

Approved March 17, 1988  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

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

3:30 ~~am~~/p.m. on March 1, 1988 in room 526-S of the Capitol.

All members were present except:

Representative Patrick (excused)  
Representative Sifers (excused)

Committee staff present:

Raney Gilliland, Legislative Research  
Laura Howard, Legislative Research  
Arden Ensley, Revisor  
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

David S. Murphy, President, Professional Lawn Care Association  
of Mid-America  
Representative Robert J. Vancrum  
Dale Lambley, Director, Plant Health Division,  
Kansas State Board of Agriculture  
Vernon McKinzie, President, Kansas Termite and Pest Control Assoc.  
Bill Hawks, Jr., Hawks Inter-State Exterminators, Inc.  
Charlene A. Stinard, Kansas Natural Resource Council  
Hyde S. Jacobs, Assistant to the Dean of Agriculture,  
Kansas State University  
Bill Fuller, Asst. Director, Public Affairs Division,  
Kansas Farm Bureau  
Ralph K. Davis, Manager, Big Bend Groundwater Management  
District #5, Stafford, Kansas  
Rich McKee, Executive Secretary, Feedlot Division,  
Kansas Livestock Association  
Jerry Doop, Kansas Fertilizer and Chemical Association  
Mark Anderson, Chemigation Safety Specialist, KS Board of Agriculture  
David L. Pope, Chief Engineer-Director, Division of Water  
Resources, Kansas State Board of Agriculture

The meeting was called to order by Chairman Dennis Spaniol.

House Bill 2891--Pesticide application by registered pest control technicians.

David Murphy, a lawn care business man from Johnson County who also represented the Professional Lawn Care Association of Mid-America and the Professional Lawn Care Association of America, gave testimony in strong support of the bill. He commented that the purpose of this bill was to increase safety among the professional urban pesticide user groups which include lawn care, tree care and structural pest control. He noted that the bill would call for minimum verifiable training and registration of uncertified pesticide applicators, along with introducing civil penalties for violations of the Kansas pesticide law. Mr. Murphy submitted with his written testimony a copy of House Bill 2891 which contained recommendations for several changes and additions to the bill. (Attachment 1)

Representative Vancrum, sponsor of House Bill 2891, noted that it was intended to apply only to applicators in the areas within the boundaries of incorporated cities. If the committee desired, it could be limited further to incorporated cities of a certain class or a certain size. He told the committee that there is a problem in many cities of our state of neighbors bringing in applicators who are utilizing people who have not been fully trained or are not knowledgeable in the application of chemicals to trees and what can happen to lawns or vegetable gardens adjacent to their property.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
room 526-S, Statehouse, at 3:30 ~~xm~~/p.m. on March 1, 1988

Copies of a case in small claims court in Johnson County were distributed. (Attachment 2) Representative Vancrum felt that this problem needed to be addressed, but perhaps the bill needed some amendments. He had no problem with the concept of creating an informal hearing, but that could be more involved than desired. He agreed that violators who are not licensees should be picked up because that would give the bill the broadest sweep possible. Mr. Vancrum had no problem with making civil penalties in a certain range, and thought this could best be done by granting the Department rule and regulation authority to let them determine what the appropriate range of penalties should be. He felt that this might also solve the problem with regard to the proper procedure for informal hearings, the certification within one year, and some of the other suggestions made by Mr. Murphy. Discussion followed.

Dale Lambley, representing the State Board of Agriculture, spoke in favor of House Bill 2891. He explained current law in this area and discussed how this bill and his recommendations would improve it. (Attachment 3) A summary of estimated fiscal impact of this bill was included on the last page of Mr. Lambley's testimony. Brief questions followed.

Vernon McKinzie spoke on behalf of the Kansas Termite and Pest Control Association. He introduced Norman Besheer, President-elect of the Kansas Termite and Pest Control Association, who also was very interested in House Bill 2891. Mr. McKinzie noted that the language of this bill was drafted from the law resulting from the passage of Senate Bill 123 in the last session of the legislature. Since Senate Bill 123 had been effective for only two months, they wanted to see it have time to work before it was changed substantially. (Attachment 4)

Bill Hawks, Jr. of Hawks Inter-State Exterminators in Wichita testified in support of House Bill 2891. He felt that the most important thing the bill does is that it provides a working path for certification to fulfill its true purpose of creating a "floor;" i.e. a minimum level of competency within the commercial pesticide application industry. Mr. Hawks pointed out two areas that also should be addressed:

1. Sales advocates who prescribe, contract or direct by contract the commercial application of pesticide.
2. The "interiorscape" industry which provides contract service to plants. They are presently unaffected.

House Bill 3022--An act regulating chemigation.

Representative Holmes gave the subcommittee recommendations as follows:

- Line 0040--\$50.00 permit fee, plus \$20.00 per well.
- Line 0059 and 0060--Requires examination.
- Line 0083--Reexamination (continuing education).
- Line 0100--0109--Allows the district attorney  
"or the attorney general" to enforce  
the law.
- Line 0131--Increases penalty from \$500 to \$10,000.

Representative Holmes also explained that in House Bill 3007, domestic water rights was inserted in the wrong section of the law. There would be a substitute which would require notarization on a water right application (this should be a water use report instead of water right application.)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
room 526-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 1, 1988

Charlene Stinard, representing the Kansas Natural Resource Council and the Kansas Chapter of the Sierra Club, testified in support of House Bill 3022. Her organizations supported the issues addressed in this bill; however, she mentioned other concerns which need to be addressed in the future. (Attachment 5)

Dale Lambley represented the State Board of Agriculture with testimony in favor of House Bill 3022. His testimony dealt with mechanics of the bill with several suggested changes in language. A summary of the estimated fiscal impact of the bill was included on the back page of his written testimony. (Attachment 6)

Hyde S. Jacobs, Assistant to the Dean of Agriculture at Kansas State University, spoke in favor of House Bill 3022. He discussed education and training conducted by the Cooperative Extension Service for farmers or private or commercial applicators of pesticides or agricultural chemicals. (Attachment 7) Brief discussion followed.

Bill Fuller represented Kansas Farm Bureau as a proponent of House Bill 3022. His organization supported an examination procedure for chemigators, but were concerned with proposed changes in the "penalty" section of the bill. (Attachment 8) He distributed copies of a "Self-Help ... Pollution Checklist" which had been developed by Farm Bureau. (Attachment 9) Responding to a question of the Chairman relative to appropriate fines, Mr. Fuller said that his organization felt that the most serious violation of the act would be where there was a spill or a contamination and the operator deliberately avoided reporting that contamination. They felt that a substantial penalty would be appropriate, but the \$10,000 fine would be quite excessive in some of the other technical areas.

Ralph Davis, Manager of Big Bend Groundwater Management District #5, spoke in opposition to House Bill 3022. His district felt that the existing equipment, educational and penalty requirements were adequate to protect water resources. They cautioned that any additional program should be field oriented and not top-heavy on the administrative level. (Attachment 10) During discussion, Mr. Davis said he felt that the current law hadn't been in place very long and needed time to work. He believed that farmers were making a sincere effort to comply with current law, and that approximately 85 percent had the majority of the required equipment installed. Mr. Davis said he intended to supply Mark Anderson of the Plant Health Division of State Board of Agriculture with a list of those who had permits in his district.

Rich McKee represented the Kansas Livestock Association with testimony in opposition to House Bill 3022. His group supported the increased staffing and requirement of examination sections of the bill, but felt the increase in penalty was excessive. (Attach.11)

Jerry Doop, Chairman of the Kansas Fertilizer and Chemical Association's Ag Chemigation Task Force, noted that he had worked with Representative Freeman and the Board of Agriculture in creating House Bill 3022. He distributed copies of two letters from Donald L. Jacka, Jr., with the Board of Agriculture. (Attachment 12) Mr. Doop said that the figures in the letters applied directly to agriculture itself. Mr. Doop said his association supported the examination requirement and would supply educational material necessary for that, as well as assisting the Board of Agriculture in monitoring the test.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
room 526-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 1, 1988

Dale Lambley introduced Mark Anderson, the Chemigation Safety Specialist with the Board of Agriculture. He commented that he thought Nebraska had an excellent law which requires that the state agencies make every reasonable effort to gain compliance from a chemigator before assessing a civil or criminal violation penalty upon that individual. They also outlined several categories of violations--each violation being classified as a misdemeanor of a different fine level, with the maximum fine being \$1,000. Mr. Anderson offered to make a copy of the Nebraska law available to the committee. He also felt that equipment specifications should be addressed and offered to provide pertinent information to the committee before consideration of House Bill 3022 on March 3.

House Bill 3007--Application for permit to appropriate water; notarized.

David Pope, Chief Engineer-Director, Division of Water Resources, suggested an alternative to notarization of water use reports, which would be use of a statement and penalty similar to that used on a federal or state tax return. Mr. Pope included with his written testimony a draft of language which could make filing water use reports mandatory and subject to submission of false information to penalties of perjury without requiring notarization. A sample of the current water use report form was also attached. (Attachment 13)

It was noted that Representative Holmes had already had an amendment to House Bill 3007 drafted and Mr. Pope agreed to work with him on it before discussion and action on March 3.

The minutes of February 23, 24 and 25 were distributed.

The meeting was adjourned at 5:15 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held at 3:30 p.m. on March 2, 1988 in Room 526-S.



