

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Ron Fox at
Chairperson

3:30 XX a.m./p.m. on January 21, 1986 in room 526-S of the Capitol.

All members were present except:

Representative Sughrue

Committee staff present:

Ramon Powers, Legislative Research Department
Raney Gilliland, Legislative Research Department
Theresa Kiernan, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Terry Shistar, Conservation Chair, Kansas Sierra Club
Director, Kansans for Safe Pest Control
Mary Fund, The Kansas Rural Center, Inc.
Marsha Marshall, Kansas Natural Resource Council (written testimony only)
Christina Wilson, Director of Governmental Relations
Kansas Fertilizer and Chemical Association (KFCA)
Mark Hassman, President, Kansas Termite & Pest Control Assoc.
Kenneth M. Wilke, Chief Counsel, Kansas State Board of Agriculture
Jon Flint, Kansas State Board of Agriculture
Bill J. Hawks, Jr., Hawks Exterminators, Wichita, Kansas

The meeting was called to order by Chairman Fox. Representative Acheson made a motion that a bill designating the ornate box turtle as a state reptile be introduced as a committee bill. Representative Mollenkamp seconded and the motion carried.

Representative Foster moved and Representative Fry seconded that a bill dealing with control of exotic and imported species of animals be introduced as a committee bill. The motion carried.

Representative Webb made a motion and Representative Fry seconded that a House Concurrent Resolution concerning the participation of the State of Kansas in the Nature Conservancy Program which would direct the Kansas Biological Survey to begin participating in the program. Motion carried.

Hearings were opened on HB 2649--Establishing civil penalties for violation of the Kansas pesticide law. Re Proposal No. 23 and HB 2654--Annual report required to be filed by pesticide dealers. Re Proposal No. 23.

Terry Shistar, representing the Kansas Chapter of the Sierra Club, as well as Kansans for Safe Pest Control, testified in favor of both HB 2649 and HB 2654. Regarding HB 2654, she urged that a reporting requirement for licensed and certified commercial applicators and governmental agencies be included. (See Attachment 1)

Mary Fund represented the Kansas Rural Center, Inc. She supported HB 2654, commenting that no pesticide product is a benign substance. They are toxins and health risks are involved in their use. (See Attachment 2)

Written testimony in favor of HB 2649, HB 2654, HB 2653, HB 2648, and HB 2652, concerning groundwater protection re Proposal No. 23, was submitted by Marsha Marshall, Kansas Natural Resource Council. (See Attachment 3).

Christina Wilson, Director of Governmental Relations of the Kansas Fertilizer and Chemical Association (KFCA) testified in favor of HB 2649. (See Attachment 4). She supported the intent of HB 2654, but expressed concern about the potential problems of administering such a law. (See Attachment 5). A position paper on groundwater protection was also submitted. (See Attachment 6)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,

room 526-S, Statehouse, at 3:30 ~~xxx~~/p.m. on January 21, 1986

Mark Hassman, President of the Kansas Termite and Pest Control Association, testified in opposition to HB 2649 in its present form. He submitted some changes in the bill which his organization would support. (See Attachment 7) Mr. Hassman also testified in opposition to HB 2654. He felt that it would be a costly and burdensome task to compile all of the data, as well as imposing a substantial expense on the Department of Agriculture to process the reports. (See Attachment 8)

Kenneth Wilke, Chief Counsel for the State Board of Agriculture represented that agency. He commented on some advantages and possible disadvantages of HB 2649. He also noted that his agency would request one change in the bill. (See Attachment 9)

Jon Flint spoke on behalf of the State Board of Agriculture concerning HB 2654. He noted that the Board realized the need for tracking the sale and/or use of pesticides. However, the Board would be placed in the position of receiving a large quantity of annual reports and being unable to process them into a meaningful and usable form. (See Attachment 10)

The last conferee was Bill Hawks, Jr., a third generation pest control operator with Hawks Exterminators of Wichita, Kansas, who also is a member of the Wichita Pest Control Regulating and Examining Board. He noted that in a scientific and legal sense, pesticides are economic poisons. Regarding HB 2649, he felt that civil enforcement authority as it relates to pesticides was long overdue, but the areas of funding and staffing would need to be considered. Mr. Hawks took a neutral position relative to HB 2654. He made some comments and recommended changes in the bill. (See Attachment 11)

The meeting was adjourned at 4:50 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held on January 22, 1986 at 3:30 p.m. in Room 526-S.

