers and the consumer. He said presently Conoco operates only two such stations in the state and there are no plans to increase that number. Section 1(b) of the bill also would prohibit a dealer from lowering his price to meet competition. Federal law allows for this action as a legitimate form of competition. By limiting competition and imposing price constraints that would result in diminished services, and by imposing an illegal and unfair system in time of product shortages, S.B. 84 would work in active opposition to the interests of the people of Kansas.

Mr. Roy Frost, Associate Director, Kansas Petroleum Council, spoke next in opposition to S.B. 84. He said there were bills similar to S.B. 84 introduced in 17 other states and Washington, D.C. last year. Such bills were defeated in 12 states and none were enacted.

Mr. Jack Sippel, Amoco dealer, Topeka, spoke next (Attachment IX). Mr. Sippel said he had been with Amoco for 16 years. At the present time Amoco owns and operates one service station that is a training center. Amoco has not extended its company owned operations and does not intend to do so. From personal experience and conversation with other dealers, Mr. Sippel said he saw no reason for legislation similar to S.B. 84.

Mr. Clayton Murphy, Amoco dealer, was the next conferee (Attachment No. X). He said he had operated an Amoco service station for 12 years, and had served on Amoco dealer advisory

councils as a dealer representative on several occasions and had been a dealer trainer. In almost all instances Amoco had been fair with him.

Mr. Ray Heintz, Amoco representative for Kansas, Oklahoma, and Missouri spoke next. He said one third of their stations are company owned. In the last ten years Amoco has sold 60 or 70 stations to dealers.

In response to a question, Mr. Heintz said self-service stations started in Denver in 1971 and had spread to Kansas within the next six months.

Mr. George Sims, Mobil Oil, was the next conferee. He asked if we are going to continue under the private enterprise system or guarantee jobs. The reason our system works, he said, is because different people make mistakes at different times. Mr. Sims said short term leases help make the adjustments necessary from federal regulations. We are going to have to take risks if we are to continue in the free enterprise system. The regulation of this industry is the reason we are experiencing an energy crisis today, because we are selling below the replacement cost.

Following the presentation by Mr. Sims, the Committee began general deliberation. The Chairman reported that the Legislative Coordinating Council had granted permission for the September field hearings. It was decided that the trip would be made by bus and would follow as closely as practicable the following schedule:

Monday, September 22, '75	-	7:30 a.m. - Leave Wichita 2:30 p.m. - Meeting at Garden City 8:00 p.m. - Meeting at Hays Spend night in Salina
Tuesday, September 23, '75	-	2:30 p.m. - Meeting in Holton 7:30 p.m. - Meeting in Olathe Spend night in Olathe
Wednesday, September 24,'75	-	10:30 a.m. - Meeting in Chanute Spend night in Wichita
Thursday, September 25, '75	-	Morning Meeting in Wichita

Following determination of the agenda for the August meeting the Committee adjourned.

Prepared by Douglas K. Crandall

Approved by Committee on:

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(Date)

7-28-75
Attachment I

Summary of Ground Water & Sediment Control Views

Submitted to Joint Legislative Committee

Division of Environment
Kansas Department of Health and Environment

Pollution of the state's surface water resources from agricultural, urban and construction site runoff is significant. Sediment yields from agricultural runoff have been estimated to amount fo 50 [1] to 88[2] million tons/year. Table 1 is a summary of estimated sediment yields made by the Division of Environment. The state's sixteen river basin water quality management planning areas and the associated sediment yield factors are illustrated in Figure 1.

Current estimated Kansas cost to fully comply with the Federal Water Pollution Control Act is in excess of $6 billion of which over $1.5 billion relates to rural and agricultural runoff.

A preliminary appraisal of the impact of sediment from agricultural runoff has been completed and is documented in the state's 305(b) report[3]. The 305(b) report concludes that the water quality benefits of sediment reduction include:

1. Decreased cost of water treatment
2. Enhancement of biosupport capability
3. Increased recreational potential

While the benefits of sediment reduction may be readily apparent the achievement of a desired sediment concentration in the stream may not be as simple as applying the recommended number of terraces or grassed waterways to agricultural cropland. One aspect of the sediment reduction problem which must be investigated further is the theoretical reduction limit imposed by the stream energy gradient which determines the natural balance of sand-silt bottom streams. It has already been documented that silt reductions resulting from the major reservoir system in Kansas have caused serious channel deterioration in major streams below the reservoirs[3]. From the Missouri River Basin Comprehensive Framework Study[4] it can be concluded that the effect of conservation, irrigation, and flood control projects on in-stream sediment reduction varies greatly with the extent of the project. For instance, soil conservation projects applied to drainages of one square mile or less have resulted in reductions of sediment yield by as much as 85 percent. The effect of conservation practices applied to larger drainage areas (greater than ten square miles) appears to have little effect on sediment yield on a downstream point unless it includes channel installations to control severe channel erosion or gully head-cutting.

Because of the apparent lack of documented evidence demonstrating a direct reduction of downstream sediment yields from the application of conservation practices to small drainage areas, the Division of Environment does not feel that comprehensive, mandatory sediment reduction legislation should be implemented at this time.

In the Division's Phase II Water Quality Management Plans, to be completed in 1978, the Division of Environment intends to present:

1. Alternate non-point source control strategies of varying complexities.

2. An estimated cost for each alternative.

3. An analysis of alternatives for institutional management.

4. Needs for enabling legislation.

Table 1.

Estimated Sediment Yields

Basin	Tons/mi^2-Yr.		Composit Yield Factor (1) Tons Acre - Yr. Range Crop	Area (2) mi^2	(2) %Farmland	%Range % Crop	Sediment Yields Range Crop Ton/yr.	Total Ton/yr.
Upper Republican	224 700	(533)	.35 1.09	4995	97	35 65	379,859 2,204,543	2,584,403
Smoky Hill	238 706	(495)	.37 1.10	8810	95	42 56	836,615 3,308,965	4,145,580
Upper Ark.	79 304	(234)	.12 .47	10315	96	31 69	243,123 2,077,127	2,320,215
Cimarron	86 156	(140)	.13 .24	6756	95	23 77	126.952 769,768	896,720
Solomon	330 858	(619)	.52 1.34	6835	95	42 56	899,964 3,119,877	4,019,841
Saline	289 780	(557)	.45 1.22	3288	96	42 56	379,156 1,378,750	1,757,960
Little Ark.	242 858	(723)	.38 1.34	1329	94	15 80	45,348 857,492	902,840
Lower Ark.	258 941	(655)	.40 1.47	9045	95	35 60	775,925 4,851,466	5,627,391
Lower Republican	382 897	(709)	.60 1.40	2600	93	33 65	304,813 1,409,814	1,714,628

Table 1. (cont.)

Basin	Tons/mi^2-Yr.		Composit Factor (1) Tons Acre - Yr. Range Crop	Area (2) mi^2	(2) %Farmland	%Range %Crop	Sediment Yields Range Crop Ton/yr.	Total Ton/yr.
Big Blue	484 1408	(1085)	.76 2.2	2424	95	35 65	390,094 2,107,522	2,497,616
Kansas	594 1881	(1216)	.93 2.94	5473	94	40 52	1,222,361 5,032,055	6,254,417
Neosho	396 1386	(814)	.62 2.17	6300	94	55 43	1,289,811 3,529,393	4,819,204
Walnut	396 1584	(1168)	.62 2.48	1955	94	35 65	254,705 1,892,095	2,146,800
Verdigris	374 1452	(913)	.58 2.27	3354	94	50 50	589,566 2,288,904	2,878,470
Marais Des Cygnes	452 1603	(1085)	.71 2.5	4304	92	45 55	805,398 3,491,052	4,296,450
Missouri	836 2904		1.31 4.54	1620	95	27 65	347,383 2,905,016	3,252,399
Total Sediment Yield for State				79403				50,114,923

References

(1) Sediment Yields from Small Drainage Areas in Kansas B.-16. Figure 8

(2) Interim Basin Plans.