Date: March 1, 1988

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME

ORGANIZATION

ADDRESS

PHONE

NAME	ORGANIZATION	ADDRESS	PHONE
Ed Reinert	Ks LWV's	Topeka	
Jim Jurnill	KS Horticulture & Chemists	Depue	
Larry Doop	KFCA	Hutchinson	
Vern McKinzie	KTPCA	Emporia	
Norman O. Beshear	K.T.P.C.A.	K.C.	
J. Clark	KAAA	Madisonville	
Proema E. Perry		Topeka	
Jan Likan		Brewster	
Gabe Likan	CC KAAA	Brewster	
Ray Kuhn	KAAA	Madison	
D. W. G. M. G. M.	KSBA, 1988A	Topeka	
Andrea Martore	Montrose Farms	B.S. Ks.	441-3130
Daniel Tuggle	KSBA		
Ralph Davis	Big Bend GMD #5	Stafford Ks	316-234-532
Mace Thornton	KFB	Manhattan	
Steve Joubert	KSU	Manhattan	532-5729
Bill Miller	Ks. Farm Bureau	Manhattan	537-2261
Doc Lambly	KSTBA	Topeka	
W. A. Hawkins	KSBA	Topeka	296-5192
CA Stinson	Ks Natural Resources Council	Topeka	233-6707
Yan P. Anderson	KSBA	Scott City	316-872-7372
Bill Hawks Jr	Hawks Inter-Stat. Ent.	Wichita, Ks	(316) 267-8331



Testimony of  
Professional Lawn Care Association of Mid-America  
presented by David S. Murphy, PLCAMA President

House Bill No. 2891  
March 1, 1988

Good day. My name is Dave Murphy. I am a local lawn care business man from Johnson County Kansas. I am the president of the Professional Lawn Care Association of Mid-America, a newly formed lawn care association that is addressing the needs of the lawn care industry in Kansas. I am also on the Board of Directors of the Professional Lawn Care Association of America. The combined membership of those association members provide in excess of \$30,000,000 of income, employs over 1500 Kansas residents and services over 150,000 Kansas customers. I am here today, as both a business man and as a representative of those associations to express our support of House Bill 2891 in the form that I have presented here today.

The purpose of this bill is to increase safety among the professional urban pesticide user groups which includes lawn care, tree care, and structural pest control. In brief House Bill 2891 calls for minimum verifiable training and registration of uncertified pesticide applicators. House Bill 2891 also introduces civil penalties for violations of the Kansas pesticide law.

Currently the only way the state has of penalizing law breakers is to prosecute them in the county where the violation occurred. This is both expensive and time consuming. The counties are also very reluctant to take on cases due to their own backlog of cases. As a result, very few violations are prosecuted. Those few people who continue to violate the law by improperly applying, spilling, or disposing of pesticides will only be stopped when it becomes uneconomical to continue to do so. As proposed by our version, House Bill 2891 calls for civil penalties ranging from \$50.00 to \$5000.00 per occurrence, per day. The \$5000.00 limit is consistent with Federal guidelines. Originally this bill called for a flat \$500.00 fine. We believe this would result in minor infractions being overlooked and major infractions being underpenalized.

The original bill calls for a formal hearing if a civil penalty is contested. Formal hearings cost the state approximately \$2000.00 each, and would deplete the Secretaries budget very quickly, thus limiting the number of penalties his agents could impose. The copy of the bill I have submitted calls for an informal hearing first. If a resolution can not be reached at that time a formal hearing would then be granted. This would greatly reduce the number of formal hearings and be a great savings to the state.

Our recommendations as written into the bill we have submitted calls for House Bill 2891 to take effect January 1, 1989, with the exception that training materials must be approved or denied beginning July 1, 1988 within 30 days. This is necessary in order to allow the industries that are affected the time they need to write their manuals, get them checked and corrected and approved, and get their persons

Attachment 1

House Energy & NR

3-1-88

start up date of January 1.

For many years the news media, fired by a relatively small group of well meaning, highly motivated, poorly informed, non-scientific toxo-terrorists have attempted to SCARE the public into believing that pesticides should be banned or very strictly controlled. In the beginning their emphasis was on pesticides on food crops, but in recent years they have turned to the users of pesticides that homeowners can most easily identify with - lawn services and pest control operators. The form of control these activists most favor is removing or greatly restricting professional use of horticultural pesticides and any other use of pesticides around the home.

Their approach is very narrow minded and totally unacceptable. Pesticides are extremely valuable tools used to protect food and fiber crops, protect buildings from termites, and lawns from weeds, insects and disease. Pesticides save Kansans billions of dollars each year by preventing damage to our crops and homes, not to mention health care savings by preventing diseases transmitted by insects and allergies caused by pollen and molds. The continued use of pesticides is indispensable. It is in our best interest to develop methods of using these chemical tools safely, without undue risk to people, pets or the environment. The loss of these tools will not only damage the industries who manufacture and professionally apply them, but will effect the quality of life for us all.

The correct use of pesticides in and around homes, on lawns, in schools and restaurants is critical. Neither our industry, our customers, nor the public wants to have incompetent people applying pesticides to their property. Most of us in the lawn and tree care industry as well as the pest control industry have struggled on our own to upgrade the professionalism of our own businesses. Unfortunately there are still a few businesses that do not send out competent employees to do their work. This jeopardizes not just the integrity of our industry, but potentially the well being of our customers. Incompetent, untrained pesticide technicians have no place in our industry. House Bill 2891 adds a margin of safety that we all desire without decreasing the benefits available from proper pesticide use. In effect we all come out winners, the customers, the environment and the professional services.

The only good solution is to create a condition that requires a minimum amount of training for all employees who apply pesticides for a living. Our industry does, and all other pesticide user groups should, support increased safety training for their employees. House Bill 2891 will provide a safety net for our industry that will help bring the worst of us up to a level of acceptable safety and professionalism.

Last week I had spoken with Representative Vancrum, indicating that our industry supports certification of all pesticide applicators. Although certification of all employees is the ultimate solution to applicator training and safety, it was pointed out to me quite clearly at a meeting just yesterday that our industry will require at least another year to prepare itself for such a step. Industry wide certification is not practical at this time. We need a transition period between registration and verifiable training and complete certification. Our industry supports certification of all of its pesticide applicators. Only 7 months ago the

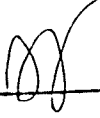
lawn care industry in Kansas formed an association to provide for education, but we are not yet in a position to offer the training necessary to get our whole industry, the arborist and the structural pest control people certified quickly enough. The Professional Lawn Care Association of Mid-America is willing to work with the legislature and the Department of Agriculture to reach this ultimate goal in the near future.

In the interim, we believe House Bill 2891 is a good step towards protecting our employees, our businesses, our friends and neighbors, and our environment. As a member of the lawn care industry, as a Director of the Professional Lawn Care Association of America and as a President of the Professional Lawn Care Association of Mid-America I request that House Bill 2891 be considered in the form that it is presented here, plus the additional modifications that the State Board of Agriculture has suggested which concerns definitions and terminology.

Thank you.

Bill Number: House Bill 2891

As Amended By: \_\_\_\_\_

Donald L. Jacka, Jr.   
Prepared By: \_\_\_\_\_

Assistant Secretary \_\_\_\_\_ 02-19-88  
Title \_\_\_\_\_ Date \_\_\_\_\_

Dale Lambley, Betty Dey

Agency Explanation of Estimated Fiscal Impact.

NOTE: Use this section to explain the assumptions and rationale employed in determining the estimated fiscal impact of the attached bill. Please note if this bill's fiscal impact is contained, in whole or in part, in the Governor's Budget Report. (Use additional sheets as necessary.)

With the addition of another category in the registered pest control technician program, it is estimated that 300 additional uncertified applicators will become registered pest control technicians.

With the passage of this bill the Records Center Subprogram of the Division of Plant Health will have a significant increase in workload as a result of adding responsibilities associated with registering pest control technicians. Such work responsibilities would include: receipting and depositing fees, reviewing applications, communicating with businesses and technicians, cross-referencing between technician records and licensed pesticide business records, issuing registrations, sending renewal notices, maintaining records, and performing computer data entry work, etc.

Present staffing level of the Records center is not sufficient to accomplish additional assignments of the registered pest control technician program, therefore, additional staffing is needed in order to handle the additional duties associated with this program.

It is estimated that the period of time needed to prepare for the program proposed in the attached legislation which would become effective approximately July 1, 1988, would be 2 months. The attached fiscal impact statement includes additional expenditures for 1 temporary Office Assistant I position for those two months, plus other operating expenses associated with preparing for the program.

In FY 1989 funding is requested to increase one intermittent Office Assistant I position (49%) to 1 FTE position. (The salary amount requested in FY 1989 on the attached fiscal impact statement contains only the amount necessary to increase the intermittent position budgeted to a FTE position.) Funding for this position will continue in FY 1990, showing the full salary amount needed. Duties of these positions will continue as stated above, since the registered technician program is a yearly renewal program.

---

(Continued on reverse side)

Revenue Impact by Fund

	1988	1989	1990
Pesticide Use Fees	\$ -0-	\$ 4,500	\$ 4,500
<b>Total Revenue</b>	<b>\$ -0-</b>	<b>\$ 4,500</b>	<b>\$ 4,500</b>

Expenditure Impact by Fund

State General Revenue Fund	\$ 2,796	\$ 5,032	\$ 11,781
Pesticide Use Fee Fund	-0-	4,500	4,500
<b>Total Expenditures</b>	<b>\$ 2,796</b>	<b>\$ 9,532</b>	<b>\$ 16,281</b>

Expenditure Impact by Object

Salaries and Wages	\$ 2,206	\$ 8,337	\$ 15,266
Communications	170	475	475
Printing & Advertising	200	200	200
Rents	20	40	40
Contractual Services	\$ 390	\$ 715	\$ 715
Stationery & Office Supplies	200	300	300
Commodities	\$ 200	\$ 300	\$ 300
Capital Outlay	\$	\$ 180	\$
<b>Total Operating Expenditures</b>	<b>\$ 2,796</b>	<b>\$ 9,532</b>	<b>\$ 16,281</b>

Salaries and Wages Summary

Classification	Salary Range	No.	Amount	No.	Amount	No.	Amount
Office Assistant I	9	0	2,034	1.0	6,416	1.0	12,516
<b>Total Benefits</b>			172		1,921		2,750
<b>Total Salaries and Wages</b>		0	\$ 2,206	1.0	\$ 8,337	1.0	\$ 15,266

Capital Outlay

Item	No.	Unit Cost			
5 - drawer vertical file	1	180	\$	\$ 180	\$
<b>Total</b>			\$	\$ 180	\$

\*\*\* This amount will cover the cost of 1 temporary position for 2 months in FY 1988.