Date: Jan. 21, 1986

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Rich McKee	K.L.A	Topeka	232-9358
Chris Wilson	K.F.C.A	Hutchinson	316-862-7911
Randy Burleson	Empire Electric	Columbus	316-429-2375
Mark Hassman	Kansas Termite & Pest Control Assoc.	Salina	913-827-6750
PAUL MAGES	KANSAS Termite & Pest Control Assn	Topeka	232-9344
Marlene K. Bosworth	Kansas Rural Center	Whiting, KS	913-873-3431
Mary Funcl	Kansas Rural Center	Whiting, KS	873-3431
Terry Shistar	Kansas Sierra Club	Lawrence, KS	789-2260
W. A. Hawkins, Jr.	KS Board of Agriculture	Topeka, KS	296-2263
Kenneth M. Wilke	" " " "	" "	296-3848
Sam D. Throat	" " " "	" "	296-2263
Shawn McGrath	Ks. Natural Resource Council	" "	233-6707
Monica Marshall	Ks. Natural Resource Council	" "	" "
Jan Johnson	Budget Division	"	2436
Michael F. Jones	WU-student	Topeka	235-1940
Dick Compton	MIDWEST ENERGY	HAYS	625-3437
Cliff Campbell	Jeg,		
Rich McKee			
Ed Sarge	Senator Allen office		
Jacque Oakes		Topeka	233-3258



SIERRA CLUB

Kansas Chapter

TESTIMONY OF THE SIERRA CLUB and KANSANS FOR SAFE PEST CONTROL
ON H.B. 2654 AND H.B. 2649
21 January 1986

The Sierra Club and Kansans for Safe Pest Control support the reforms in H.B. 2654 and H.B. 2649. Since the bills address two aspects of the same problem, I will combine my comments.

Regardless of what the benefits of pesticide use may be, pesticides are highly toxic materials that have considerable potential for threatening human health and contaminating our environment. We are happy to see this committee take an interest in protecting Kansans and the Kansas environment from the ill effects of these widely-used chemicals.

H.B. 2654 addresses an important need--the need to know where pesticides are stored and used. This information is needed to determine which parties might be responsible for damage to health or property or contaminating water supplies. It may also be helpful in providing valuable data for epidemiological studies relating health problems to environmental causes. However, it is not clear that the bill will give us what we need. The bill does not tell where pesticides are used, which is a crucial piece of information. Since pesticide application businesses are currently required to keep records of all services, and certified commercial applicators not employed by a business are required to keep records of all applications of restricted use pesticides (under K.S.A. 2-2455), it would be relatively easy to include them in the requirement to provide reports to the Secretary. Those who apply chemicals through irrigation systems are also required to report all chemicals applied annually. The other users not now required to maintain records by the Kansas Pesticide Law are private applicators and governmental agencies. I can see no reason for exempting governmental agencies. Private applicators account for a large proportion of pesticide use in the state, but it would not be easy to require them to provide reports. It is this segment which may be most easily reflected in the dealer reporting.

Therefore, we urge you to include a reporting requirement for licensed and certified commercial applicators and governmental agencies in H.B. 2654.