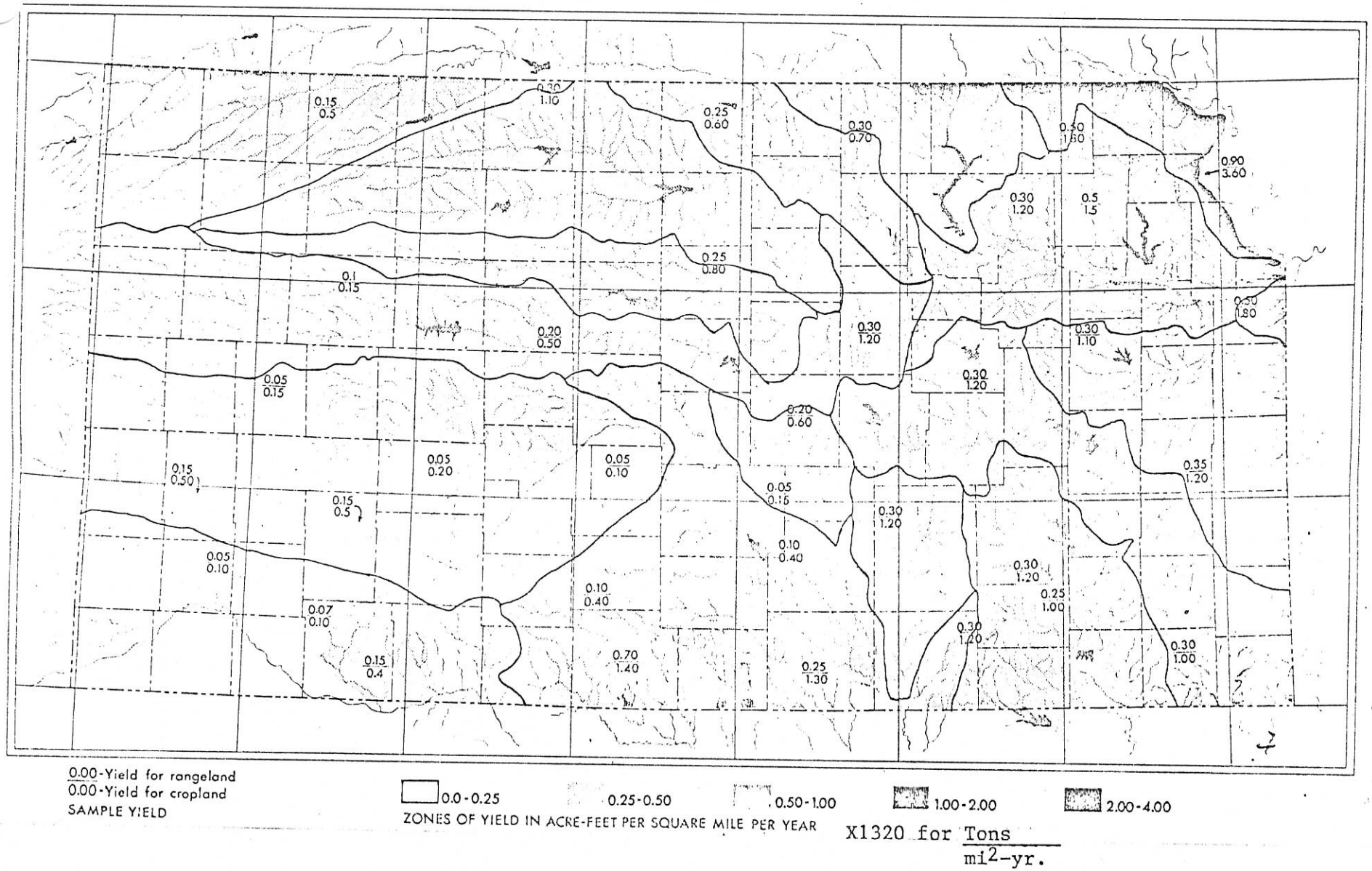

Figure 1. Sediment Yield Factors for Kansas River Basins
Source: Sediment Yields from Small Drainage Areas in Kansas Bulletin No. 16 The Kansas Water Resources Board 1971.

References

(1) "Sediment Yields from Small Drainage Areas in Kansas;"Bulletin No. 16; The Kansas Water Resources Board; 1971.

(2) "Special Information Kit - Erosion & Sedimentation" Cooperative Extension Service. Kansas State University Manhattan. October 1974.

(3) The 1975 Kansas Water Quality Inventory. State of Kansas Department of Health and Environment. 1975.

(4) The Missouri River Basin Comprehensive Framework Study, Vol. 6, Chapter 5; Missouri Basin Inter - Agency Committee. June 1969.

Department of Health and Environment
Division of Environment
Statewide Water Quality Planning

PL 92-500 requires each state to operate a Continuing Planning Process which will be the program under which water quality management planning for achievement and maintenance of state and national water quality goals will be accomplished. The Governor of Kansas officially designated the Division of Environment as the state water pollution control planning agency on March 29, 1973, to carry forth the planning activities required by PL 92-500. The Water Data Analysis Section is responsible for the duties performed under the Continuing Planning Process, which program was approved by the Region VII Office of the Environmental Protection Agency on September 7, 1973.

The Continuing Planning Process must satisfy statewide planning provisions required by sections 303(e) and 208 of PL 92-500 and encompasses the following basis responsibilities:

- Overall basin planning responsibility, coordination of basin planning effort, and final plan preparation.
- Water Quality monitoring and data gathering.
- Wasteload allocation and stream modelling.
- Determination of waste treatment needs and costs.
- Priority setting.
- Compliance monitoring

Section 208 planning, at the option of the state, may be done for a specified area by a local designated planning agency if the state determines that complex water quality control problems exist in the area, such as might be encountered as a result of urban-industrial concentrations. However, the general homogeneity of water quality problems in Kansas, as well as the need for a consistent regulatory program for non-point source control across the state, has generally precluded the desirability of local planning designations, and resulted in the non-designation of the entire state by the Governor in 1973. Subsequently, a local designation request has been prepared for the Kansas City metropolitan area for consideration by EPA, but it is unlikely that other areas will be considered. The Continuing Planning Process therefore assumes responsibility for statewide planning provisions under section 208.

The major outputs of the Continuing Planning Process are river basin water quality management plans which must be prepared for each river basin in the state. These plans are prepared in accordance with federal regulations which require sixteen components to be addressed:

1. Identification of planning areas and problems.
2. Inventory of waste sources.
3. Water quality standards to be achieved.
4. Population, economic, and water quality projections.
5. Total maximum daily loads for streams.
6. Waste load allocations.
7. Schedules of compliance for waste sources.
8. Municipal waste treatment needs.

9. Residual waste control program.
10. Waste treatment construction priorities.
11. Assessment of non-point sources.
12. Identification of non-point source controls.
13. Urban stormwater system needs.
14. Industrial waste treatment needs.
15. Description of regulatory programs.
16. Identification of implementation and operating agencies.

Components 1 through 7 (referred to as Phase I planning) must be completed and approved prior to July 1, 1976. The remaining components (Phase II) must be incorporated into each plan in sufficient time to assure implementation of the plan by July 1, 1983. After approval of a Phase I or Phase II plan, no construction grants may be awarded for any waste treatment control facilities which do not conform to the approved plan. All detailed facilities planning under section 201 of the law, as well as any future planning under sections 208 or 209, if approved by the state, automatically becomes a part of the approved basin plan.

All final basin planning under the Continuing Planning Process must undergo a public hearing which will be announced statewide 30 days prior to the actual hearing. All state and federal agencies, municipalities, industries, and other interested persons will have opportunity at that time to provide input to any plan being considered.

The following is a list of inputs which have been identified as being needed during the formulation of the river basin water quality management plans. The list is not intended to be complete, and further elements will undoubtedly be identified prior to or during plan preparation. Those elements relating to plan components 1 through 7 (Phase I) listed above will be required within the first half of FY 1976 in order to satisfy the Phase I completion date of July 1, 1976. Elements relating to plan components 8 through 16 (Phase II) will be required throughout FY 1977 and FY 1978, although exact timing of inputs is undetermined at this point. During the preparation of Phase II, some re-assessment of Phase I components will also be required.

General Element	Examples
Phase I Elements:	
Streamflow records	Daily mean, average and extreme discharges, rating curves
Streamflow characteristics	Flow duration, low flow frequency, base flow characteristics
Basin morphology	Drainage areas, river mileage, channel geometry, basin topography
Runoff characteristics	Distribution, long-term averages, rainfall-runoff relationships
Reservoir data	Lake inventories, reservoir yields, storage allocations, release records

Surface water quality	Long-term surveillance of streams and lakes, intensive basin surveys, areal problem studies (chemical, nutrient, heavy metal, oxygen, solids, bacteriological, radiological, pesticide)
Population data	Census, distribution, trends, projections
Economic data	Manufacturing, mining, agricultural trends and projections
Waste source inventories	Municipal, industrial, commercial listings, feedlot statistics, reservoir sanitation zone information.
Waste source monitoring	Discharge quality and quantity, permit compliance status, condition of facilities.
Water use data	Municipal, industrial, agricultural use and projections

Phase II Elements:

Water availability	Quantity/use projections, state water plan elements, source feasibility studies

Water rights information	Distribution and totals of established water rights by use category, water rights policy projections
Sediment data	Sediment load transport, particle size analysis, chemical analysis
Soils information	Classification, location and extent, chemical analysis
Irrigability of land	Acreage by basin
Land use data	Land use mapping, major land use projections
Land conservation data	Land treatment needs, structural needs, land treatment monitoring, soil loss data
Aquatic biology data	Long-term surveillance of streams and lakes, intensive basin surveys, areal problem studies, bio-support assessments, toxicity data, tissue analysis (plankton, periphyton, macrophyton, macroinvertibrates)
Fish and wildlife data	Populations, distributions, indigenous species, toxicity data, tissue analysis, pollution-related mortality
Recreation statistics	Water-related recreation data, use areas, frequency and degree of use, future needs

Waste treatment needs	Degree and type of treatment needed at each source, costs of treatment
Stormwater control needs	Location and extent of combined and separate stormwater systems, discharge locations, control or treatment needs, costs of correction
Agricultural statistics	Acreage of cropland, pastureland, rangeland, crop production statistics, livestock inventories, fertilizer and pesticide use
Geological data	Location and extent of formations, mineral analysis
Groundwater data	Location and extent, aquifer characteristics, movement, chemical quality, surface water-groundwater interchange
Construction statistics	Yearly construction data and costs for highways, watershed projects, flood control projects, residential and commercial building, utility construction
Elements of county and city planning	Water supply and sewerage improvement planning, land availability studies

Attachment II

DRAFT ON INSULATION STANDARDS FOR COMMITTEE DISCUSSION

RE: PROPOSAL NO. 62

SPECIAL COMMITTEE ON ENERGY AND NATURAL RESOURCES

Section 1. As used in this act the following terms shall have the meanings respectively ascribed to them unless the context requires a different meaning: (a) "Structure" means any residential dwelling whether single or multi-family, including apartments and condominiums; commercial buildings; and public or governmental buildings, including schools; (b) "energy" means that derived from fossil or atomic fuels excluding that dervied from solar, wind, geothermal or other non-depletive sources.

Sec. 2. (a) Each application for a building permit for any new structure shall be accompanied by a certificate of compliance executed by a registered architect or licensed engineer. Such certificate shall indicate that such structure has been designed to comply with and does not exceed the maximum energy consumption standards as set forth in section 3.

(b) Each application for a building permit for the reconstruction or remodeling of any structure in excess of twenty-five percent (25%) of gross area shall be accompanied by a certificate of compliance executed by a registered architect or licensed engineer. Such certificate shall indicate that upon such reconstruction or remodeling such structure has been designed to comply with and does not exceed the maximum energy consumption standards as set forth in section 3.

Sec. 3. (a) The maximum annual energy consumption at building boundary BTU per gross square foot of floor area per annum shall be:

(1) Residences and schools . . . . .

(2) offices and commercial . . . . .

(3) hospitals. . . . . .

(4) assembly and mercantile. . . . .

(b) The method of determination of BTU/gsf/year shall be set forth in ASHRAE Standard 90P.