\*\*\* This amount will increase 1 budgeted permanent intermittent Office Assistant I position to 1 FTE posit

## HOUSE BILL No. 2891

By Representative Vancrum

2-10

---

0017 AN ACT concerning the Kansas pesticide law; relating to the  
0018 application of pesticides; providing civil penalties for certain  
0019 violations; amending K.S.A. 1987 Supp. 2-2438a, 2-2440a,  
0020 2-2440b and 2-2440c and repealing the existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 1987 Supp. 2-2438a is hereby amended to  
0023 read as follows: 2-2438a. As used in this act, unless the context  
0024 otherwise requires, the following words and phrases shall have  
0025 the meanings ascribed to them in this section:

0026 (a) "Animal" means all vertebrate and invertebrate species,  
0027 including but not limited to man and other mammals, birds, fish  
0028 and shellfish.

0029 (b) "Board" means the board of agriculture of the state of  
0030 Kansas.

0031 (c) "Certified applicator" means any individual who is cer-  
0032 tified under this act to use or supervise the use of any restricted  
0033 use pesticide which is classified for restricted use by a certified  
0034 applicator.

0035 (1) "Certified commercial applicator" means a certified ap-  
0036 plicator, whether or not a private applicator with respect to some  
0037 uses, who uses or supervises the use of any pesticide which is  
0038 classified for restricted use for any purpose or on any property  
0039 other than as provided in paragraph (2) of this subsection (c).

0040 (2) "Certified private applicator" means a certified applicator  
0041 who uses or supervises the use of any pesticide which is clas-  
0042 sified for restricted use for purposes of: (A) producing any agri-  
0043 cultural commodity, (i) on property owned or rented by such  
0044 person or such person's employer or, (ii) if applied without  
0045 compensation other than trading of personal services between



# HOUSE BILL No. 2891

By Representative Vancrum

2-10

---

0017 AN ACT concerning the Kansas pesticide law; relating to the  
0018 application of pesticides; providing civil penalties for certain  
0019 violations; amending K.S.A. 1987 Supp. 2-2438a, 2-2440a,  
0020 2-2440b and 2-2440c and repealing the existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 1987 Supp. 2-2438a is hereby amended to  
0023 read as follows: 2-2438a. As used in this act, unless the context  
0024 otherwise requires, the following words and phrases shall have  
0025 the meanings ascribed to them in this section:

0026 (a) "Animal" means all vertebrate and invertebrate species,  
0027 including but not limited to man and other mammals, birds, fish  
0028 and shellfish.

0029 (b) "Board" means the board of agriculture of the state of  
0030 Kansas.

0031 (c) "Certified applicator" means any individual who is cer-  
0032 tified under this act to use or supervise the use of any restricted  
0033 use pesticide which is classified for restricted use by a certified  
0034 applicator.

0035 (1) "Certified commercial applicator" means a certified ap-  
0036 plicator, whether or not a private applicator with respect to some  
0037 uses, who uses or supervises the use of any pesticide which is  
0038 classified for restricted use for any purpose or on any property  
0039 other than as provided in paragraph (2) of this subsection (c).

0040 (2) "Certified private applicator" means a certified applicator  
0041 who uses or supervises the use of any pesticide which is clas-  
0042 sified for restricted use for purposes of: (A) producing any agri-  
0043 cultural commodity, (i) on property owned or rented by such  
0044 person or such person's employer or, (ii) if applied without  
0045 compensation other than trading of personal services between

0046 producers of agricultural commodities, on the property of an-  
0047 other person; or (B) controlling ornamental shrubbery or turf  
0048 pests on property, *wherever located, which is owned or rented*  
0049 *by such person and such property which is used as such person's*  
0050 *residence.*

0051 (d) "Defoliant" means any substance or mixture of sub-  
0052 stances intended to cause the leaves or foliage to drop from a  
0053 plant, with or without causing abscission.

0054 (e) "Desiccant" means any substance or mixture of sub-  
0055 stances intended for artificially accelerating the drying of plant  
0056 tissue.

0057 (f) "Equipment" means any ground, water or aerial appa-  
0058 ratus, used to apply any pesticide but shall not include any  
0059 pressurized hand size household apparatus used to apply any  
0060 pesticide or any equipment, apparatus or contrivance of which  
0061 the person who is applying the pesticide is the source of power  
0062 or energy in making such pesticide application.

0063 (g) "Fungus" means any nonchlorophyll-bearing thallo-  
0064 phyte, including, but not limited to, rust, smut, mildew, mold,  
0065 yeast and bacteria, except those on or in man or other animals  
0066 and those on or in processed food, beverages or pharmaceuticals.

0067 (h) "General use pesticide" shall mean and include all pes-  
0068 ticides which have not been designated, by rule or regulation of  
0069 the secretary or the board, as being restricted use pesticides.

0070 (i) "Insect" means any small invertebrate animal having the  
0071 body segmented, belonging to the class insecta and other classes  
0072 of arthropods, including, but not limited to, beetles, bugs, bees,  
0073 flies, spiders, mites, ticks and centipedes.

0074 (j) "Registered pest control technician" means an uncertified  
0075 commercial applicator who applies pesticides for wood destroy-  
0076 ing pest control ~~or~~, for structural pest control; ~~or both~~, *for tree or*  
0077 *ornamental shrubbery pest control or for turf pest control, or*  
0078 *for any combination of these types of pest control, and who has*  
0079 *received verifiable training.*

0080 (k) "Nematode" means any unsegmented roundworms of the  
0081 class nematoda, with elongated, fusiform, or saclike bodies cov-  
0082 ered with cuticle, inhabiting soil, water, plants or plant parts.

0083 Such roundworms may also be referred to as nemas or eelworms.

0084 (l) "Person" means any individual, partnership, association  
0085 of persons, corporation or governmental agency.

0086 (m) "Pest" means, but is not limited to, any insect, rodent,  
0087 nematode, fungus, weed or any other form of terrestrial or  
0088 aquatic plant or animal life or virus, bacteria or other microorga-  
0089 nism, except viruses, bacteria or other microorganisms on or in  
0090 man or other animals, or which the secretary may declare to be a  
0091 pest.

0092 (n) "Pesticide" means, but is not limited to, (1) any substance  
0093 or mixture of substances used to prevent, destroy, control, repel,  
0094 attract or mitigate any pest and (2) any substance or mixture of  
0095 substances intended to be used as a plant regulator, defoliant or  
0096 desiccant.

0097 (o) "Pesticide business" means any individual, partnership,  
0098 association of persons or corporation which applies pesticides to  
0099 the property of another for compensation.

0100 (p) "Pesticide dealer" means any person who sells a pesti-  
0101 cide to another person for application.

0102 (q) "Plant regulator" means any substance or mixture of  
0103 substances intended through physiological action, to accelerate  
0104 or retard the rate of growth or maturation, or to otherwise alter  
0105 the behavior of plants but shall not include substances insofar as  
0106 they are used as plant nutrients, trace elements, nutritional  
0107 chemicals, plant inoculants or soil amendments. The term "plant  
0108 regulator" shall not include any such nutrient mixtures or soil  
0109 amendments as are commonly known as vitamin-hormone horti-  
0110 cultural products, intended for improvement, maintenance, sur-  
0111 vival, health and propagation of plants, and not for pest destruc-  
0112 tion if such mixtures or soil amendments, in the undiluted  
0113 packaged concentration are nontoxic and nonpoisonous.

0114 (r) "Restricted use pesticide" shall mean and include all  
0115 pesticide uses designated as such by rules and regulations of the  
0116 secretary or the board.

0117 (s) "Secretary" means the secretary of the state board of  
0118 agriculture.

0119 (t) "Tree, ornamental shrubbery or turf," and any similar

0120 phrase, includes only trees, ornamental shrubs or turf located on  
 0121 property which is within the boundaries of incorporated cities.

0122 (u) "Under the supervision of" means, unless otherwise  
 0123 provided by the labeling of the pesticide product, acting under  
 0124 the instructions and control of another person who is available if  
 0125 and when needed, even though such other person is not physi-  
 0126 cally present at the time and place the act is done.

0127 (v) "Weed" means any plant or part thereof which grows  
 0128 where not wanted.

(w) "Pesticide Business Licensee"  
 shall mean any individual, business,  
 association of persons, corporation or  
 governmental agency who is licensed or  
 should be licensed under Kansas  
 Pesticide Law (insert statute numbers  
 here).

0129 Sec. 2. K.S.A. 1987 Supp. 2-2440a is hereby amended to read  
 0130 as follows: 2-2440a. (a) A pesticide business licensee applying  
 0131 pesticides for the control of wood destroying pests or, structural  
 0132 pests, tree or ornamental shrubbery pests or turf pests shall  
 0133 ensure that registered pest control technicians who handle, mix  
 0134 or apply pesticides have been trained as provided in this act. The  
 0135 pesticide business licensee shall notify the secretary by the 10th  
 0136 of the month following the date of employment of the employ-  
 0137 ment of a registered pest control technician or a person to be  
 0138 trained as a registered pest control technician. The pesticide  
 0139 business licensee shall ensure that all persons employed by the  
 0140 pesticide business who apply pesticides and who are not regis-  
 0141 tered pest control technicians meet the requirements of this act  
 0142 within 90 days after they are employed. This requirement shall  
 0143 not apply to certified commercial applicators employed by the  
 0144 pesticide business licensee.