H.B. 2649 brings the enforcement capability for the Pesticide Law more in line with that of other environmental protection statutes. I am including with my testimony one copy of a report by C.K. Rowland and Martha Bloomquist of the Center for Public Affairs at the University of Kansas. Rowland and Bloomquist studied the enforcement action taken by the Board of Agriculture in cases involving pesticide misuse between 1980 and 1985. They compiled a list of the 46 cases during that period that had been turned over to county attorneys for prosecution and had adequate documentation for their study. Of those 46, 21 were not even recorded as received by the county attorney's

office. In only 6 cases were charges filed and only 5 were prosecuted. Clearly, this is not an effective use of the resources of the Board of Agriculture and does not present a significant deterrent to careless pesticide applicators. Rowland and Bloomquist note (p.10) that a common reason for not prosecuting is that county attorneys believe that this function is inappropriate for their office. We agree with their conclusions (p. 14) that "available criminal sanctions must be supplemented with civil and administrative remedies." They note the effectiveness of such actions at the Kansas Department of Health and Environment, but caution that adequate funding must be provided for the program.

Therefore, we strongly urge you to act favorably on H.B. 2649.

Terry Shistar
Conservation Chair, Kansas Sierra Club
Director, Kansans for Safe Pest Control

THE KANSAS RURAL CENTER, INC.

304 Pratt Street

January 21, 1986

WHITING, KANSAS 66552

Phone: (913) 873-3431

Testimony for the House Energy and Natural Resources Committee

My name is Mary Fund, and I represent the Kansas Rural Center, which is a non-profit research, education and advocacy organization focusing on agriculture and natural resource issues. I am here today in support of HB 2654, which seeks to amend the Kansas Pesticide Act to require that pesticide dealers file an annual report with the State Board of Agriculture on all pesticides sold or distributed by the dealer.

As we all know, conventional agriculture relies heavily on the use of pesticides and herbicides. According to agricultural experts, this reliance on chemical controls for weeds and pests is increasing. Also increasing is the body of evidence pointing to existing and potential contamination of water and food products. Kansas has been lucky so far. Although traces of commonly used pesticides have been detected in some of our water supplies, we do not, as far as current data tells us, have a serious problem.

However, if a serious health threatening situation arose or if new knowledge about existing pesticides is learned that would require changes in use, disposal or health warnings, the state lacks the information that would help it act quickly and efficiently. No one in the state currently knows with any certainty what chemicals are being sold, where, and in what amounts.

As we consider why it is important to have this information, I'd like to share a couple of comments I've heard from farmers, who generally object to any tampering with pesticide regulations: "some of these pesticides are so harmless that you could eat them on your breakfast cereal" and "if the pesticides weren't safe, the EPA would not allow them on the market." Both of these comments reflect a level of "what we don't know can't hurt us" niavete that is potentially damaging to the public health, the environment, and particularly to the very people who come into the closest contact with these substances - the farmer and his or her family.

It may be true that some pesticides are no more dangerous than common table salt, but it is important to remember that no pesticide product is a benign substance. They are toxins. They were designed to control pest organisms, plant or animal, by disrupting one or more biological processes. We forget that we and other desirable organisms share the same processes with the very pests we seek to eliminate. Thus, there are health risks involved in their use. According to a study done by the National Academy of Sciences, sufficient data for complete risk assessment is available for only about 10 per cent of the pesticides now on the market.

It is for this reason that an information gathering effort like that proposed in HB 2654 should be supported. Requiring pesticide dealers to submit an annual report on what and how much they are selling will establish a base of knowledge about pesticide use in Kansas that will give Kansans some assurance that if our luck does not hold, if problems do develop, or if new product information becomes available, we will be better equipped to take swift and efficient action to protect the public health.

I commend the Committee for consideration of this bill, and urge its passage.