(c) An allowance of twenty percent (20%) over the maximum annual energy consumption standard may be allowed for in cases of unusual design and climatic, orientation or siting problems upon good cause shown in the certificate of compliance.

Sec. 4. The director of architectural services is hereby authorized and directed to promulgate and adopt rules and regulations to enforce and insure compliance with the provisions of this act. Such rules and regulations may authorize the utilization of county or municipal building code inspectors to act as designees to perform such inspection duties as the director may require.

Sec. 5. The provisions of this act shall not apply to any structure existing, under construction or reconstruction on the effective date of this act but such provisions shall apply to such structure if the same is reconstructed or remodeled in excess of twenty-five percent (25%) of gross area after June 30, 1976.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Attachment III

STATEMENT BY

W. G. LANDRY

PLANT MANAGER -- MCPHERSON

JOHNS-MANVILLE FIBER GLASS, INC.

FOR PRESENTATION TO THE

KANSAS COMMITTEE ON

ENERGY AND NATURAL RESOURCES

TOPEKA, KANSAS

JULY 28, 1975

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES;

I'M BILL LANDRY, PLANT MANAGER OF THE JOHNS-MANVILLE CORPORATION'S FIBER GLASS MANUFACTURING FACILITY IN MCPHERSON. I APPRECIATE THE OPPORTUNITY TO BE HERE TODAY TO DISCUSS THE CORRELATION THAT EXISTS BETWEEN THERMAL PRODUCTS AND THE CONSERVATION OF ENERGY.

I ALSO HOPE TO ILLUSTRATE THE FAVORABLE IMPACT BOTH OF THESE COULD HAVE IN ALLEVIATING THE CRITICAL ENERGY SITUATION LOOMING ON THE HORIZON FOR THE STATE OF KANSAS.

I'D LIKE TO START BY PUTTING AT YOUR DISPOSAL WHATEVER EXPERTISE I OR MY COMPANY MAY BE ABLE TO OFFER THAT WOULD BE OF VALUE TO YOU IN YOUR DELIBERATIONS. ALONG THOSE LINES, I MIGHT TELL YOU THAT JOHNS-MANVILLE HAS BEEN PRIVILEGED TO WORK WITH VARIOUS FEDERAL AGENCIES AND CONGRESSIONAL COMMITTEES IN MAKING RECOMMENDATIONS AND SUGGESTIONS RELATIVE TO NATIONAL ENERGY CONSERVATION PROGRAMS -- SPECIFICALLY, AS THEY ADDRESS THIS CAUSAL RELATIONSHIP BETWEEN THERMAL PROTECTION MATERIALS AND ENERGY CONSERVATION, AND ALSO AS THEY ADDRESS

THE NEED FOR THERMAL PROTECTION BUILDING STANDARDS TO NURTURE THAT RELATIONSHIP.

NOW LET'S EXPLORE THOSE POINTS A BIT. WHAT ARE "THERMAL PROTECTION MATERIALS" AND WHY SHOULD STANDARDS BE SET TO ENSURE THEIR PRESENCE IN EVERY NEW OR EXISTING BUILDING IN THIS STATE? ARE THESE MATERIALS THAT EFFECTIVE IN CONTROLLING BUILDING ENERGY CONSUMPTION?

TO ANSWER THOSE QUESTIONS, LET ME SAY THAT THIS CATEGORY OF MATERIALS INCLUDES INSULATION, STORM DOORS AND WINDOWS, WEATHERSTRIPPING AND CAULKING. AND FOR THE RECORD, YES, THEY ARE THAT EFFECTIVE! IT'S BEEN ESTIMATED, FOR EXAMPLE, THAT IN AN AVERAGE AMERICAN HOUSE AND CLIMATE, INSTALLING THESE THERMAL PROTECTION MATERIALS CAN RESULT IN ENERGY SAVINGS EQUIVALENT TO 27 BARRELS OF OIL EACH YEAR.

TO APPRECIATE THE IMMEDIATE IMPACT THERMAL PRODUCTS COULD HAVE IN SLASHING ENERGY CONSUMPTION, THEREFORE, YOU NEED ONLY REALIZE THAT NATIONALLY, OUR RESIDENTIAL SECTOR ALONE IS CONSUMING 20% OF OUR COUNTRY'S ENERGY SUPPLY JUST TO HEAT AND COOL HOMES. THOSE HOMES ARE "ENERGY-EATERS" BECAUSE HALF OF THEM WASTE ONE-THIRD OF THE ENERGY SUPPLIED TO THEM.

OF MORE INTEREST TO THOSE OF US HERE IN KANSAS IS THE FACT THAT THERE ARE NOW APPROXIMATELY 616,000 SINGLE FAMILY RESIDENTIAL UNITS IN THIS STATE THAT NEED REINSULATING. IF YOU REINSULATED JUST THE CEILINGS OF THESE HOUSES, 10 BILLION CUBIC FEET OF NATURAL GAS WOULD BE SAVED IN THIS STATE EACH YEAR ... 10 BILLION CUBIC FEET A YEAR!

So, I SAY TO YOU GENTLEMEN NOW, THAT MUCH OF THE ENERGY USED FOR HEATING AND COOLING KANSAS RESIDENCES COULD EASILY BE SAVED IF WE COULD ENCOURAGE OUR CITIZENS TO "SEAL THE ENVELOPE" AROUND THEM.

AS MY FIRST RECOMMENDATION TODAY, THEN, I SUGGEST TO YOU THAT WE NEED TO MAKE OUR PEOPLE AWARE OF THE HUGE QUANTITIES OF ENERGY THEY ARE WASTING IN THEIR HOMES ... AND WE NEED TO DO IT IN A HURRY.

NOW, YOU MIGHT SIT THERE AND NOD AND SAY TO YOURSELF "SURE, THAT'S WHAT I WOULD SAY IF I WERE IN THE INSULATION BUSINESS TOO." AND I'LL BE THE FIRST TO ADMIT THAT I WOULDN'T BE IN A POSITION TO KNOW THIS IF I WEREN'T IN THE INDUSTRY. BUT INSULATION ALONE WON'T DO IT. WE NEED MORE WEATHER STRIPPING, THERMAL GLASS AND STORM WINDOWS ... EVEN CAULKING COMPOUND.

THEN WE START TALKING NUMBERS, GENTLEMEN, NUMBERS THAT INVOLVE DOLLARS, BARRELS OF OIL AND PERHAPS MOST IMPORTANTLY, CUBIC FEET OF NATURAL GAS ... ALL OF WHICH CAN BE SAVED TOMORROW ... NOT LATER ON ... IF WE START REORDERING OUR PRIORITIES TOWARD THE "LITTLE GUY."

AS MY SECOND RECOMMENDATION, I PROPOSE THAT KANSAS FOLLOW THE LEAD OF STATES LIKE OHIO, OREGON, NORTH CAROLINA AND CALIFORNIA BY PASSING LEGISLATION TO IMMEDIATELY ADOPT FHA MINIMUM PROPERTY STANDARDS FOR ALL NEW CONSTRUCTION IN THIS STATE.

WHEN YOU COMPARE THIS KIND OF APPROACH - WHICH ACTUALLY SAVES THE HOMEOWNER MONEY IN THE LONG-RUN - TO THE INCREASES WE'RE FACING FROM PUBLIC UTILITY COMPANIES AND AT THE GAS PUMP, THIS "STANDARDS" IDEA STARTS LOOKING EVEN BETTER.

KANSAS HAS MADE A GREAT BEGINNING IN MOBILE HOME CONSTRUCTION BY ADOPTING ANSI 119.1 (AMERICAN NATIONAL STANDARDS INSTITUTE) FOR ALL MOBILE HOMES MANUFACTURED IN THIS STATE, BUT NOW WE MUST APPLY THE SAME FORESIGHT TO THE REST OF THE RESIDENTIAL SECTOR.

BY THE WAY, I'M AWARE THAT CONGRESS HAS A NUMBER OF NATIONAL BUILDING STANDARDS PROPOSALS IN VARIOUS COMMITTEES NOW, BUT I'M ALSO AWARE THAT CONGRESS' IDEA OF "ENERGY CONSERVATION" OF LATE SEEMS TO BE TO SIT AROUND AND TAKE IT EASY ON THEMSELVES, SO I DOUBT WE'LL SEE MUCH LEGISLATION IN THIS AREA IN THE NEAR FUTURE. EVEN IF NATIONAL LEGISLATION PASSED TODAY, IT WOULD STILL BE ABOUT TWO YEARS BEFORE IT WENT INTO EFFECT, AND I JUST DON'T THINK WE CAN AFFORD THAT KIND OF DELAY HERE IN KANSAS! WE NEED TO IMPLEMENT STANDARDS FOR NEW AND EXISTING RESIDENCES TODAY, NOT TOMORROW.

THERE IS NOW A BILL IN THE KANSAS LEGISLATURE THAT WOULD DO THE JOB: #SCR2, WHICH REQUIRES THE STATE DIRECTOR OF ARCHITECTURAL SERVICES TO STUDY STANDARDS FOR ENERGY USE AND THE INSULATION OF BUILDINGS.

OBVIOUSLY, HOMEOWNERS NEED ENCOURAGEMENT TO IMPROVE THE THERMAL PERFORMANCE OF THEIR HOMES, AND IT LOOKS AS THOUGH IT MAY BE AWHILE BEFORE NATIONAL TAX INCENTIVE LEGISLATION BECOMES EFFECTIVE. SO I CALL YOUR ATTENTION TO ANOTHER STATE BILL -- THIS ONE IN THE HOUSE, (H. 2375) -- WHICH GIVES PEOPLE A TAX CREDIT IF THEY INCREASE THE THERMAL PROTECTION OF THEIR HOMES. I URGE YOUR SUPPORT OF THESE BILLS AND ASK THAT YOU BRING SOME LEVERAGE TO BEAR ON THE SITUATION SO WE CAN CONSERVE WHAT ENERGY WE HAVE WITH RESPECT TO NEW AND EXISTING RESIDENCES. THAT'S STEP ONE.