0145 (b) This section shall be part of and supplemental to the  
 0146 Kansas pesticide law.

0147 (b) This section shall take effect and be in force from and  
 0148 after January 1, 1988.

0149 Sec. 3. K.S.A. 1987 Supp. 2-2440b is hereby amended to read  
0150 as follows: 2-2440b. (a) It shall be unlawful for any pesticide  
0151 business licensee to apply pesticides for the control of wood  
0152 destroying pests ~~or~~, structural pests, *tree or ornamental shrub-*  
0153 *bery pests or turf pests* unless the applicator of the pesticide is a  
0154 certified commercial applicator or is a registered pest control  
0155 technician, except that an uncertified commercial applicator may  
0156 apply pesticides when either a certified applicator or registered  
0157 pest control technician is physically present.

0158 (b) Any such employee applying for a pest control technician  
0159 registration shall file an application on a form prescribed by the  
0160 secretary. Application for such registration shall be accompanied  
0161 by an application fee established by rules and regulations  
0162 adopted by the board, except that such fee shall not exceed \$25  
0163 and shall be reduced (but not below zero) by an amount equal to  
0164 the additional fee paid under subsection (b) of K.S.A. 2-2440 and  
0165 amendments thereto for such uncertified individual.

0166 (c) If the secretary finds the applicant qualified to be a  
0167 registered pest control technician after meeting the training  
0168 requirements determined by the secretary in rules and regula-  
0169 tions, the secretary shall issue a pest control technician registra-  
0170 tion which will expire at the end of the calendar year.

0171 (d) This section shall be part of and supplemental to the  
0172 Kansas pesticide law.

0173 (b) This section shall take effect and be in force from and  
0174 after January 1, 1988.

0175 Sec. 4. K.S.A. 1987 Supp. 2-2440c is hereby amended to read  
0176 as follows: 2-2440c. (a) Each registered pest control technician  
0177 shall have received training, to the extent prescribed by the  
0178 secretary by rules and regulations in each of the subjects enu-  
0179 merated in K.S.A. 2-2443a, and amendments thereto.

0180 (b) Within 90 days after the effective date of this act, each  
0181 pesticide business licensee who applies pesticides or causes  
0182 pesticides to be applied for the control of wood destroying pests  
0183 ~~or~~, structural pests, *tree or ornamental shrubbery pests or turf*  
0184 *pests* shall submit its training materials to the secretary for  
0185 approval. After initial approval, each such pesticide business  
0186 licensee shall resubmit its training materials for approval every  
0187 five years ~~or~~ as training materials are updated.

(c) Training materials submitted to the Secretary shall be approved or denied within 30 days of being submitted to the secretary. Any training materials that are denied must be returned to the pesticide business licensee within 40 days with a complete written explanation of the denial.

0188 (d) Each pesticide business licensee who applies pesticides  
0189 or causes pesticides to be applied for the control of wood de-  
0190 stroying pests ~~or~~, structural pests, *tree or ornamental shrubbery*  
0191 *pests or turf pests* shall maintain records to verify that each  
0192 registered pest control technician employed by such pesticide  
0193 business licensee has been properly trained. These records shall  
0194 contain the name of each person who takes the training to  
0195 become a registered pest control technician, the date or dates of  
0196 such training, the date the training was completed, and any other  
0197 information required by the secretary. These records shall be  
0198 maintained for a period of three years after the training has been  
0199 given. These records shall be made available to the secretary or  
0200 the secretary's authorized designee upon request.

0201 (e) ~~This section shall take effect and be in force from and~~  
0202 ~~after January 1, 1988. This section shall be part of and supple-~~  
0203 ~~mental to the Kansas pesticide law.~~

0204 New Sec. 5. (a) Any pesticide business licensee who applies  
0205 pesticides in violation of subsection (a) of ~~K.S.A. 1987 Supp.~~  
0206 ~~2-2410b and amendments thereto, in addition to any other pen-~~  
0207 ~~alty provided by law, may incur a civil penalty imposed under~~  
0208 ~~subsection (b) in the amount of \$500 for each violation and, in the~~  
0209 ~~case of a continuing violation, every day such violation continues~~  
0210 ~~shall be deemed a separate violation.~~

0180 (b) Within 90 days after the effective date of this act, each  
 0181 pesticide business licensee who applies pesticides or causes  
 0182 pesticides to be applied for the control of wood destroying pests  
 0183 ~~or~~, structural pests, *tree or ornamental shrubbery pests or turf*  
 0184 *pests* shall submit its training materials to the secretary for  
 0185 approval. After initial approval, each such pesticide business  
 0186 licensee shall resubmit its training materials for approval every  
 0187 five years or as training materials are updated.

(c) Training materials submitted to the Secretary shall be approved or denied within 30 days of being submitted to the secretary. Any training materials that are denied must be returned to the pesticide business licensee within 40 days with a complete written explanation of the denial.

0188 (d) Each pesticide business licensee who applies pesticides  
 0189 or causes pesticides to be applied for the control of wood de-  
 0190 stroying pests ~~or~~, structural pests, *tree or ornamental shrubbery*  
 0191 *pests or turf pests* shall maintain records to verify that each  
 0192 registered pest control technician employed by such pesticide  
 0193 business licensee has been properly trained. These records shall  
 0194 contain the name of each person who takes the training to  
 0195 become a registered pest control technician, the date or dates of  
 0196 such training, the date the training was completed, and any other  
 0197 information required by the secretary. These records shall be  
 0198 maintained for a period of three years after the training has been  
 0199 given. These records shall be made available to the secretary or  
 0200 the secretary's authorized designee upon request.

0201 (e) ~~This section shall take effect and be in force from and~~  
 0202 ~~after January 1, 1988. This section shall be part of and supple-~~  
 0203 ~~mental to the Kansas pesticide law.~~

0204 New Sec. 5. (a) Any pesticide business licensee who applies  
 0205 pesticides in violation of subsection (a) of ~~K.S.A. 1987 Supp.~~  
 0206 ~~2-2410b and amendments thereto, in addition to any other pen-~~  
 0207 ~~alty provided by law, may incur a civil penalty imposed under~~  
 0208 ~~subsection (b) in the amount of \$500 for each violation and, in the~~  
 0209 ~~case of a continuing violation, every day such violation continues~~  
 0210 ~~shall be deemed a separate violation.~~

Kansas Pesticide Law (insert statute number) and amendments thereto, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection b in the amount of \$50 to \$5000 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

0211 (b) A duly authorized agent of the board, upon a finding that a  
0212 pesticide business licensee has applied pesticides in violation of  
0213 subsection (a) of K.S.A. 1987 Supp. 2-2440b and amendments  
0214 thereto, may impose a civil penalty as provided in this section  
0215 upon such licensee.

0216 (c) No civil penalty shall be imposed pursuant to this section  
0217 except upon the written order of the duly authorized agent of the  
0218 board to the licensee who committed the violation. Such order  
0219 shall state the violation, the penalty to be imposed and the right  
0220 of such licensee to appeal to the board. Any such licensee, within  
0221 20 days after notification, may make written request to the board  
for an informal hearing conducted as directed by the secretary. After such informal hearing the licensee may receive further consideration by making written request for a formal hearing within 20 days of notification of the informal hearings determination. At either the informal hearing or the formal hearing, the board shall affirm, reverse or modify the order and shall specify the reasons therefor.

0222 ~~for a hearing in accordance with the provisions of the Kansas~~  
0223 ~~administrative procedure act. The board shall affirm, reverse or~~  
0224 ~~modify the order and shall specify the reasons therefor.~~

0225 (d) Any person aggrieved by an order of the board made  
0226 under this section may appeal such order to the district court in  
0227 the manner provided by the act for judicial review and civil  
0228 enforcement of agency actions.

0229 (e) Any civil penalty recovered pursuant to the provisions of  
0230 this section shall be remitted to the state treasurer, deposited in



0231 the state treasury and credited to the state general fund.

0232 (f) This section shall be a part of and supplemental to the  
0233 Kansas pesticide law.

0234 Sec. 6. K.S.A. 1987 Supp. 2-2438a, 2-2440a, 2-2440b and 2-  
0235 2440c are hereby repealed.

0236 Sec. 7. ~~This act shall take effect and be in force from and~~  
0237 ~~after its publication in the statute book.~~

This act shall take effect and be in  
force from and after January 1, 1989  
except that section 4 (C) shall take  
effect and be in force from and after  
July 1, 1988.

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
(SMALL CLAIMS DIVISION)

Sandra S. Montrose

PLAINTIFF

VS

S.C.# 86 S 705

Mid Continent Fuel & Loan Service, Inc  
and Ron McCann

DEFENDANT

JOURNAL ENTRY

Now on this 30th day of September, 1986, this matter comes on for (trial) (~~hearing~~).

Sandra S. Montrose appears (~~not~~) (as) (~~for~~) plaintiff.

Ron McCann appears (~~not~~) (as) (~~for~~) defendant.

Venue and Jurisdiction properly placed. Case proceeds to trial

The Court, being duly advised in the premises, finds as

follows:

Matter taken under advisement following trial

FILED

'86 OCT 23 A9:51

LOVA D. JAMES, CHIEF  
CLERK OF DISTRICT COURT  
BY [Signature]

IT IS SO ORDERED.