Attachment 2

Kansas Natural Resource Council

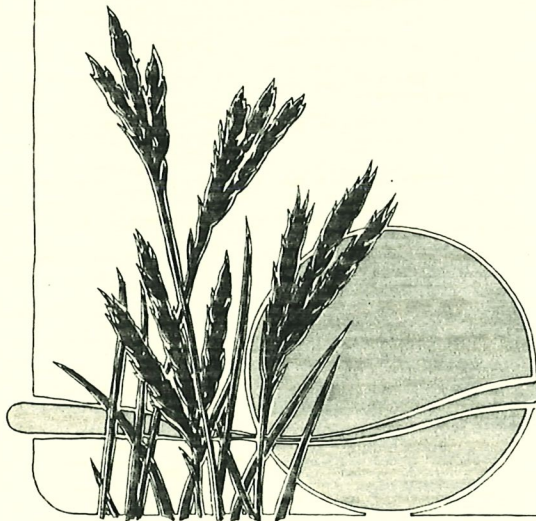
Tuesday, January 21, 1985

To: Members of the House Energy and Natural Resources Committee

From: Marsha Marshall, Kansas Natural Resource Council

Subject: HB2649, HB2654, HB2653, HB2648, HB2652--concerning groundwater protection re Proposal No. 23.

KNRC supports the five bills listed above and urges your favorable consideration of this package of groundwater protection legislation. We commend the Special Committee on Energy and Natural Resources for these recommendations. The bills show the special committee's recognition of the potential impact of pesticide activities and water well drilling upon the groundwater resources of the state. Enactment of these proposals will substantially improve Kansas groundwater protection laws.



Attachment 3

House Energy and Natural Resources 1/21.86



KANSAS FERTILIZER AND CHEMICAL ASSOCIATION, INC.

Box 1392

Hutchinson, Kansas 67504-1392

316-662-2598

STATEMENT OF THE
KANSAS FERTILIZER & CHEMICAL ASSOCIATION
TO THE HOUSE ENERGY & NATURAL RESOURCES COMMITTEE
REPRESENTATIVE RON FOX, CHAIRMAN
REGARDING H.B. 2649
JANUARY 21, 1986

Good afternoon Chairman Fox and members of the Committee. I am Chris Wilson, Director of Governmental Relations of the Kansas Fertilizer and Chemical Association (KFCA). We appreciate the opportunity to appear before you today regarding H.B. 2649, providing for civil penalties for violations of the Kansas Pesticide Law.

The Kansas Fertilizer and Chemical Association represents the state's agricultural chemical and fertilizer retail dealers, handlers and manufacturers. KFCA supports H.B. 2649, which would provide the State Board of Agriculture with an additional and needed tool to use in the event of a pesticide law violation.

Present authority often requires the Board of Agriculture to seek action through the criminal system, which can be too slow or burdensome for this type of violation. Enactment of H.B. 2649 would allow the Board to move expediently and at the same time insure that the rights of the accused violator are protected.

(Continued)
Attachment 4

House Energy and Natural Resources 1/21/86

KFCA also supported legislation enacted last year which established the Pesticide Dealer Registration Program, and we commend the Board of Agriculture on its administration of this program to date. We feel that the most significant advantage of H.B. 2649 is that, coupled with the pesticide dealer registration act, it should help provide the basis for EPA to grant state supremacy to Kansas' program. We believe it is appropriate for the Board, with its other pesticide regulatory responsibilities, to be designated with chief responsibility in this area.

I would be happy to respond to any questions you may have.

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KANSAS FERTILIZER AND CHEMICAL ASSOCIATION, INC.

Box 1392

Hutchinson, Kansas 67504-1392

316-662-2598

STATEMENT OF THE
KANSAS FERTILIZER & CHEMICAL ASSOCIATION
TO THE HOUSE ENERGY & NATURAL RESOURCES COMMITTEE
REPRESENTATIVE RON FOX, CHAIRMAN
REGARDING H.B. 2654
JANUARY 21, 1986

Chairman Fox and members of the House Energy and Natural Resources Committee, I am Christina Wilson, Director of Governmental Relations of the Kansas Fertilizer and Chemical Association. KFCA is a voluntary trade, professional and educational association of over 400 members, representing Kansas' agricultural chemical and fertilizer industry.

We appreciate the opportunity to comment on H.B. 2654, providing for reporting of all sales of general use pesticides. KFCA does not oppose the legislation, but we would raise some concerns about the potential problems of administering such a law. We support the intent of the bill, which we understand to be to gain more knowledge about which pesticides and their quantity are being sold in the state and a better idea of where they are being used. Such information would be helpful in learning more about the extent to which pesticide use could pose a concern for groundwater quality and in what particular areas of the state.