FOR STEP TWO, LET'S TURN TO THE COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL SECTORS OF KANSAS FOR A MINUTE. THESE ARE ALL VIRGIN AREAS FOR ENERGY CONSERVATION AND UNTIL RECENTLY, NO ONE HAD ANY IDEA AS TO THEIR POTENTIAL.

I CAN TELL YOU TODAY THAT MY COMPANY IS CONDUCTING SOME ENERGY AUDITS OF INDUSTRIES THROUGHOUT THE COUNTRY FOR THE FEA (FEDERAL ENERGY ADMINISTRATION), AND WE'RE AMAZED AT THE TREMENDOUS POTENTIAL SAVINGS OF ENERGY AND DOLLARS WE'RE DISCOVERING IN INDUSTRY PARTICULARLY. INTEREST IN THIS AREA IS ESCALATING WITH THE PRICE OF FUEL. AS FURTHER INCENTIVE, HOWEVER, I SUGGEST THAT YOU CONSIDER GRANTING SOME SORT OF INVESTMENT TAX CREDIT TO THESE SECTORS FOR THEIR ENERGY CONSERVATION EFFORTS -- BOTH IN NEW CONSTRUCTION AND EXISTING STRUCTURES.

FINALLY, AS MANAGER OF A KANSAS BUSINESS WITH AN ANNUAL PAYROLL OF APPROXIMATELY $1.5 MILLION, I'D LIKE TO COMMENT ON THE NATURAL GAS SITUATION IN THE STATE, A SUBJECT I ADDRESSED BEFORE THE SPECIAL COMMITTEE FOR NATURAL GAS ALLOCATION EARLIER THIS MONTH.

LET ME START BY POINTING OUT TO YOU -- BASED ON WHAT I'VE SAID THIS AFTERNOON -- THAT THE INSULATION INDUSTRY IS UNIQUE IN THAT IT'S A NET ENERGY-<u>CONSERVING</u> INDUSTRY RATHER THAN A

NET ENERGY-CONSUMING INDUSTRY. WE USE A SMALL AMOUNT OF ENERGY TODAY TO MAKE A PRODUCT THAT SAVES LARGE AMOUNTS OF FUTURE ENERGY. SPECIFICALLY, EVERY SINGLE BTU USED IN PRODUCING FIBER GLASS INSULATION SAVES 600 BTU'S OVER THE NORMAL MORTGAGE LIFETIME OF THE BUILDING IN WHICH INSTALLED.

A SUPPLY OF NATURAL GAS IS ABSOLUTELY ESSENTIAL IF WE ARE TO CONTINUE PRODUCTION, YET WE NOW FACE POSSIBLE CURTAILMENT BECAUSE, UNDER EXISTING LAW, IT MAY BE ALLOCATED TO ONE SMALL PART OF KANSAS TO THE DETRIMENT OF THE REST OF THE STATE.

I SUBMIT TO YOU THAT NATURAL GAS IS A RESOURCE "AFFECTED WITH A PUBLIC INTEREST" AND SHOULD NOT BE ALLOWED TO BE SOLD INDISCRIMINATELY TO THE HIGHEST BIDDER WITHOUT REGARD TO ITS END USE. IT IS FOR THAT REASON THAT I URGE YOU TO SUPPORT SENATE BILL NUMBER 564 AS A MEANS BY WHICH THE SUPPLY OF NATURAL GAS MAY BE STABILIZED AND FAIRLY ALLOCATED AT A FAIR PRICE TO THE PRODUCER AND THE USER. I BELIEVE IT MUST BE ALLOCATED WITH CONSIDERATION BEING GIVEN TO "ENERGY-CONSUMING" VERSUS "ENERGY CONSERVING" USE.

IN SUMMARY, I'VE ADDRESSED MYSELF TO THOSE FACTORS I FEEL ARE MOST CRITICAL TO MEETING THE ENERGY CHALLENGE IN KANSAS:

1. ESTABLISHING MINIMUM ENERGY CONSUMPTION STANDARDS FOR NEW CONSTRUCTION BY ADOPTING FHAMPS FOR ALL NEW RESIDENTIAL CONSTRUCTION IN THE STATE;
2. PROVIDING TAX ENCOURAGEMENT FOR EXISTING HOMEOWNERS TO PURCHASE THERMAL PROTECTION MATERIALS;
3. CONSIDERING INVESTMENT TAX CREDITS TO COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL SECTORS, AND
4. ALLOCATING NATURAL GAS IN ACCORDANCE WITH SENATE BILL #564.

IF YOU ADOPT EVEN A FEW OF THESE MEASURES, I'M CONFIDENT THE STATE OF KANSAS WILL BE SUCCESSFUL IN REDUCING ITS VULNERABILITY AND REINFORCING ITS SELF-SUFFICIENCY.

THANK YOU.

Attachment IV

STATEMENT OF JOHN S. COSTELLO, EXECUTIVE SECRETARY, MAGDA
Mid America Gasoline Dealers Association, Inc.

Mr. Chairman: My name is John S. Costello. I reside in rural Holt County, Mo. I am the Executive Secretary of the Mid America Gasoline Dealers Association (MAGDA) with offices at 4439 N. W. Gateway, Riverside, Mo.

Our appearance before your Committee is a very serious one. Looking back over the past 40 years of lopsided, unreasonable and many times hard to believe terms, conditions and practices served by Supplier Representative "take it or leave it" attitude, it is quite obvious that some type of mandatory rules of fairness between Suppliers and Dealers must be provided. A Dealer Day in Court Bill is needed in Kansas.

No one, who knows the facts, is so stupid as to accept what has been happening to Gasoline Dealers as representing any measure of fairness at all.....except those who want to keep using people for their own greedy interest. We are not asking that the tables be turned to give us an advantage over our Suppliers, especially the advantage the Suppliers have had over us for so many years.

Is the Bill of sufficient public interest to justify enactment? Most certainly it is. Shortly after our appearance before this Committee during the 1975 session, the Skelly Dealers learned that they were no longer being treated in a fair way by Skelly Oil Company. Skelly notified their Dealers that it was Skelly's intention to "take over", throw out the Dealers if you please and establish self-service, company operated service stations. One of these Dealers had been with Skelly for over 20 years.

These Dealers will confirm to you that the Company Rep gave them no choice but to sign the mutual cancellation. One suggested he would like to have the copy of the cancellation in order to read it and seek legal advice. The answer was, "I can't let you have it...you might just as well sign NOW."

MAGDA strongly favors legislation designed to prevent the further forward integration of our Suppliers into the retailing function and to require their withdrawal from retailing. This is necessary for the preservation of an independent and viable retail sector in the petroleum industry.

Recent programs initiated by many supplying companies have moved them dramatically downstream into retailing. Specifically, Gulf's program will reduce the overall number of Gulf outlets and convert up to 20 percent of those remaining to full company operation. In addition, many of the outlets that remain on stream will be converted to secondary brands.

Exxon in some markets, notably New Orleans, has engaged in a high incidence of conversion from Dealer-operated to Company-operated units.

Crown, in Virginia, just announced that they will not renew any of the Dealer leases scheduled to expire by October 31 in that state. All will be converted to company operations

Citgo also has a program of reducing the number of outlets and converting to company operation.

In Ohio, Sohio and Marathon are not writing any new Dealer leases, but converting all available stations to company operation. In the case of Marathon, they are switching from Branded identification to the secondary Brand of "Speedway".

In the Washington, D. C. area, BP has abandoned its logo in many stations, converting to "William Penn". In others they have dispossessed the Dealers in favor of "Gas and Go" company operations.

In our own area those who have gone or have threatened to go the company operation route are Phillips, Clark, Conoco and others. We are concerned as to whom will be next. We feel that Kansas needs legislation NOW which will assure a Dealer he cannot be thrown out without his day in court.

We urge that action be taken NOW.

Attachment V

STATEMENT OF BOB PEARSON

OF FARMWAY CO-OP, INC., BELOIT, KANSAS

BEFORE ENERGY AND NATURAL RESOURCES COMMITTEE

COMMITTEE OF THE KANSAS SENATE

July 29, 1975

I am Bob Pearson, employed by Farmway Co-op, Inc., Beloit, Kansas. We are Petroleum Distributors in North Central Kansas, operating eight Service Stations and eight Farm Delivery Tankwagons. I am here, also to represent the 285 Cooperatives of Kansas, 196 of these organizations are engaged in the Petroleum business, supplying approximately 178 million gallons of gasoline and diesel fuels per year to approximately 96,000 patrons.

We feel it is most important to the people of Kansas, that Senate Bill 84 not become law.

In North Central Kansas, the Cooperative is the only supplier of Petroleum Products, in Hunter, Scottsville, Jamestown, Randall, Westfall and Delphos, just to name a few. I could name another 25 towns across Kansas where this is also true.

We feel the existing laws, governing the Petroleum Industry in Kansas give adequate protection to the consumer as well as the marketer.

Attachment VI

Vickers

VICKERS PETROLEUM CORPORATION

VICKERS-KSB&T BUILDING / AC 316·267-0311
P. O. BOX 2240 / WICHITA, KANSAS 67201

DON SWANSON
VICE PRESIDENT — MARKETING

July 18, 1975

The Honorable Senator Vincent E. Moore
Senate Chambers, State House
Topeka, Kansas 66612

Re: Kansas Senate Bill 84

Dear Senator Moore:

On February 12, 1975, I wrote to you concerning the captioned bill which would prohibit refiners (such as Vickers), producers and wholesalers of petroleum products, from operating retail service stations. Since Vickers Petroleum is incorporated in this state and has been doing business here since 1919, I felt an obligation to inform the Legislature of the disastrous effect such special interest legislation could have upon the petroleum industry and the people of Kansas. Now that I have learned that the bill is scheduled for rehearing in the committee of which you are a member, I wish to reaffirm those points made in my February 12 letter and to again express my strongest opposition. In addition, since the time of my February letter, legal developments have come to light which not only reinforce my belief that the legislation proposed in Senate Bill 84 is unconscionable from a business and public policy standpoint, but also point to the conclusion that it is illegal. Let me elaborate upon this point first.