[Signature]  
JUDGE OF THE DISTRICT COURT  
SMALL CLAIMS DIVISION

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

Small Claims Division

SANDRA S. MONTROSE  
plaintiff

VS

Case No. 86 S 705

MID-CONTINENT TREE AND LAWN SERVICE, INC.  
AND DON McCANN  
defendant

DECISION

The parties appeared in court on September 30, 1986, and presented evidence on this case. The defendant advised that his true name is Ron McCann. Following evidence of the parties and witnesses, the court took the case under advisement.

The plaintiff testified that on July 10, 1986 she observed the defendant, a duly licensed tree spraying service and Mr. McCann particularly, applying a chemical by spraying, to trees in the back yard of a neighboring residence. She testified that she observed this spray drifting into her yard and coming in contact with raspberry and blackberry plants in her back yard. The plaintiff immediately made contact with Mr. McCann and asked him the name of the product he was using and expressed her concerns about her berries. She was advised the product was a material known as ORTHENE. The plaintiff attempted a washdown of the plants exposed to the chemical.

The plaintiff presented evidence at trial indicating that the prevailing wind was such that her berry plants were affected by the spray. She offered evidence of the manufacturers warnings concerning the use of ORTHENE, which include the phrase "Do not apply to edible crops."

The plaintiff contacted the Kansas Board of Agriculture, Division of Plant Health, and Daniel Tuggle, Investigator, contacted the plaintiff and took samples for testing, the day following the incident. Mr. Tuggle also

contacted the defendant, examined his application equipment and subsequently appeared in this court as a witness under subpoena. Mr. Tuggle advised Mrs. Montrose that if she had seen the spray in contact with the berry crop, she should not eat the berries.

By way of background, Mrs. Montrose testified that she has been growing the berries, primarily for personal consumption, for many years. She testified that the value of her crop if purchased at retail would be in excess of \$1500.00. Mr. Tuggle indicated that he considered the plaintiff's berry crop to be of the best quality he had seen in Kansas.

Relying upon Mr. Tuggle's recommendation, Mrs. Montrose destroyed the entire crop. Test results became available September 24, 1986 and reported that no chemical of the type used by the defendant could be detected in the samples examined. Mr. Tuggle indicated that such a finding did not mean that there was no presence of the chemical. It does appear, however, that the chemical level must be quite low. The plaintiff testified that there would not have been a practical way available to her to preserve the crop from the date of spraying to the date the test results became available. The crop was thus, lost entirely.

The defendant testified that he is a licensed qualified applicator and has been involved in tree spraying in Kansas for 18 years. He was aware of the possibility of wind drift of the chemical he was applying and stated that he had taken into consideration the wind direction and speed in making the application. He testified that his application method would have caused all of the spray to be caught by the tree onto which it was directed and that there was no overspray or drift.

He presented evidence to show that Orthene has a short 7 to 14 day residual effect.

The plaintiff claims she is entitled to \$1000.00 damages for loss of her berry crop which she estimates had a value if purchased at retail of \$1500.00.

The court finds that spray from defendant's application of Orthene on trees in a neighboring yard drifted onto plaintiff's property and came in contact with her berry plants. Orthene bears warnings against application on edible plants without any minimum acceptable or safe level identified. The plaintiff sought and received immediate expert assistance from State Agriculture Board officials and following their advise, the crop was a total loss.

The plaintiff is entitled to judgment in the sum of \$1000.00 against the defendants Mid-Continent Tree and Lawn Service, Inc. and Ron McCann, the individual who made the application of the chemicals.

Costs are assessed against the defendants.

Exhibits are returned to the parties herewith.

IT IS SO ORDERED

Judgement Entered This 23rd Day Of October, 1986.

*Richard W. Fenly*  
Judge of the District Court Pro Tem

FILED

'86 OCT 23 A9:50

LOVA HUNGAN, CHIEF  
CLERK OF DISTRICT COURT  
BY *[Signature]*

And it's free  
Got a safety question about a household chemical product? Need information on asthma? These health issues can now be handled over the phone on health hotlines. And it's free.  
If you need nonemergency information on any chemicals or chemical products, the Chemical Manufacturers Association's Chemical Referral Center will direct you to the appropriate agency. Call 800-262-8200 (Alaska residents call 202-887-1315 collect; District of Columbia residents call direct) from 8 A.M. to 9 P.M. Eastern time, Monday through Friday.  
The National Jewish Hospital and Research Center in Denver provides a Lung Line for people needing answers about emphysema, asthma, chronic bronchitis, and other respiratory or immune disorders. Call 800-222-5864 (Colorado and Alaska residents call 303-398-1477) from 8 A.M. to 5 P.M. Mountain time, Monday through Friday.

Nothing to due in case - JUST ANOTHER SOURCE FOR DATA.

TESTIMONY

HOUSE BILL NO. 2891

PRESENTED TO

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

by

Dale Lambley, Director  
Plant Health Division  
Kansas State Board of Agriculture

March 1988

TESTIMONY

House Bill No. 2891

House Bill 2891 would require all uncertified employees of pesticide applicator businesses in Category 3 - Ornamental and Turf Pest Control to receive verifiable training as prescribed by the secretary. The Kansas State Board of Agriculture essentially supports this legislation since it establishes a requirement for training which should raise the level of competency in the industry. However, we do not believe that this bill goes far enough. It is our belief that all persons who commercially apply pesticides inside of homes, offices and restaurants or in the immediate vicinity of these structures should be certified.

At the present time each licensed business is required to have at least one employee who is commercially certified in the category or categories in which the business is licensed. In order to become certified, this individual must pass two or more closed-book examinations. He or she must then attend one approved training program or retake the examinations every three years. Most businesses have only one certified applicator, who is the owner of the company or the branch manager. There are no statutorily mandated training requirements for the other pesticide applicators employed by licensed businesses. The lone exception is the training requirement recently imposed on businesses in structural and wood-destroying pest control which is currently being implemented.

Last year when a bill was introduced in the legislature to establish a verifiable training requirement for uncertified employees of businesses in structural and wood destroying pest control, testimony was presented by the agency urging that full certification be required but also supporting any changes which might improve the overall competency of the pest control industry. The state pest control association opposed certification because

our agency was unable to offer the required examinations often enough and at enough locations to meet their needs (We presently offer the certification exams every other month at ten different locations around the state.).

The agency would much prefer to see the registered pest control technician program as a stepping stone toward full certification rather than as a self-perpetuating entity. We recognize that we cannot offer certification examinations as often as businesses might like, and we therefore believe that the registered technician concept has some merit. However, at the present time, a pest control technician's registration may be renewed annually for an indefinite period of time. The agency would like the committee to consider establishing a one-year, non-renewable registration to be followed by mandatory certification. I would add that the Kansas Groundwater Quality Protection Strategy (page 25 attached) recommends certification of all commercial lawn care applicators.

Other than that, Mr. Chairman, we have a question about the intent of Section 5. As written, it grants civil penalty authority under very narrow guidelines. Civil penalties may only be imposed for violations of K.S.A. 2-2440b subsection (a) which deals with the requirements for registered pest control technicians. Further, there appears to be no flexibility in establishing the amount of the fine which is fixed at \$500. If the intent was to establish broad civil penalty authority, this might be done by making reference to the unlawful acts sections of the law (K.S.A. 2-2453, 2-2454). Flexibility in the amount of the penalty could be established by listing a maximum penalty. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) includes civil penalty authority of not more than \$5,000 for each offense (7 USC 1361).



My other comments are of a technical nature, primarily involving changes in the language of the bill to make it compatible with the existing statute.

- 1.) The definition of "Certified private applicator" (lines 0048-0049) should not be changed. The new language implies legal authority which extends beyond the borders of this state.
- 2.) To remain consistent with the names of categories used for licensing and certification, the amended definition of "Registered pest control technician" should read: "Registered pest control technician" means an uncertified commercial applicator who applies pesticides for wood destroying pest control, for structural pest control, for ornamental pest control, or for turf pest control, and who has received verifiable training.
- 3.) The definition of "Tree, ornamental shrubbery or turf" (lines 0119-0121) should be deleted. Commercial certification Category 3 - Ornamental and Turf Pest Control is presently defined by regulation in 4-13-11.
- 4.) Similarly, "tree or ornamental shrubbery pests or turf pests" should be changed to "ornamental pests or turf pests" in lines 0132, 0152, 0183, and 0190.
- 5.) The word "board" should be changed to "secretary" in lines 0211, 0218, 0220, 0221, 0223, and 0225.
- 6.) Line 0212 should be changed to read "pesticide business licensee or any employee or agent thereof has applied pesticides in violation of" . . .
- 7.) In line 0225, change "person" to "business licensee."

As the bill reads presently, civil penalties recovered are to be deposited in the state general fund (lines 0229-0231). Should a business licensee pay a fine and later appeal and win, the agency would be required to compensate the licensee, and the money would come from the agency's budget. Is there some way to avoid this potential problem?

Lastly, since all business licenses, commercial applicator certificates and pest control technician registrations are issued on a calendar year basis, it would be helpful to the agency and to industry if the act would take effect from and after January 1, 1989 rather than from and after its publication in the statute book (lines 0236-0237).