As an industry, we are committed to the protection of the state's invaluable groundwater resources. Attached for your

(Continued)

information is a position statement regarding groundwater protection which was issued jointly by KFCA and the Kansas Grain and Feed Dealers Association this fall. KFCA provides a number of educational seminars and publications to assist our members and others in the safe use of agricultural fertilizer and chemicals, which aid in the protection of the state's groundwaters. One concern of our Association which is mentioned in the position statement, is that there is a great lack of knowledge about the use of agricultural chemicals, their potential movement into groundwater, and what health risks might be posed by their presence in groundwater and at what levels. To the extent that H.B. 2654 could help in answering some questions about the use of pesticides in Kansas, it would be constructive.

As we understand it, the bill would require members of our Association who have pesticide business licenses to report all pesticide sales to the Board of Agriculture on an annual basis. While this requires extensive recordkeeping, those members presently report all sales of restricted use pesticides, and we do not feel that the additional regulation would be too burdensome. However, multiple reports during a year would represent a greater burden, which we would oppose.

Aside from our industry, there are thousands of retailers in the state whose primary business is not chemical sales, but who would also be subject to the provisions of this bill. Registration of those retailers and management of the resulting data could prove very costly and burdensome for the Board of Agriculture.

(Continued)

We wonder if there might be an easier, less costly, but effective way to accomplish the intent of the bill. We believe that this information being sought is currently available through the distributors of the products. Reports from distributors, while not as accurate as those from retailers, would, we believe, be very close, and much less costly to obtain and less difficult to manage. Reports from either retailers or distributors will not tell us how much pesticide is being used in Kansas, only how much is being sold. However, reports from distributors could provide us with a very reasonable estimate. As to where the pesticides are being used, in the case of most all pesticides, knowledge of the product will indicate where they are going (i.e. for agricultural use or lawn and garden use).

Retail and distributor members of our Association would be happy to supply any further information requested by the Committee and I will attempt to answer any questions you may have at this time.

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KANSAS GRAIN AND FEED DEALERS ASSOCIATION

AND

KANSAS FERTILIZER AND CHEMICAL ASSOCIATION

POSITION PAPER ON GROUNDWATER PROTECTION

Statement of Commitment

Groundwater is an extremely valuable resource. In Kansas, 80% of the population depends on it for drinking water, so the protection of groundwater is very important to all Kansans. The KGFDA and KFCA are committed to protecting this valuable resource.

Present Situation

Recent monitoring programs have shown several chemicals used in agriculture and other industries to be present in trace amounts in some groundwater samples. Due to recent advances in analytical methodology, the detection of extremely low concentrations of chemicals is now possible. Thus, these trace amounts can be detected. Unusual combinations of soil type, high water table and other environmental factors serve to contribute to these occurrences.

KGFDA/KFCA Position

KGFDA and KFCA strongly support sound management strategies to protect groundwater for current and future generations. Chemicals used by agriculture are essential to the production of food and fiber and in assuring a wholesome and safe food supply. KGFDA and KFCA members are committed to minimizing movement of these chemicals into groundwater supplies. When they are used according to registered label directions and good management practices, these chemicals are unlikely to reach groundwater because of their immobility and rapid degradation in the environment. Where these chemicals are detected in groundwater, due to either a point or non-point source, and it is shown that they are present due to use by the agriculture industry, member companies will work cooperatively with responsible government agencies to evaluate the significance of levels present and, if appropriate, take action.

It should be clearly recognized that the mere presence of chemicals in groundwater does not necessarily present an unreasonable risk to public health or the environment. Many groundwaters are used for other than drinking purposes - to provide such services to consumers as energy development and sanitary wastewater disposal. Groundwaters are treated differently according to the purpose for which they are used. Also, some groundwaters contain substances, both natural and synthetic, which may place limitations on their use. If groundwater is used for human consumption and the presence of an agricultural chemical is detected and identified, a toxicological evaluation should be conducted to assess its significance. The evaluation can be accomplished by employing the extensive safety data base and risk assessment procedures currently used for registering agricultural chemicals.