On January 23, 1975, a state court in Florida held unconstitutional a law prohibiting refiners and producers from operating retail service stations on any significant scale. The law in that case was found to be discriminatory, contrary to the public welfare, an impermissible restraint upon competition, a denial of the equal protection of the laws, a denial of the right to carry on a legitimate business, an undue restriction of the right to enter into lawful contracts, and, in general, unconstitutional. I am advised that the proposed Kansas law suffers from the same defects and would probably fall in the face of a similar constitutional challenge. So that you may evaluate this decision for yourself, I am enclosing a copy. To the best of my knowledge, it has not been reversed, or altered, since its issuance.

Despite this serious legal question, which I will leave to the lawyers, the proposed law just doesn't make good sense. At the current time, I would estimate that at least 90 percent of the gasoline marketed in this country is sold through dealer and jobber operated stations. It now seems that this powerful special interest lobby is not satisfied unless they have all. It is interesting to note that this group does not seek to enhance its position by offering competitive prices or better service than that provided at the refiner operated outlets; but it seeks its end through the political process, thereby hoping to have the unwanted competition declared illegal.

Competition, in spite of its pitfalls, has brought this country a long way. At the beginning of this century, Congress recognized the importance of this mechanism and enacted the Sherman Act and related anti-trust laws to nurture and protect competition. At this juncture, the Legislature should take a long and hard look at what it is doing before competition in the gasoline marketing business is declared illegal.

The proponents of this anti-competitive legislation seem to assume that there are two mutually exclusive ways to retail gasoline: company operated stations; or dealer operated stations. This is simply not true. For years the market has supported both types of operations for the simple reason that gasoline demand has many faces. Some people want gas only, and they want it fast. Others prefer the full attention most dealers offer; and still, others want a car wash thrown in, or carry out food, or extensive travel information, or wrecker service, or rental trailers.... In short, there is room for many types of operations. It is not logical to destroy one particular type which has arisen, after all, to fulfill one type of gasoline consumer's needs.

When we speak of company operated stations, Vickers was one of the first to popularize this type of operation and probably employs this style to a much greater extent than most companies, and yet, far more than half of the gasoline we sell is through dealers and jobbers. It is a simple fact that there are marketing conditions to which full-service dealer operations are particularly well suited, especially the rural areas of the Midwest where the personal relationship between dealer and customer is so vitally important. This personal relationship must be built up over a period of years by providing a full line of automotive care perhaps not duplicated anywhere in the near vicinity. To suggest that Vickers, or any other oil company for that matter, plans to drive the small town dealer out of business in favor of high volume, gas only, company operated stations, is patently ridiculous.

I would suspect that oil companies will continue marketing through dealers where that style is appropriate and through their own outlets where that style is appropriate.

In all this talk about oil companies, large dealers organizations, and abstract policy arguments, we must not forget those work-a-day Kansans employed at company operated stations. If the proposed bill were to become law, we would have to release the employees at our 52 service stations in this state. A similar fate would befall those employed by other companies. There would be no guarantee, of course, that the successor on the site would choose to reemploy any of them. With unemployment rolls growing everywhere, it seems senseless to create more dislocation and unemployment by legislative act.

In this same regard, consider for a moment those who would be employed at stations converted to dealer operation. Would they be covered by unemployment compensation insurance, company benefit and insurance plans, workmen's compensation insurance, minimum wage laws and other such programs; or would the exemptions in these laws, due to smallness of the operation or the dealer's inability to recognize the applicability of these programs to his business, leave the employee to his own devices? Would the payroll be met on time without fail? Would the safety conditions at the station be maintained at the present high level found in most company stations? And how about the health and cleanliness standards to be maintained in those public areas; especially the rest rooms? No longer would the oil companies impose appropriate standards.

More could be said, but I will not burden you further. I would like to say in closing that the legislation proposed in Senate Bill 84 would work considerable mischief in many ways upon the people of our state, and I would urge you to oppose it adamantly. Please feel free to distribute copies of this letter as you deem appropriate. I am also enclosing a copy of my February 12 letter with which you may take the same liberties.

Thank you for your attention to this matter.

Sincerely,

Don Swanson

DS:am

VICKERS-KSB&T BUILDING / AC 316-267-0311
P. O. BOX 2240 / WICHITA, KANSAS 67201

VICKERS PETROLEUM CORPORATION

DON SWANSON
VICE PRESIDENT – MARKETING

February 12, 1975

The Honorable Senator Vincent E. Moore
Senate Chambers State House
Topeka, Kansas 66612

Dear Senator Moore:

RE: Senate Bill 84

There is currently before the Senate of the State of Kansas a bill which would prohibit refiners, producers and wholesalers of petroleum products from operating retail service stations. As a refiner incorporated in this state and doing business here through company owned and operated retail outlets, Vickers feels an obligation to advise the legislature of the many unwanted, and perhaps undisclosed, effects Senate Bill No. 84 will have upon our home state.

If this bill were to become law, the employees at our 52 retail stations in Kansas would be immediately released. Whether the dealer or new owner of the station would choose to rehire the staff is a matter of conjecture. With unemployment growing in all sections of the nation, it seems senseless to create unemployment in Kansas by legislative act. Let the working continue to work.

One point almost always overlooked by the proponents of this type of legislation is the effect upon competition which would result from forced divesture of company operated stations. As a general rule, it is the style of the major, multi-national oil companies to market through independent dealers, while many of the independents, such as Vickers, have originated and developed company operated outlets as an alternative. The gasoline consuming public has been receptive to this alternative, and the result has been an improvement in competition between the major and independent segments of the industry. The Bill of which we are now speaking would destroy the primary competitive tool of many of the independents while leaving the majors virtually unscathed. As the independents attempted to convert their entire marketing operations to independent dealer operation, the competitive balance would be destroyed and Kansas would become the special province of the major oil companies. It is

hard for me to believe, as a Kansan and as one with long experience in the industry, that the Legislature desires this result.

In addition to seriously damaging competition, the proposed legislation would deprive Kansas consumers of a type of service they have found meets their needs. As contrasted to the full service operations carried on by most major oil company dealers, the company operated station specializes in quick service or self service. This enables the consumer to get in and get out with a minimum of time and effort expended in the process. There is no logic in destroying a service which has grown in part to fulfill a consumer demand.

Company control of retail outlets enables the company to impose cleanliness and courtesy standards appropriate to a business catering the public. If dealers were to take over the stations, this control along with the high standards would be lost.

As a final point, I would like to mention the effect upon the station employees themselves. Under dealer control, these employees may be excluded from benefit programs and the operation of employee protection laws which they now enjoy. Minimum wage laws, workmens compensation benefits, unemployment compensation insurance, and the right to form and belong to labor organizations may no longer apply to these employees working for dealers due to fewness of employees, gross income below qualifying standards, remoteness from interstate commerce, or the dealer's inability to recognize the applicability of these programs to his operation. Furthermore, there is a considerable difference between the company's financial responsibility in meeting employees payrolls as compared to the dealer's.

I urge you to carefully consider these points and to vote against, and oppose in every way, Senate Bill No. 84.

Yours truly,

Don Swanson

DS:sje

cc: The Honorable Senator Don Christy
The Honorable Representative Ansel Tobias

COPY

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA.

EXXON CORPORATION, 1251 Avenue of the Americas, New York, New York, Plaintiff,	CASE NO. 74-1449
SHELL OIL COMPANY, One Shell Plaza, Houston, Texas 77001; and UNION OIL COMPANY OF CALIFORNIA, a California Corporation, Plaintiffs,	CASE NO. 74-1577
PHILLIPS PETROLEUM COMPANY, a Delaware corporation, and SUPERIOR OIL COMPANY, a Florida corporation, Plaintiffs,	CASE NO. 74-1772
vs.	
DOYLE CONNER, as Commissioner of Agriculture and Consumer Services of the State of Florida, and the DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES of the State of Florida, Defendants	

FINAL JUDGMENT

This cause came on for final hearing on the pleadings, stipulations, admissions, answers to interrogatories and on the affidavits, depositions and other evidentiary papers on file (all of which is stipulated to constitute the record and evidence in these cases), and on the briefs and oral argument of counsel for the parties, and the Court having considered same and being otherwise advised, it is

DECLARED, ORDERED AND ADJUDGED:

1. The several plaintiffs in these cases are producers

/or refiners of petroleum products, and a subsidiary of a producer, and are engaged in the marketing of their products in Florida through various retail outlets. The petroleum products are refined outside of the state of Florida and shipped into the state. Such outlets include service stations owned or leased by the plaintiffs and operated by their salaried employees; independent service station operators who buy from plaintiffs and sell under "brand names" or under private brand names; operators who buy from jobbers who have purchased petroleum products from the plaintiffs; and various other independent retailers. The plaintiffs have challenged the validity of Chapter 74-387, Laws of Florida 1974, which created Section 526.151, Florida Statutes.

2. This statute provides that after October 1, 1974

> "No producer, refiner, or a subsidiary of any producer or refiner, shall operate with company personnel, in excess of three per cent of the total number of all classes of retail service stations selling its petroleum products, under its own brand or a secondary brand." Subsection 1.

It also provides:

> "2. Every producer or refiner of petroleum products supplying gasoline and special fuels to retail service station dealers shall apply all equipment rental charges uniformly to all retail service station dealers which they supply.
> 3. Provided, however, this act shall not apply to any service station operated by a producer or refiner of petroleum products who purchases or obtains more than 90% of the unrefined petroleum products from another producer or refiner of petroleum products.
> 4. A circuit court or circuit judge shall have jurisdiction . . . to grant an injunction restraining any person from violating or continuing to violate any of the provisions of this act."

3. This Court has already defined the term "service station" as used in the statute to mean "retail service stations offering a full line of automotive service, including the sale of petroleum products, the sale of tires, batteries and accessories,

the performance of automobile repair and maintenance work". Direct Oil Corp., et al. v. Doyle Connor, et al., Case No. 74-1185 (Circuit Court of Leon County). Thus the statute does not apply to retail outlets, whether producer operated or otherwise, which merely sell gasoline and oil or which are less than full service operations involving the sale of accessories and repair and maintenance services.