10) Continue to stress educating the public and commercial agricultural chemical services on the proper use and application of chemicals and the potential for groundwater contamination related to their use. The educational program should be targeted to providing recommendations on the use of chemicals only when they are really needed, and that the choice of chemicals be those which are environmentally appropriate for the intended use and site conditions.

b. Urban Application of Chemicals to Lawns and Gardens

- 1) Continue to impress upon EPA the need for completing the collection of environmental fate data on all new chemicals and the most commonly used chemicals currently available on the market. Determinations should be made concerning leachability of lawn and garden chemicals and determinations as to whether the products should be cancelled or restrictions placed on their use because of groundwater concerns.
- 2) Continue to stress educating the public and commercial lawn care services on the proper use and application of chemicals and the potential for groundwater contamination related to their use. The educational program should be targeted to providing recommendations on the use of chemicals only when they are really needed, and that the choice of chemicals be those which are environmentally appropriate for the intended use and site conditions.
- 3) Ensure that commercial applicators handling pesticides and herbicides are appropriately certified through the Kansas Board of Agriculture, the pesticides are used according to label directions, and employees are properly trained in methods of application. Consider mandatory certification of all employees involved in chemical application.

KANSAS STATE BOARD OF / CULTURE  
109 S.W. 9th Street  
Topeka, Kansas 66612  
Phone: (913) 296-3556

Bill Number: House Bill 2891

As Amended By: \_\_\_\_\_

Donald L. Jacka, Jr.  
Prepared By:

Assistant Secretary  
Title

02-19-88  
Date

Dale Lambley, Betty Dey

Agency Explanation of Estimated Fiscal Impact

NOTE: Use this section to explain the assumptions and rationale employed in determining the estimated fiscal impact of the attached bill. Please note if this bill's fiscal impact is contained, in whole or in part, in the Governor's Budget Report. (Use additional sheets as necessary.)

With the addition of another category in the registered pest control technician program, it is estimated that 300 additional uncertified applicators will become registered pest control technicians.

With the passage of this bill the Records Center Subprogram of the Division of Plant Health will have a significant increase in workload as a result of adding responsibilities associated with registering pest control technicians. Such work responsibilities would include: receipting and depositing fees, reviewing applications, communicating with businesses and technicians, cross-referencing between technician records and licensed pesticide business records, issuing registrations, sending renewal notices, maintaining records, and performing computer data entry work, etc.

Present staffing level of the Records center is not sufficient to accomplish additional assignments of the registered pest control technician program, therefore, additional staffing is needed in order to handle the additional duties associated with this program.

It is estimated that the period of time needed to prepare for the program proposed in the attached legislation which would become effective approximately July 1, 1988, would be 2 months. The attached fiscal impact statement includes additional expenditures for 1 temporary Office Assistant I position for those two months, plus other operating expenses associated with preparing for the program.

In FY 1989 funding is requested to increase one intermittent Office Assistant I position (49%) to 1 FTE position. (The salary amount requested in FY 1989 on the attached fiscal impact statement contains only the amount necessary to increase the intermittent position budgeted to a FTE position.) Funding for this position will continue in FY 1990, showing the full salary amount needed. Duties of these positions will continue as stated above, since the registered technician program is a yearly renewal program.

(Continued on reverse side)

Summary of Estimated Fiscal Impact

	<u>1988</u>	<u>1989</u>	<u>1990</u>
<u>Revenue Impact by Fund</u>			
Pesticide Use Fees	\$ -0-	\$ 4,500	\$ 4,500
Total Revenue	\$ -0-	\$ 4,500	\$ 4,500
<u>Expenditure Impact by Fund</u>			
State General Revenue Fund	\$ 2,796	\$ 5,032	\$ 11,781
Pesticide Use Fee Fund	-0-	4,500	4,500
Total Expenditures	\$ 2,796	\$ 9,532	\$ 16,281
<u>Expenditure Impact by Object</u>			
Salaries and Wages	\$ 2,206	\$ 8,337	\$ 15,266
Communications	170	475	475
Printing & Advertising	200	200	200
Rents	20	40	40
Contractual Services	\$ 390	\$ 715	\$ 715
Stationery & Office Supplies	200	300	300
Commodities	\$ 200	\$ 300	\$ 300
Capital Outlay	\$	\$ 180	\$
Total Operating Expenditures	\$ 2,796	\$ 9,532	\$ 16,281

Salaries and Wages Summary

<u>Classification</u>	<u>Salary Range</u>	<u>No.</u>	<u>Amount</u>	<u>No.</u>	<u>Amount</u>	<u>No.</u>	<u>Amount</u>
Office Assistant I	9	0	2,034	1.0	6,416	1.0	12,510
Total Benefits			172		1,921		2,750
Total Salaries and Wages		0	\$ 2,206	1.0	\$ 8,337	1.0	\$ 15,260

Capital Outlay

<u>Item</u>	<u>No.</u>	<u>Unit Cost</u>			
5 - drawer vertical file	1	180	\$	\$ 180	\$
Total			\$	\$ 180	\$

This amount will cover the cost of 1 temporary position for 2 months in FY 1988.  
 This amount will increase 1 budgeted permanent intermittent Office Assistant I position to 1FTE position.

Testimony on  
HB 2891  
To House Committee on Energy and Natural Resources  
March 1, 1988

Submitted by Vernon McKinzie

Mr. Chairman, members of the committee. Thank you for this opportunity to offer a statement concerning HB 2891. I am Vernon McKinzie, a pest control businessman from Emporia. I am a Registered Professional Entomologist. I have served both my State and National Associations as President and currently serve as Legislative Committee Chairman of the Kansas Termite and Pest Control Association.

Last year the Kansas Termite and Pest Control Association assisted with the development of Senate Bill 123 and supported it through its passage. The original language of HB 2891 was drafted from the law resulting from the passage of SB 123 last session of the legislature. SB 123 became effective January 1, 1988 and we would like to see it have some time to work before it is changed substantially.

HB 2891 expands the requirement of verifiable training and registration to include lawn and ornamental applicators. We do not oppose their inclusion in the Bill.

Our Association worked with the Board of Agriculture staff and the Senate Agriculture Committee to assist in perfecting language of SB 123. We intentionally did not ask for it to include any other pesticide applicator groups. Our intent was to provide the public with competent pesticide applicators in order for our services to be performed safely and effectively in and around homes, businesses and institutions. We believe HB 2891 will extend a higher level of competency to the lawn and ornamental industry and see it as a positive step in providing safe and effective services.

New Section 5 of HB 2891, provides for civil penalties. We would respectfully request you consider changing the language to permit up to a maximum penalty of \$5,000.00 rather than require \$500.00 for each violation. This suggested language change will bring the state law into harmony with the current Federal Law.

Our Association has supported the concept of civil penalties for some time and have supported civil penalty legislation in the past.

To summarize, the Kansas Termite and Pest Control Association supports the basic language of HB 2891; we do not oppose the inclusion of Lawn and Ornamental Applicators; we oppose change of the verifiable training and registration requirements as they relate to certified applicators; we support civil penalties with a minor modification.

Thank you for your attention. Are there any questions?

# Kansas Natural Resource Council

Testimony before the House Energy and Natural Resources Committee  
HB 3022: Chemigation

Charlene A Stinard, Kansas Natural Resource Council  
March 1, 1988

My name is Charlene A. Stinard and I represent the Kansas Natural Resource Council, a private, nonprofit organization of 800 members. In addition, I appear today on behalf of the 2000 members of the Kansas Chapter of the Sierra Club.

Our long-term goals center on promoting sustainable natural resource policies. We commend the work of this committee in reviewing nonpoint source pollution threats to groundwater supplies.

The subcommittee chaired by Representative Holmes, charged with reviewing chemigation, was attentive to concerns raised in hearings, and conscientious in facing the difficult issues raised during testimony.

Monitoring data and water quality analysis are to date insufficient to assure that the chemigation process does not adversely affect surface and groundwater supplies. HB 3022 does not address that concern. Nor does the bill include provisions for other agencies or organizations to assist in the implementation/oversight of the chemigation program. We urge the committee to return to these concerns during future review of chemigation.

HB 3022 does address three issues well.

(1) Enforcement provisions have been expanded and penalties have been increased substantially.

(2) New fees provide the possibility for additional resources to fund more extensive field work.

(3) Additional testing requirements may help ensure more informed use of this potentially dangerous process.

We strongly support the Committee's efforts to improve regulation of the chemigation process and urge favorable passage of HB 3022.



TESTIMONY

HOUSE BILL NO. 3022

PRESENTED TO

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

by

Dale Lambley, Director  
Plant Health Division  
Kansas State Board of Agriculture

March 1988

T E S T I M O N Y  
House Bill No. 3022

Kansas State Board of Agriculture staff have undertaken a review of the specific language of H.B. 3022 and would like to make comments directed toward mechanics of this bill.

Lines 0040-0042: We would suggest that rather than referring to K.S.A. 82a - 1501, a sentence be included to read "For the purposes of this section, point of diversion shall mean:"

- (1) The point where the longitudinal axis of the dam crosses the center line of the stream in the case of a reservoir; or
- (2) The location of the headgate or intake in the case of a direct diversion from a river, stream or other watercourse; or
- (3) The location of a well in the case of groundwater diversion.

Line 0059: We would recommend the inclusion of the words "is a certified private applicator and" between the words person and has. Also after the word examination (Line 0060) insert the words "required by this subsection". This language will allow the agency to coordinate chemigation use permit training and examination programs with the existing training and examinations for certified private applicator program.

Line 0083 through 0085: We would encourage inclusion of language in this section to the effect that the initial chemigation user examination will need to be retaken concurrently with the applicator's private pesticide applicator certification examination. Further, we would recommend that language be included to indicate that exams for a chemigation use permit coincide with renewal exams for certification of private applicators.

Finally, we would like to refer you to lines 0127-0174 which are the civil penalty provisions. Lines 0129 and 0130 indicate that persons found guilty of a misdemeanor in court shall also be subject to a civil penalty. Our question is whether the Committee intends to provide authority for civil penalties as an additional tool in the enforcement of the act or does the Committee intend that civil penalties shall be assessed only after criminal court proceedings should result in a conviction.