Recommendations

In view of their commitment to groundwater protection and the necessary and safe use of chemicals by agriculture, KGFDA and KFCA believe that a concerted effort by government and industry should be undertaken to accomplish the following:

1. Prevention - The best means of protecting groundwater is through the use of good management practices which will minimize the movement of chemicals into groundwater supplies. KGFDA and KFCA sponsor educational programs which help industry members achieve best management practices for protecting groundwater.
2. Assessment - Standards are needed to determine acceptable and unacceptable levels of various chemicals in drinking water. These Health Guidance Levels should be based on the toxicological data base established for product registration.
3. Evaluation - Good methods are needed for determining the point source of Volatile Organic Chemicals (VOCs) found in groundwater. Presently, it is often difficult or impossible to accurately identify the source of contaminants. Where better procedures are needed, the industry is willing to join with government in conducting necessary research to find them.
4. Prediction - Scientifically sound modeling procedures need to be developed to identify areas where movement of agricultural chemicals into groundwater is likely to occur so that extra preventative measures can be taken.
5. Monitoring - Groundwater monitoring practices should be developed to assess groundwater quality on an ongoing basis.

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January 21, 1986

TO: Representative Ron Fox, Chairman and the Special Committee on
Energy and Natural Resources.

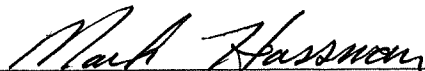
FROM: Kansas Termite and Pest Control Association

My name is Mark Hassman and I am President of the Kansas Termite and Pest Control Association, a group which represents approximately two hundred pest control businesses in the state.

I am present to submit testimony in opposition to House Bill 2649 in its present form. As an association of Kansas pest control operators, we want to go on record in support of the civil penalty concept of enforcement; however, we ask you to defeat this bill in its present form. We would support the following changes in the bill:

- A. Coordination of state civil penalty enforcement with federal civil penalty enforcement, so that in the case of a violation, only one penalty would be enforced. This would remove the possibility of both a federal and state penalty being enforced.
- B. We oppose the \$5,000.00 maximum penalty, and in the case of a continuing violation, that a maximum \$5,000.00 penalty could be imposed each and every day. We would support a maximum \$1,000.00 penalty and in the case of a continuing violation a \$1,000.00 per day maximum penalty.
- C. We would support the implementation of civil penalties with companion legislation to improve the competency level of Kansas pest control operators through verifiable training, and/or upgrading the present applicator certification program. We feel that training and competency requirements should be considered, along with any enforcement legislation.

We respectfully request that the committee consider our position and we would like to offer our support and assistance to the committee regarding the changes we feel are necessary.



Mark Hassman, President
Kansas Termite & Pest Control Assoc.

January 21, 1986

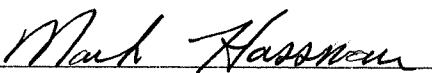
TO: Representative Ron Fox, Chairman and the Special Committee on
Energy and Natural Resources.

FROM: Kansas Termite and Pest Control Association

My name is Mark Hassman and I am President of the Kansas Termite and Pest Control Association, a group which represents approximately two hundred pest control businesses in the state.

I am present today to submit testimony in opposition to House Bill 2654. As an association of Kansas pest control operators and taxpayers, we are opposed to this bill because we feel it is unreasonable and questionably necessary to require every pesticide dealer in the state to submit an annual report of all pesticides sold or distributed. This report would impose a costly and burdensome task to compile all of this data and, in addition, it will necessitate additional, substantial expense on behalf of the Department of Agriculture to receive, process and record these reports containing the tremendous amount of data required.

We respectfully ask you to consider our position and act to defeat this bill.