4. The apparent object of the statute is to severely limit the right of producers, refiners and their subsidiaries to operate with their own personnel retail service stations in the state. It also seeks to require uniformity in rental charges by producers and refiners to retail service station dealers which they supply.

5. The statute is assailed as being an unconstitutional invasion of rights to operate a legitimate business; that it is an invalid exercise of police power; that it is unconstitutionally vague, indefinite and ambiguous; that it is a burden on interstate commerce; that it denies due process of law; denies equal protection of the law; is a taking of private property without just compensation; and is in conflict with the purpose and effect of the Federal Emergency Petroleum Allocation Act of 1973 (87 Stat. 627).

6. At the outset the Court is confronted with the rule that every legislative act is presumed to be valid and that all doubts must be resolved in favor of its constitutionality. One challenging the constitutionality of a statute must overcome that presumption, and if there is any reasonable theory upon which it can be upheld the Court must adopt it. The Court must adopt an interpretation which supports the statute if consistent with reason, rather than one which strikes it down. Courts are not permitted to strike down an act because it fails to square with

individual social or economic theories which the judges deem to be sound policy. See Ball v. Branch, 154 Fla. 7, 16 So. 2d 650 (1944). See also notes 115-123 under Fla. Const. Art. 3, Sec. 1, Vol. 25 APSA pp. 567-572.

7. On the other hand, the Courts have the duty to inquire whether a statute brought into question is within constitutional limits, when such statute rests upon the police power of the state, as the right to own, hold and enjoy property is nearly absolute and may be abridged only when the public health, safety, morals or welfare requires it. See Liquor Store v. Continental Distilling Corp., Fla. Sup. Ct. 1949, 40 So. 2d 371. Our constitutions, both state and federal, guarantee a certain liberty of action of its citizens and such guaranties preclude the state from forbidding the citizen's inherent right to engage in useful and legitimate business, though they do not prevent reasonable regulation. The test of validity is not what is set forth in the letter of the Act, but how it is operative in its practical application and effect. Riley v. Sweat, 110 Fla. 362, 149 So. 38. Stated another way, as in State v. Leone, Fla. Sup. Ct. 1950, 118 So. 2d 781 where it is said:

> "The limitation (on police power) is such that the police power may be used so as to interfere with the . . . constitutionally protected right of the individual to pursue a lawful business, or so as to discriminate against an individual, or class, where the public interest demands that the rights of the individual, or class give way in favor of the public generally . . ." " . . . it must first be clear that the purpose to be served is not merely desirable but one which will so benefit the public as to justify interference with or destruction of private rights."
> ". . . . Such interference or sacrifice of private rights can never be justified or sanctioned merely to make it more convenient or easier for the state to achieve the desirable end."

8. It is not contended, nor could it be, that the sale at retail of petroleum products is other than a legitimate business, or that limiting the number of company operated service stations is in any way related to public safety, health or morals. It is asserted that it does promote public welfare in that it protects the independent dealers from the great oil producers who, through their own service stations, can force them out of business or render their operations unprofitable. It has been held that in some cases the exercise of police power is justified to promote the economic welfare of the community. Eskind v. City of Vero Beach, Fla. Sup. Ct. 1963, 159 So. 2d 209. However, to be valid such must have its foundation in reason and general community welfare. It must not impose discriminatory restrictions on the activities of a carefully selected business while permitting others similarly conditioned to engage in the prohibited activity. Discriminatory legislation damaging to one segment of a class of businesses and beneficial to another segment is not a valid exercise of the power. Eskind v. City of Vero Beach, supra. The real test of validity of policy power is found in the effect which the pursuit of the calling involved has on the public weal rather than in the inherent nature of the calling. State ex rel Davis v. Ross, 97 Fla. 710, 122 So. 225. The state cannot arbitrarily interfere in private businesses or impose unreasonable and unnecessary restrictions upon them under the guise of protecting the public. A statute exercising police power must be supported by some sound basis of necessity to protect public welfare. It must not discriminate in its application and impact between individuals engaged in the same business, and if there is no reasonably identifiable rational relationship between the demands of the public welfare and the

raint upon the private business the latter will not be permitted to stand. Eskind v. City of Vero Beach, supra. As said in Connor v. Sullivan, Fla. DCA 1, 1963, 160 So. 2d 120:

> "Despite many inroads during recent years on the people's economic freedom throughout the country on both state and federal levels, the principle still stands that the exercise of the police power cannot extend beyond reasonable interferences with the liberty of action of individuals as are really necessary to protect the public health and welfare."

9. Without examining in minute detail the extent of limitation sought to be imposed on company operated service stations or the mathematical difficulties which are involved in determining what the universe may be in computing the three per cent maximum which the statute sets as a limit, the Court will consider whether any restraint of this kind is a valid exercise of the police power. The obvious result of restraint in the number of service stations a producer or refiner may operate is to reduce competition with the independent operators of such stations. The evidence indicates that company operated stations generally sell gasoline at lower prices than the independents. It is also shown that the oil industry is not concentrated in the hands of a few producers. In 1973 the largest was only 12% of the total domestic production, with 10 1/2% the largest in gasoline marketing nationally and 11 1/2% in Florida. The average retail dealer margin has nearly doubled since 1972 which results in higher profits to dealers. This is justified and is no criticism of the independent dealer, as he was confronted during the shortage with a reduced available gallonage for sale. However, since the shortage has been relieved these margins are largely maintained and they probably should be. It appears that as a general rule the tendency on the part of

lucers is to market the great bulk of their gasoline and other petroleum products through jobbers and independent dealers. The company operated station is employed largely when a company is breaking into new territory when there is a natural reluctance on the part of independent dealers or jobbers to make the investment and effort to market an untried product. Even so, it appears that once the market is established there is a definite trend for the company stations to be transferred to dealers as opportunities present themselves. Another instance of company operations is in certain specialized or innovative marketing techniques. Tunnel car washes which offer wash and wax services in connection with gasoline sales are an example. This perhaps meets a public need for car washes which had practically disappeared from most service stations, due to high labor costs and space limitations. The company stations also function to provide standards of service to promote public relations, and customer acceptance of its brand products. This serves to provide an incentive to independents who may not be otherwise motivated to attend to the public needs for service station services.

10. Automobile owners have a great variety of needs and preferences in selecting the type of service in retail outlets of the fuel for their vehicles. Some are totally price conscious and will patronize the outlet which has the lowest per gallon charge, regardless of other services present or absent. Some desire the full service with battery, water and oil checks, availability of tires, batteries and other accessories and a reasonably competent mechanic to make repairs when necessary. Some are interested in other goods and services not related to the automobile, such as availability of beverages, snacks, souvenirs, telephones, trailer rentals, and even restau-

ts and overnight accomodations. The traveling motorist is certainly interested in rest rooms, which are perhaps one of the most essential of facilities expected of a service station. The station dependent upon local trade is concerned with maintaining good relations to build up a satisfactory custom. The cashing of checks, ordering some special item, keeping records of maintenance and a myriad of other real or fancied needs make up the operation. Independent dealers often charge higher gallon prices than others to cover the services they render. finding that the customers are willing to pay such a premium for the added attentions they get. Independent dealers also establish their own hours of operation, arranging such as they deem desirable. Company stations often arrange hours of operation to provide some service at all reasonable hours in the area.

11. Taking all into account the evidence indicates that the public would not be benefitted in any degree by the curtailment of company operated stations. Indeed the lessened competition to other stations would have a tendency to decrease the availability of needed goods and services, to lessen incentive to maintenance of quality facilities and service, and to reduce pressures to hold down prices. Also, there would be a chilling effect on new refiner products being introduced into an area not previously served by such refiner. There would be discouragement, if not exclusion, from embarking on innovative operations such as car care centers, self repair stations, and other responses to customer needs in a changing situation. There are other particular functions of the company operated station which are not harmful to the public. They serve as testing grounds for merchandising techniques, operating procedures, and financial control systems and equipment. This

tually inures to the benefit of all dealers as well as customers. Company stations also serve as training schools and company employees often qualify for and become independent dealers. Another function is the taking over and operating of a station which an independent dealer has for any reason had to give up. Most often this is a temporary operation, but it serves to provide a continuous operation so that an incoming dealer can more effectively succeed in a going business.

12. The evidence indicates that there are about 12,000 retail stations in this state. It is shown that the major oil companies in the United States operate about 3.5% of the total service stations selling their products as company-operated stations. In Florida the percentage is 1.1%. However, at the present time the plaintiff Exxon appears to operate about 6% as company operated stations. However, it does not appear that there is or is threatened any drastic change in the direction of significant increased company operations.

13. In evaluating legislation which tends to lessen competition, under the guise of advancing public economic interests, courts may not consider the relative numbers in or the popularity of the segments of an industry to be affected either adversely or advantageously. As has been previously stated, legislation damaging to one segment of a class of a legitimate business and beneficial to another, with the general public not being protected or served, is an invasion of the liberties involved in constitutional guarantees of the right to acquire, own and enjoy property and to enter into and perform contracts. The statute under examination is found to serve no protection to public welfare but is discriminatory to that segment of petroleum retail service stations which are company operated.

There is shown no constitutional impediment to what is described as vertical integration in the market place, namely the selling directly to the consumer of goods by those who produce and process them. The statute is unconstitutional. The rulings of a long line of Florida appellate decisions direct this result. Perry Trading Co. v. City of Tallahassee, 128 Fla. 424, 174 So. 854; Town of Bay Harbor Islands v. Schlepik (Fla. 1952) 57 So. 2d 855; Town of Miami Springs v. Scoville (Fla. 1955) 81 So. 2d 188; Tollius v. City of Miami (Fla. 1957) 96 So. 2d 122; City of Miami Beach v. Seacoast Towers (Fla. DCA 3, 1965) 156 So. 2d 528 (holding interference with private rights must be in the interests of the public generally as distinguished from those of a relatively few); Rabin v. Connor (Fla. 1965) 174 So. 2d 855; Fogg v. City of South Miami (Fla. DCA 3, 1966) 183 So. 2d 219; William Murray Builders, Inc. v. City of Jacksonville (Fla. DCA 1, 1971) 254 So. 2d 364.