Finally, we would recommend that language be included to provide direction as to disposition of funds received through civil penalties assessed. Such monies could revert to the state general fund or to the chemigation fee fund. We would suggest that it might be in keeping with the intent of the statute were these monies to be deposited in one of the appropriate environmental remediation funds. Regardless of where these funds are deposited, consideration should be given to how civil penalties would be repaid if, on appeal, a court found the civil penalty should not have been assessed.

FISCAL SUMMARY INFORMATION

KANSAS STATE BOARD OF AGRICULTURE  
 109 S.W. 9th Street  
 Topeka, Kansas 66612  
 Phone: (913) 296-3556

Bill Number: House Bill 3022

As Amended By: \_\_\_\_\_

Donald L. Jacka, Jr.  
 Prepared By:

Assistant Secretary 2/29/88  
 Title Date

Dale Lambley & Arlene Janosik

Agency Explanation of Estimated Fiscal Impact

NOTE: Use this section to explain the assumptions and rationale employed in determining the estimated fiscal impact of the attached bill. Please note if this bill's fiscal impact is contained, in whole or in part, in the Governor's Budget Report. (Use additional sheets as necessary.)

House Bill 3022 increases annual chemigation user permit fees from \$50 per permit to \$50 per permit plus \$20 per well or point of diversion. Projected increased fee income realized is as follows:

<u>Year</u>	<u>No. Wells</u>	<u>\$ Fee Income</u>
1989	3,000	60,000
1990	3,500	70,000
1991	4,000	80,000

Expenditures necessary for salary and support of one new Ecological Specialist (Range 25) field position in the area of Chemigation Safety Law enforcement is also included.

Summary of Estimated Fiscal Impact

	<u>1989</u>	<u>1990</u>	<u>1991</u>
<u>Revenue Impact by Fund</u>			
<u>Chemigation Fee Fund</u>	\$ 60,000	\$ 70,000	\$ 80,000
<u>Total Revenue</u>	<u>\$ 60,000</u>	<u>\$ 70,000</u>	<u>\$ 80,000</u>
<u>Expenditure Impact by Fund</u>			
<u>Chemigation Fee Fund</u>	\$ 40,962	\$ 40,838	\$ 41,600
<u>Total Expenditures</u>	<u>\$ 40,962</u>	<u>\$ 40,838</u>	<u>\$ 41,600</u>
<u>Expenditure Impact by Object</u>			
Salaries and Wages	\$ 29,697	\$ 31,403	\$ 32,165
Communications	1,310	1,310	1,310
Freight & Express	1,000	1,000	1,000
Printing & Advertising	50	50	50
Travel & Subsistence	6,000	6,000	6,000
Fees-Other Services	100	100	100
Contractual Services	\$ 8,460	\$ 8,460	\$ 8,460
Professional & Scientific	350	350	350
Stationery & Office Supplies	525	525	525
Other Supplies , Materials, Parts	100	100	100
Commodities	\$ 975	\$ 975	\$ 975
Capital Outlay	\$ 1,830	\$	\$
<u>Total Operating Expenditures</u>	<u>\$ 40,962</u>	<u>\$ 40,838</u>	<u>\$ 41,600</u>

Salaries and Wages Summary

<u>Classification</u>	<u>Salary Range</u>	<u>No.</u>	<u>Amount</u>	<u>No.</u>	<u>Amount</u>	<u>No.</u>	<u>Amount</u>
<u>Ecological Specialist</u>	<u>25</u>	<u>1</u>	<u>26,016</u>	<u>1</u>	<u>26,976</u>	<u>1</u>	<u>27,660</u>
<u>Total Benefits</u>			<u>3,681</u>		<u>4,427</u>		<u>4,505</u>
<u>Total Salaries and Wages</u>		<u>1</u>	<u>\$ 29,697</u>	<u>1</u>	<u>\$ 31,403</u>	<u>1</u>	<u>\$ 32,165</u>

Capital Outlay

<u>Item</u>	<u>No.</u>	<u>Unit Cost</u>			
<u>Chemigation Sampling Equip.</u>	<u>1</u>	<u>850</u>	\$ 850	\$	\$
<u>Desk</u>	<u>1</u>	<u>300</u>	300		
<u>5 Drawer File</u>	<u>1</u>	<u>180</u>	180		
<u>Camera</u>	<u>1</u>	<u>500</u>	500		
<u>Total</u>			<u>\$ 1,830</u>	\$	\$

STATEMENT  
Prepared for  
House Agricultural and Natural Resource Committee  
March 1, 1988

by

Hyde S. Jacobs  
Assistant to the Dean of Agriculture  
Kansas State University

The Cooperative Extension Service, Kansas State University, cooperates with the State Board of Agriculture to prepare training and educational materials when federal and state law requires that farmers or private or commercial applicators must be tested or certified prior to their use of pesticides or agricultural chemicals.

Where certification or testing is required, the cooperation is two fold:

(1) The State Board of Agriculture takes the lead in establishing the regulations, certification requirements and testing procedures. The State Board also administers the test and collects the required fee.

(2) The Cooperative Extension Service prepares the training and educational materials which farmers or private or commercial applicators use to prepare for the test. Where appropriate, educational meetings may also be conducted.

Close coordination with the State Board of Agriculture is essential to insure that all educational materials meet the time, safety and use standards implied by law or regulation. Dr. Donald C. Cress, Extension Pesticide Coordinator and the KSU Chemical Task Force, provides the focal point for coordinating those activities with the State Board of Agriculture.

Should chemigators be required to successfully complete an examination as envisioned in H.B. 3022, the Cooperative Extension Service will prepare the required training materials. However, budgetary considerations will require recovery of publication costs by (1) charging farmers for the manual (2) by supplemental appropriation or (3) by using grant funds.

For example, Cooperative Extension regularly prepares the training manuals which private applicators use to prepare to become certified private applicators of restricted use pesticides. In the past, Cooperative Extension has not charged private applicators for those manuals because a substantial portion of the publication costs came from federal and industry grant funds. Those funds are depleted and, if we cannot find another source of funding, we expect to recover publication costs by charging for those and similar publications.



# PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

RE: H.B. 3022 - Amending the Kansas Chemigation Safety Act

March 1, 1988  
Topeka, Kansas

Presented by:  
Bill R. Fuller, Assistant Director  
Public Affairs Division  
Kansas Farm Bureau

**Mr. Chairman and Members of the Committee:**

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division of Kansas Farm Bureau. We appreciate this opportunity to comment on H.B. 3022.

Agriculture must be responsible in its actions to protect our environment and natural resources. Farmers and ranchers have been good stewards of our natural resources. We want to assist in addressing potential problems. In fact, the agricultural community recommended and supported S.B. 330 which created the "Kansas Chemigation Safety Law" during the 1985 Legislative Session.

Most of the proposals in H.B. 3022 were part of the original S.B. 330 introduced in 1985.

If more funds are needed, the amendment to add a fee for each well to the current \$50 users permit requires a chemigator with several wells to pay higher fees than a chemigator with only one well. We believe that is fair.

We believe providing chemigators with adequate information is the key to a successful regulatory program. We support an examination procedure for chemigators, especially if it is a part of the Private Applicators Certification Program. We want to do our part in assisting farmers in preventing pollution from farming activities. For that reason, Farm Bureau has developed and the KFB Board of Directors has authorized the printing and distribution of **"Self-Help ... POLLUTION CHECKLIST."** In that document we point out that the Kansas Chemigation Safety Law requires a permit and anti-pollution devices. The proposed changes in the "penalty" section are causing many of our members concern. Adding a civil not to exceed to \$10,000 for each violation (\$10,000 per day for continuing violations) and Class A misdemeanor criminal penalty, rather than the current \$500 fine is a significant change. Will this threat of a substantial penalty improve compliance with the law? Is the State prepared to fund additional personnel to find chemigation wells and administer the law? The \$10,000 civil penalty may adversely affect the cooperation we generally have between chemigators and the regulatory agency.

Thank you for allowing us to express our views on H.B. 3022. We will attempt to respond to any questions you may have.

Self-Help...

# POLLUTION CHECKLIST

...to assist farmers in reducing or preventing pollution from farming activities

- ✓ Fill out this Checklist
- ✓ Review it once a year
- ✓ Protect our groundwater and environment



IS  
YOUR  
DRINKING  
WATER  
SAFE?

**KF**® **Kansas Farm Bureau and Affiliated Services**

2321 Anderson Avenue, Manhattan, Kansas 66502 / (913) 537-2261

Attachment 9  
House Energy & NR

3-1-88

## I. BASIC INFO ON YOUR WATER SUPPLY & TESTING, CLIMATE AND SOILS:

Which system provides drinking water for your family and/or livestock?

- \_\_\_ **PUBLIC** (EPA defines it as any system with 15 or more connections or serving 25 or more people, including most rural water districts.) Water testing and treatment required by federal Safe Drinking Water Act.
- \_\_\_ **PRIVATE** (includes your own system; bottled water; and systems with 14 or fewer connections or systems serving 24 or less people). Water tests generally not required except for dairies and for new wells.

Check  the source/s from which your system draws its water:

### GROUNDWATER

- \_\_\_ Shallow well, 0 to 50 ft.
- \_\_\_ Medium well, 50 to 150 ft.
- \_\_\_ Well deeper than 150 ft.
- \_\_\_ Artesian well
- \_\_\_ Spring
- \_\_\_ Don't know, but I intend to find out.