Mark Hassman, President
Kansas Termite & Pest Control
Association

MH:PM:ag

Attachment 8

House Energy and Natural Resources 1/21/86

TESTIMONY BEFORE HOUSE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

Re: House Bill 2649 - Amend Kansas Pesticide Law to Provide
Civil Penalties for Violations

Mr. Chairman, ladies and gentlemen of the committee, I am Kenneth M. Wilke, Chief Counsel, for the Kansas State Board of Agriculture. I wish to thank the committee for the opportunity to appear today and testify on HB 2649.

At the outset, the Agency supports the concept of the bill which would amend K.S.A. 2-2461 to include a civil penalty mechanism. Section 1 (d) of the bill authorizes the Agency to assess a civil penalty in an amount not to exceed \$5,000 for each violation of the Kansas Pesticide Law. Before any civil penalty could be assessed, the Secretary must find that the person involved has violated either the Kansas Pesticide Law or a rule or regulation adopted thereunder and give the individual an opportunity for a hearing in accordance with the Kansas Administrative Procedures Act.

This bill affects all pesticide applicators and pesticide dealers in Kansas. The bill provides a new remedy in addition to existing remedies which include injunction, criminal prosecution, and administrative hearings which may result in suspension, revocation or refusal to issue or renew any license or permit under the act. Mechanically speaking, the civil penalty could be engrafted onto the present administrative hearing mechanism so that when a person is notified of a hearing, they will be faced with possible suspension or revocation, or refusal to issue or renew any license or permit, or a possible civil penalty, or any combination thereof. At the present time the Environmental Protection Agency assesses civil penalties of up to \$5,000 following a similar mechanism.

The Agency notes the bill has certain advantages. These include the need

Attachment 9

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not to rely on injunctions or criminal prosecutions. In addition, this could cut down on hometown justice due to higher priority items on county and district attorney dockets.

In all fairness, the Agency should point out some possible disadvantages of the bill as well. First, the addition of a civil penalty mechanism may eliminate criminal prosecutions under the act completely; the county or district attorney may say, "You have your own enforcement mechanism. Use it." Second, the bill may lead to individuals litigating damage actions before the Agency instead of the courts. Third, this bill may increase the number of hearings held by the Agency and therefore create additional administrative costs.

The Agency would request one change in the bill. Section 1 (d) (4), lines 0060 through 0065, directs that an appeal shall not stay the payment of the civil penalty. The Agency requests that this language be deleted. The purpose of this proposal is to prevent unexpected expenditures from the agency budget in those instances in which the civil penalty is paid to the Agency in one fiscal year and an appellate court reverses the Agency on appeal in a subsequent fiscal year. The bill's present mechanism would require the Agency to set up a refund account and budget for the amount of possible refunds it would have to make.

Thank you for the opportunity to appear before the committee. I will answer any questions which you have might have at this time.

TESTIMONY BEFORE HOUSE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

Re: House Bill 2654 - Pertaining to All Pesticide Dealers Filing an Annual Report on All Pesticide Sales

Mr. Chairman, members of the committee, ladies and gentlemen, my name is Jon Flint and I am speaking on behalf of the State Board of Agriculture.

In 1985, the Legislature amended the Kansas Pesticide Law to require registration of pesticide dealers. As part of the implementation of this legislation, the agency promulgated rules and regulations imposing certain recordkeeping requirements regarding the sale of restricted use pesticides.

During the public hearings, the question of requiring recordkeeping on all pesticide sales was raised, but the scope of the regulations were limited to restricted use pesticides at that time. Since this is a new program in its first year, we have no data currently available concerning reporting of sales.

House Bill 2654 requires annual reporting of sales of all pesticides in the State Kansas. The Board realizes the need for tracking the sale and/or use of pesticides in Kansas. We concur with the necessity to know this data, but have some reservations as to the best method of obtaining the necessary information.

Currently, there are more than 8,000 pesticide products registered for sale in the state. These pesticides include a wide variety of products ranging from commonly used agricultural pesticides to dog and cat flea collars, cattle ear tags, rat and mouse baits, and germicides such as clorox.