14. The challenge to the vagueness of the act and the requirements of sufficient certainty to accord due process of law is deemed to be fully sustained. This is especially significant in that portion of the statute which deals with equipment rental charges to service station dealers which producers or refiners supply and which requires uniformity of such charges. The term "equipment" is vague and may include facilities that are real estate as well as personalty. The amount of a rental would normally be variable depending upon the age and condition of the rented item, the location of same where mobility is limited, and many other rational differences. The test of a statute being sufficiently explicit is that it informs those who are subject to its provisions what conduct on their part will render them liable to its sanctions and penalties. Stated another way,

words employed in the statute must be reasonably clear to indicate the legislative purpose, so that a person who may be liable to the penalties may know that he is within its provisions or not. State ex rel Lee v. Buchanan, (Fla. 1966) 191 So. 2d 33; Brock v. Hardie, 114 Fla. 670, 154 So. 690. There is vagueness as to what would be included in the terms "equipment" and "equipment rental charges". Whether "equipment" means only movable items or includes lifts, tanks or even the station building itself is unclear and not susceptible to interpretation except to rewrite the statute to some extent. Also, the "equipment rental charge" is ambiguous as to whether that refers to straight dollar amounts for a specified period or some other measurement such as would be based on sales. This vagueness is particularly obvious in the requirement of uniformity ("uniformly") as to whether such is to be measured in cents per gallon or a fixed monetary charge for each item of equipment. The Court deems that Subsection (2) is not reasonably clear so that the producers or refiners may know whether or not they are within its provisions. In view of other dispositions, it is not deemed necessary or useful to consider the vagueness vel non of other portions of the statute. (See Aztec Motel, Inc. v. State ex rel Faircloth, Fla. 1971, 251 So. 2d 849.)

15. The Court will not consider or discuss the contention of plaintiffs of violation of due process because of unlawful delegation of authority to the Commissioner of Agriculature to make rules without adequate statutory guidelines. What has been said on vagueness suffices. Also, it is not apparent that this statute would violate the constitutional prohibition of taking private property for public use without just compensation. There is no taking of property under the statute, but there is an im-

ment of its use which is protected by other constitutional provisions. There is substance to the complaint of denial of equal protection of the law. It singles out the major integrated oil companies and their subsidiaries for drastic limitation at the retail level, but leaves untouched other major integrated companies, such as the motor industry, the appliance manufacturers, and others. There does not appear to be a reasonable classification for such restrictions. See State v. Blackburn, Fla. Sup. Ct., 104 So. 2d 19; Lasky v. State Farm Insurance Company, (Fla. 1974), 296 So. 2d 9; Castlewood International Corp. v. Wynne, (Fla. 1974), 294 So. 2d 321.

16. The claim of conflict with a federal statute regulating commerce and thus offending the supremacy clause is not well taken. Any effect on allocations of petroleum under the Federal Emergency Petroleum Allocation Act of 1973 is insubstantial and incidental. The assertion of violation of the commerce clause is a close question that need not be decided in view of other more clearly demonstrated grounds of invalidity. Walling v. Jacksonville Paper Co., 317 U.S. 564, 63 S. Ct. 332, 87 L. Ed. 460 would indicate that plaintiffs operations of their stations is interstate commerce.

17. In view of the foregoing, it is hereby DECLARED that, as applied to plaintiffs, Chapter 74-387, Laws of Florida, Acts of 1974 is unconstitutional and void for the reasons stated, and the defendant Doyle Conner, as Commissioner of Agriculture and Consumer Services of the State of Florida and the defendant Department of Agriculture and Consumer Services of the state of Florida, and their agents, employees and representatives are enjoined from taking any action against any of the plaintiffs in any of the above cases to enforce said statute

tion 526.151). Each party shall bear its own costs.

DECLARED, ORDERED and ADJUDGED in Chambers at Tallahassee, Florida this 23rd day of January, A.D. 1975.

(Signed)
BEN C. WILLIS, CIRCUIT JUDGE

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DERBY REFINING COMPANY

P. O. BOX 1030 - WICHITA, KANSAS 67201 (316) 267-0361

R. W. KERSEY
PRESIDENT

July 24, 1975

Senator Vincent E. Moore
1316 Arrowhead
Wichita, Kansas 67203

Dear Senator Moore:

On February 20, Jim Schartz, our Vice President for Branded Marketing, wrote you concerning what was then designated as Senate Bill 84 of the Kansas Legislature. We are advised this bill is again being considered for introduction in the next session of the legislature.

While our attorneys advise the bill as proposed raises serious constitutional questions, we will leave those questions to the lawyers and confine our comment to the serious economic impact the bill would have if enacted. The bill would have a devastating effect on competition in the retail marketing of gasoline by creating a select, privileged and protected single class of gasoline retailers. Producers, refiners and wholesalers (jobbers) would be prohibited from engaging in retail gasoline marketing. This would remove strongly competitive forces from the market. The inevitable result, in our opinion, would be higher prices to the consumer from the increasingly well-organized retail dealer class of gasoline marketer.

Sincerely,

R. W. Kersey

RWK/hc

Attachment VII

KANSAS INDEPENDENT OIL & GAS ASSOCIATION

940 FOURTH FINANCIAL CENTER • WICHITA, KANSAS 67202 • (316) 263-7297

July 29, 1975

To: Special Committee on Energy and Natural Resources

Re: Proposal No. 16 - SB 84

Mr. Chairman and Members of the Committee---

We appeared in opposition to SB 84 before the Senate Energy and Natural Resources Committee on February 18, 1975, by filing a formal statement.

KIOGA represents a diverse membership with members throughout Kansas and doing business in at least 92 Kansas Counties. We appeared against SB 84 because the word "producers" is mentioned in the title and four times in the bill. Our association has always had uppermost in its concern, the plight of producers in Kansas.

During the February hearings the proponents directed their concern toward the "major" oil companies and offered to exempt "small" companies. We do not think this solves the issues presented in SB 84.

SB 84 in its present form would affect a few of our members who have limited refining or retail outlets. We have some members who are considering new ventures and may expand their business interests in the future.

While our membership has a limited interest in retail outlets of petroleum products, we feel SB 84 smacks of discrimination between classes of properties and activities and raises a serious constitutional question. We are aware of a recent federal court decision in Florida that I believe will be brought to your attention which will inform your committee of legal problems SB 84 may develop.

If not unconstitutional, SB 84 strikes at the philosophical issue of whether private enterprise will be permitted to flourish in Kansas without governmental regulation and interference. We feel this restraint of trade is un-warranted and we urge your committee to oppose this legislation.

Thank you for your consideration.

Donald P. Schnacke

Attachment VIII

STATEMENT OF MR. JOE A. LAVENDER - DIVISION SALES MANAGER - CONOCO
BEFORE THE INTERIM ENERGY AND NATURAL RESOURCES COMMITTEE OF THE
KANSAS LEGISLATURE -- SENATE BILL #84 -- JULY 29, 1975

MY NAME IS JOE LAVENDER AND I AM DIVISION SALES MANAGER FOR CONOCO AND I HAVE MARKETING RESPONSIBILITIES FOR THE STATE OF KANSAS. WE HAVE BEEN MARKETING UNDER THE CONOCO BRAND NAME HERE IN KANSAS FOR NEARLY 52 YEARS, AND TODAY WE SELL PRODUCTS THROUGH 235 SERVICE STATIONS IN THIS STATE. WE HAVE A CRITICAL INTEREST IN ANY PROPOSALS FOR LEGISLATION AFFECTING SUPPLYING COMPANIES AND SERVICE STATION DEALERS. SECTION 1(A) OF THIS ACT BEGINS, "FROM AND AFTER JANUARY 1, 1977, NO PRODUCER, REFINER, OR WHOLESALER OF PETROLEUM PRODUCTS SHALL OPERATE ANY CLASS OF RETAIL SERVICE STATION IN THIS STATE WITH PERSONNEL EMPLOYED BY SUCH PRODUCER, REFINER, OR WHOLESALER OR ANY SUBSIDIARY OR COMMISSIONED AGENT OF SUCH PRODUCER, REFINER, OR WHOLESALER." WE OPPOSE PASSAGE OF SUCH A PROVISION.

TO PUT MY COMMENTS IN THE RIGHT PERSPECTIVE, I SHOULD BEGIN BY STATING THAT MY COMPANY OPERATES ONLY TWO SALARIED SERVICE STATIONS IN THIS STATE. ONE SUCH STATION IS A CAR WASH, LOCATED IN SHAWNEE MISSION, KANSAS, AND THE OTHER IS AN INTERSTATE LOCATION AT ABILENE, KANSAS. THE SALES VOLUME FROM THESE TWO RETAILERS IN 1974 TOTALED 912,502 GALLONS AND IS 2.2% OF OUR RETAIL SALES IN KANSAS. WE HAVE NO PLANS, NOR HAVE WE EVER HAD ANY PLANS TO EXPAND SALARY OPERATIONS TO ANY SIGNIFICANT DEGREE. NATIONWIDE, MAJOR OIL COMPANIES OPERATE ONLY ABOUT 3.5% OF RETAIL OUTLETS AS SALARY OPERATIONS. THE AMERICAN PETROLEUM INSTITUTE REPORTED THAT DURING THE YEAR 1973, 608 DEALER OUTLETS WERE CONVERTED TO COMPANY OPERATIONS NATIONWIDE, AND SOME 965 COMPANY STATIONS WERE TURNED OVER TO DEALERS FOR A NET GAIN OF 357 IN FAVOR OF LESSEE DEALERS. IN FLORIDA, WHERE A BILL OF THIS TYPE WAS RULED UNCONSTITUTIONAL, THE CIRCUIT COURT FOUND THAT CURTAILING COMPANY-OPERATED STATIONS WOULD RESULT IN LESS COMPETITION AND THE COURT ADDED THAT THIS IN TURN WOULD TEND TO MAKE GOODS AND SERVICES LESS EASILY AVAILABLE, REDUCE THE INCENTIVE TO MAINTAIN GOOD QUALITY FACILITIES AND SERVICE, AND REDUCE THE PRESSURE TO HOLD DOWN PRICES. WE BELIEVE THAT THE PASSAGE OF SENATE BILL #84 WOULD BE A DISSERVICE TO BOTH THE SERVICE STATION DEALER AND THE CONSUMER.

ANOTHER IMPORTANT POINT: THE WORDING OF SENATE BILL #84 IS SUCH THAT EVEN IF AN INDEPENDENT DEALER SHOULD LEAVE A STATION FOR ANY REASON, WE COULD NOT STEP IN EVEN TEMPORARILY TO OPERATE THE STATION UNTIL A COMPETITIVE DEALER COULD BE FOUND AS A REPLACEMENT. THIS OBVIOUSLY IS A DISSERVICE TO CUSTOMERS WHO NORMALLY WOULD TRADE AT SUCH A LOCATION.

THERE'S SOME QUESTION AS TO WHETHER THIS SECTION OF THE BILL WOULD BE CONSTITUTIONAL: I WOULD LIKE TO POINT OUT THAT THE FLORIDA COURT HAS RULED A DIVORCEMENT BILL TO BE DISCRIMINATORY AGAINST COMPANY-OPERATED STATIONS. THE COURT ALSO FOUND THAT THE STATUTE DID NOT SERVE TO PROTECT THE PUBLIC WELFARE.

SECTION 1(B) OF THE ACT STATES THAT "EVERY PRODUCER, REFINER, OR WHOLESALER OF PETROLEUM PRODUCTS SUPPLYING GASOLINE AND SPECIAL FUELS TO RETAIL SERVICE STATIONS WITHIN THIS STATE SHALL EXTEND ALL VOLUNTARY ALLOWANCES UNIFORMLY TO ALL RETAIL SERVICE STATION DEALERS WHICH THEY SUPPLY." THIS WOULD NOT ONLY HAVE VERY SERIOUS CONSEQUENCES TO MAJOR OIL COMPANIES, BUT TO JOBBER SUPPLIERS AND TO THE SERVICE STATION DEALERS WHO SELL THE MAJOR BRAND PRODUCTS. LET US ASSUME THAT A DEALER IN A CERTAIN LOCALITY REDUCES HIS PRICE TO MEET COMPETITION. FEDERAL LAW ALLOWS FOR THIS ACTION AS A LEGITIMATE FORM OF COMPETITION.

UNDER THE PROPOSED STATUTE, HOWEVER, A COMPETITOR WHO OPERATED STATE-WIDE WOULD HAVE TO REDUCE HIS PRICE THROUGHOUT THE STATE. THIS WOULD MEAN THAT CONOCO, IN ORDER TO GRANT A SINGLE DEALER JUST 1.0¢ PER GALLON IN VOLUNTARY ALLOWANCE FOR ONE WEEK, WOULD HAVE TO ABSORB A COST OF THAT SAME 1¢ ON 785,000 GALLONS. THE COST OF THIS ASSISTANCE TO A SMALL DEALER THEN BECOMES $7,850 FOR JUST ONE WEEK. A 3.0¢ VOLUNTARY ALLOWANCE FOR JUST ONE WEEK WOULD COST $23,550 AND IF THE SITUATION LASTED FOR ONE MONTH, THE COST TO CONOCO WOULD BE $94,200. THIS COST WOULD BE PROHIBITIVE.

WE CAN EXPECT THAT THE SMALL DEALER WOULD BE HELPLESS IN TRYING TO COMPETE WITH OTHER RETAILERS AND HE WOULD BE DRIVEN OUT OF THE GASOLINE BUSINESS. THIS NOT ONLY DISCRIMINATES AGAINST THE SMALL DEALER, BUT IT WOULD REDUCE THE QUALITY OF SERVICE OFFERED TO CUSTOMERS.

SECTION 2(C), REQUIRING UNIFORM EQUIPMENT RENTAL CHARGES, ALSO POSES CERTAIN PROBLEMS. THEY HAVE BEEN DETAILED BY THE FLORIDA CIRCUIT COURT WITH REGARD TO A LAW WHICH HAD THE SAME WORDING AS THE PROPOSED KANSAS STATUTE. THE MAIN OBJECTION IS THAT THE PROVISION IS SO VAGUE THAT NO SUPPLIER COULD REASONABLY COMPLY WITH IT.

"EQUIPMENT" COULD MEAN ANYTHING FROM A SET OF HAND TOOLS TO A COMPLETE STATION BUILDING. THE BILL DOES NOT PERMIT THE SUPPLIER TO DIFFERENTIATE BETWEEN CHARGES FOR NEW AND USED EQUIPMENT OR FOR DIFFERENCES IN AGE, CONDITION, OR LOCATION OF THE ITEMS.

IN SHORT, A SUPPLIER UNDER THIS PROVISION COULD NOT TELL WHETHER HE WAS COMPLYING WITH THE LAW OR NOT.

SECTION 1(D) SEEMS TO BE CONTRARY TO EXISTING FEA REGULATIONS. I DON'T KNOW WHAT "UNIFORMLY" MEANS IN THIS CONTEXT. I THINK IT MEANS THAT EACH RETAIL SERVICE STATION DEALER WOULD RECEIVE THE SAME AMOUNT OF PRODUCT. THIS WOULD CREATE INSTANT WEALTH FOR MANY DEALERS AT THE EXPENSE OF OTHER DEALERS. IT ALSO WOULD LEAVE HIGH VOLUME STATIONS IN METROPOLITAN MARKETS WITHOUT ENOUGH VOLUME TO SERVE THE CONSUMER. WE THINK THAT A SUPPLIER COULD NOT COMPLY WITH THIS PROPOSED KANSAS LAW WITHOUT DIRECTLY VIOLATING FEDERAL LAW.

IN THE END, I SUGGEST THAT THE MOST TELLING OBJECTION TO SENATE BILL #84 IS THE FACT THAT IT WOULD NOT BE IN THE PUBLIC INTEREST. MORE THAN THAT: BY LIMITING COMPETITION, BY IMPOSING PRICE CONSTRAINTS THAT WOULD RESULT IN DIMINISHING SERVICES, AND BY IMPOSING AN ILLEGAL AND UNFAIR SYSTEM IN TIME OF PRODUCT SHORTAGES, THIS MEASURE WOULD WORK IN ACTIVE OPPOSITION TO THE INTERESTS OF THE PEOPLE OF KANSAS. THIS CONCLUDES MY REMARKS AT THIS TIME.

Attachment IX

Presented To:

The Interim Energy & Natural Resources Committee
KANSAS LEGISLATURE
Tuesday, July 29, 1975

Mr. Chairman, Members of the Committee:

My name is Jack Sippel, residing at 2419 Prairie Road, Topeka, and doing business in Topeka at 2044 Topeka Avenue and 405 E. 10th. I have been an independent dealer, associated as a lessee with AMOCO Oil Company for sixteen (16) years. I have been a dealer representative on the AMOCO National Dealer Advisory Council two different years (1970 and 1972) and on Regional and District Councils numerous years.

At the present time, AMOCO Oil Company has one company owned and operated service station in the state of Kansas. This is a training station used for training company personnel and new dealers leasing stations from AMOCO. It also serves as an experimental station for new products, new sales techniques and testing of new equipment. The experience gained there has benefitted directly or indirectly all of the AMOCO dealers in our state.

Contrary to existing rumors and statements, we dealers and the public have been advised that AMOCO has no intentions of expanding company-operated service stations. Virgil Dolen, the Regional Vice President for AMOCO's Western Region, made this emphatic at our Dealers Convention in November 1974. Ken Curtis, Marketing Vice President for AMOCO, has re-emphasized this since that time.

In support of this stated policy, the AMOCO Oil Company on February 13th announced the conversion of their company agents to a jobber type organization.

This is to be accomplished within a two year period. Jobbers are independent business men while company agents are employees, hence, AMOCO will be marketing almost entirely through independent business men in the future.

From personal experience and conversations with other dealers, I feel that past gasoline allocations have been fairly administered to dealers by their suppliers under the guidelines established by the FEA, hence, I see no reason for legislation by the state on this subject.

To my knowledge, all rental charges by AMOCO at this time are based on a uniform rate and are not discriminatory in any way. Slight variations from a fixed rate should and do exist because of various economic factors inherent at particular locations. Without this flexibility, it would be necessary to do without many of the so-called "neighborhood stations" in urban areas and many of the small stations in rural areas.

IN CONCLUSION

I am opposed to SB #84 because, in my opinion, there is no need for this type of legislation. It would not be of any benefit to the public, the dealers or the oil companies. It would be another restriction on the capability of the oil industry to cope with the energy requirements, present and future.

I respectfully request the Committee to vote in opposition to Senate Bill #84.

Attachment X

Presented To:

The Interim Energy & Natural Resources Committee
KANSAS LEGISLATURE
Tuesday, July 29, 1975

Mr. Chairman, Members of the Committee:

My name is Clayton Murphy. I reside in Girard, Kansas, where I have operated an AMOCO Oil Company service station for twelve years. I have served on AMOCO Dealer Advisory Councils as a Dealer Representative on several occasions and also have been a dealer trainer.

About three years ago I purchased the building and land on which my station is located, from the property owner, however, I am still an AMOCO Dealer. I feel that we, as dealers, have done a good job for our company and that, in almost all instances, they have been fair with us.

Paragraph (b) of Section 1 of Senate Bill #84 apparently pertains to price affirmation which would prevent my supplier from granting a price allowance to enable me to meet competitive prices on gasoline in my area unless they would grant this same allowance to all dealers on a statewide basis. This would, no doubt, create a statewide price war, which doesn't make sense to me. This also is contrary to the federal law which allows for the lowering of prices to meet competition in a local area.

It is my opinion, that my company has administered the allocation program fairly under the guide lines set forth by the Federal Energy Administration. Allocations are regulated by law by the Federal Government and any state law would certainly be in conflict.

IN CONCLUSION

Senate Bill #84 appears to me to be un-necessary and certainly another step into government meddling with the free enterprise system of marketing.

I respectfully request this Committee to vote in opposition to Senate Bill #84.