There are currently numerous federal and state studies being conducted to delineate those specific chemicals including pesticides which are potentially involved in environmental problems, particularly ground water.

Given sufficient time, results of these studies should define specifically those compounds or groups of compounds which may be considered potentially harmful. In this manner, pesticides believed or found to be harmful could be specifically targeted for annual reporting.

We also wish to directly approach the question of impact of the requirement for submission of annual reports upon our agency. The Board would be placed in the position of receiving a large quantity of such reports and being unable to process them into some meaningful and usable form.

Thank you for the opportunity to appear before the committee. I will answer any questions which you might have at this time.

To: Special Committee on Energy and Natural Resources

From: Bill J. Hawks, Jr.
6528 Claytonia
Wichita, KS 67206

Re: Testimony on HOUSE BILL #2654

Point #1: As listed in the 1st paragraph regarding the adoption of 2-2469. (a), "A registration fee of \$15 shall accompany the application.;" a fee of \$15 is insufficient to effectively fund a program of this ambitious scope; and, although it may politically difficult, fees for licensing this type of activity should run in the \$100.00 to \$250.00 range.

Due to the enormity of administrative and enforcement stewardship necessary to make this bill a working reality, I cannot conceive of it functioning, much less providing any meaningful benefit to the citizens of Kansas, unless this bill is designed from the onset as a substantially self-funding enterprise.

Point #2: As listed in the 2nd paragraph regarding the adoption of 2-2469. (b) and (c), "Every pesticide dealer shall file with the state board of agriculture an annual report of all pesticides sold or distributed by the dealer.;" should be changed to read: "Every pesticide dealer shall file with the state board of agriculture an annual report of all *herbicides, insecticides and rodenticides* sold or distributed by the dealer."

Also, it should not be restricted by site or user category, it should be restricted by use category. The term "pesticides" is too vague and includes everything from odor killers, household antiseptics and hospital sanitizers to toilet bowl cleaners. What the citizens of Kansas need is a specific targeting of herbicides, insecticides and rodenticides with a most important emphasis being placed on the actual total tonnage of active ingredients sold within Kansas each calendar year.

Without generating contemporaneously itemized lists of all herbicides, insecticides and rodenticides sold with our state, the data base created will be environmentally, scientifically and legally meaningless. It is my opinion that where urban and structural insecticide application is concerned, the lay-consumer will probably apply 10 to 20 times the amount used by commercial applicators if averaged statewide over the term of one calendar year. Even if I am wrong, and it is shown the public uses only 50% of the amount used by commercial applicators, the absence of that data would still destroy the statistical usefulness of this data base.

Point #3: As listed in the 4th paragraph regarding the adoption of 2-2469. (d); it almost represents double-jeopardy to hold dealers liable for the representation or sale of pesticides when no requirement is made to create an environment of "competitive equality;" i.e., to require that a person competent to make pesticide use or purchase recommendations must be available at each place of business. This can easily be accomplished by adapting existing law regarding commercial pesticide use. Really, from a perspective of environmental or professional stewardship, one cannot refute the symmetry or logic of requiring the same standards of care and practice for both commercial pesticide use and commercial pesticide sales. When economic poisons are involved, we cannot have "the blind leading the blind."

ADDITIONAL COMMENTS AND RECOMMENDATIONS:

1. Expand the funding base by making changes to:
 - a. raise the registration fee to \$150.00 @ place of business;
 - b. require a registered/certified applicator @ place of business;
 - c. increase all pesticide product registration fees; and,
 - d. create an additional "pesticide tax" similar to those required for cigarettes and alcohol. (exempt farm chemicals)

2. Be prepared to substantially increase the administrative and enforcement resources:
 - a. by greatly increasing the budget of the Plant Health Div.;
 - b. providing additional field staff to investigate compliance;
 - c. provide an administrative support system which would include full time legal counsel, case workers and hearing officials; and,
 - d. fully integrate with the existing pesticide use administration and enforcement group.