### SURFACE WATER

- \_\_\_ Stream
- \_\_\_ River
- \_\_\_ Farm pond
- \_\_\_ Lake
- \_\_\_ Cistern

Is your water treated to kill bacteria? \_\_\_ Yes \_\_\_ No

If you have a well, is it dug, drilled, or sandpoint? \_\_\_\_\_

In what year was your well constructed? \_\_\_\_\_

Is your well properly grouted to prevent contamination from rainfall and animal contamination from seeping down along the well's casing? \_\_\_ Yes \_\_\_ No \_\_\_ Don't Know

Does your well's casing extend above ground level? (It should.)  
\_\_\_ Yes \_\_\_ No

Does your well have a water tight cover or seal? \_\_\_ Yes \_\_\_ No



**WATER TESTING**

Have you had your water tested within the last year?

Yes  No

If No, what year did you last test it? \_\_\_\_\_

Did the test include any of the following? Check those that apply.

<input type="checkbox"/> pH	Done by many state health
<input type="checkbox"/> Nitrate	labs for a small fee.
<input type="checkbox"/> Total Coliform Bacteria	Should be done annually
<input type="checkbox"/> Total Dissolved Solids	even if no obvious problems
	exist.

---

Pesticide Scan

Heavy Metals (lead, arsenic, etc.)

Purgable Organic Carbons (fuels, dry cleaning solvents, etc.)

**CLIMATE and SOILS**

What is the average rainfall for your area? \_\_\_\_\_ inches.

*(Leaching potential increases as annual rainfall increases.)*

Is the bedrock limestone?  Yes  No

Are your topsoils shallow to bedrock (less than 3 ft.)

Yes  No

*(Thicker top soils may still be a problem depending on soil type.)*

Are your soils generally:

Sandy (most likely to allow leaching into groundwater)

Loams (medium leaching potential)

Clays (least likely to allow leaching)

High organic matter (peat or muck)

Loam or some combination of those listed above?

How are any ponds or impoundments on your farm recharged?

rainfall/runoff  stream

groundwater/spring  pumped well

## II. CHEC OUR FARM'S POTENTIAL TO POL TE GROUNDWATER AND YOUR DRINKING WATER SUPPLY

**DO YOU:**

**YES\* NO**

- Have limestone bedrock fairly close to the surface? . . . . . \_\_\_\_\_  
*(Cracks and sinkholes provide fast movement of runoff and pollutants to groundwater and wells many miles away.)*
- Have sandy soils? . . . . . \_\_\_\_\_  
*(Fertilizers and chemicals can move rapidly to groundwater.)*
- Have groundwater tables within 30 ft. of the surface? . . . . . \_\_\_\_\_
- Have a dug or sandpoint well less than 50 feet deep? . . . . . \_\_\_\_\_  
*(These are generally old, not properly cased or grouted. Easily contaminated by bacteria, rodents and surface runoff.)*
- Have a well pit? . . . . . \_\_\_\_\_  
*(Easily contaminated by surface runoff, flooding and rodents.)*
- Have an older submersible well pump? . . . . . \_\_\_\_\_  
*(Many older pumps contain lubricating oil with highly toxic PCBs which could contaminate your whole water supply system.)*
- Have lead water pipes or pipe joints soldered with lead? . . . . . \_\_\_\_\_  
*(Lead is highly poisonous and could leach into drinking water, especially if the water is acidic.)*
- Use your well for both livestock and household use? . . . . . \_\_\_\_\_  
*(Potential for cross contamination exists.)*
- Have livestock or poultry within 200 feet of a well? . . . . . \_\_\_\_\_  
*(Bacteria, nitrates and disease may reach the well water.)*
- Have a feedlot, manure lagoon or manure holding facility? . . . . . \_\_\_\_\_
- Have a septic tank or soil absorption field within 200 feet of a well? . . . . . \_\_\_\_\_  
*(Bacteria and nitrate contamination is possible.)*
- Have a surface water drainage well? . . . . . \_\_\_\_\_  
*(Runoff carries chemicals and manure directly into groundwater.)*

**DO YOU:**

- Have a farm dump? . . . . . \_\_\_\_\_  
*(Improperly disposed household and farm chemicals and animals.)*
- Have an underground fuel tank? . . . . . \_\_\_\_\_  
*(Average life of steel tanks is 40 years or less.)*
- Put chemicals or fertilizers into your irrigation system? . . . . . \_\_\_\_\_  
*(“Kansas Chemigation Safety Law” requires a permit and anti-pollution devices to prevent backflows into wells.)*
- Use chemicals which are on EPA’s Priority Leachers List? . . . . . \_\_\_\_\_  
*(If you do use them, try to find a substitute chemical which is equally effective but less likely to leach to groundwater. See list below)*
- Apply sewage sludge? . . . . . \_\_\_\_\_  
*(Possible problems with heavy metal buildup, disease and nitrates if not monitored carefully.)*
- Dump or spread used oil to control road dust? . . . . . \_\_\_\_\_  
*(EPA considers this hazardous waste, better recycle it.)*

**IF YOU CHECKED “YES” FOR ONE OR MORE OF THE QUESTIONS ON PAGE 3 AND 4 YOU SHOULD DEFINITELY BEGIN A PROGRAM OF ANNUAL WELL WATER TESTING!**

\*Also, if you checked the “YES” column you should try to reduce your system’s pollution potential and/or reduce your production costs.

**EPA PRIORITY LEACHERS** *(Current as of October 21, 1987 but could change)*

acifluorfen	gamma-chlordane	disulfoton	metribuzin DA
alachlor	chlorothalonil	disulfoton sulfone	metribuzin DADK
aldicarb	cyanazine	diuron	metribuzin DK
aldicarb sulfone	cycloate	endrin	nitrates
aldicarb sulfoxide	2,4-D	ethylene dibromide	oxamyl
ametryn	dalapon	ETU	pentachlorophenol
atrazine	dibromochloropropane	fenamiphos sulfone	pichloram
atrazine, dealkylated	DCPA	fenamiphos sulfoxide	pronamide metabolite, RH 24,580
baygon	DCPA acid metabolites	fluormeturon	propachlor
bromacil	diazinon	heptachlor	propazine
butylate	dicamba	heptachlor epoxide	propham
carbaryl	5-hydroxy dicamba	hexachlorobenzene	simazine
carbofuran	3,5-dichlorobenzoic acid	hexazinone	2,4,5-T
carbofuran-30H	1,2 dichloropropane	methomyl	2,4,5-TP
carboxin	dieldrin	methoxychlor	tebuthiuron
carboxin sulfoxide	diphenamid	methyl paraoxon	terbacil
chloramben	dinoseb	metolachlor	trifluralin
alpha-chlordane		metribuzin	

### III. OFF-SITE ASSESSMENT

(i.e., are other people's actions affecting your water supply?)

What is the approximate distance to the nearest neighbor's well?  
(Express in feet or miles) \_\_\_\_\_.

Is that well: \_\_\_ shallow (less than 50 feet); \_\_\_ deeper than 50 ft.?

From a map or by observation, in what direction does the groundwater flow through your property? From the \_\_\_\_\_

\_\_\_\_\_ to the \_\_\_\_\_. (Check with local Soil Conservation Service or State Geological Survey if you don't know the answer.) Often times groundwater moves toward the nearest creek or river.

Place a check mark ✓ next to all **POLLUTANT SOURCES** within a 1-mile radius of your property where the groundwater seems to be coming from. (If your farm's water supply is surface water you may have to think in terms of many miles upstream.)

Pollutant Source	Potential Pollution or Problem	If You Suspect/observe these Problems, Request These Tests
___ Ag Areas	All problems listed in Part II	TC, NO <sub>3</sub> , pH, TDS, Pesticide Scan.
___ Wetlands	Polluted recharge water.	Bacteria, NO <sub>3</sub> .
___ Forests	Pesticide use.	Pesticide scan.
___ Highways	Road salt, lead petroleum.	TDS, chlorides, sodium.
___ Housing	Septic, house and lawn chemicals.	NO <sub>3</sub> , surfactants, Fecal Coliform & Streptococcus.
___ Fuel Tank	Gasoline, diesel.	Hydrocarbon scan.
___ City	Street runoff, fuels.	TDS, pH, Hydrocarbon scan.
___ Abandoned Wells	Contaminant runoff or seepage.	NO <sub>3</sub> , Fecal Coliform & Pesticide scan

Pollutant Source	Potential Pollution or Problem	If You Object/ observe these Problems, Request These Tests
___ Industry	Metals, fuels, solvents, acids.	TDS, pH, Hydrocarbon scan.
___ Food Ind.	Rinse water, cleaning solvents.	Bacteria, TDS, pH, Surfactants.
___ Injection Well	Brine, chemicals, & acids.	TDS, pH, acidity, Hydrocarbon Scan, Corrosion Index.
___ Mining	Acid, salts, minerals.	TDS, Fe, SO <sub>4</sub> , pH, Mn, Al, acidity Corrosion Index.
___ Oil & Gas	Brine, sulfur & minerals	TDS, Na, Cl, Ba, Pb, pH, Strontium, Corrosion Index.
___ Golf Club	Pesticide and Fertilizer use.	NO <sub>3</sub> , pH, Pesticide Scan.
___ Landfills	Chemicals of all sorts.	TDS, pH, COD, Volatile organics.
___ Sludge	Heavy metals, bacteria.	Bacteria, nitrate, metals.
___ Utilities	Seepage from storage ponds.	TDS, pH
___ Other		

TDS = Total Dissolved Solids, TC = Total Coliform Bacteria, NO<sub>3</sub> = Nitrates, Al = Aluminum, Fe = Iron, Cl = Chlorides, Mn = Manganese, Ba = Barium, SO<sub>4</sub> = Sulfates, COD = Chemical Oxygen Demand, Pb = Lead, Na = Sodium.

If there is any question in your mind about how any of the pollutant sources you checked above may be affecting your water supply then you should have your water tested. This gives you a baseline against which to compare water test results in future years.

Work closely with local government to deal with off-farm problems.



**IV. FERTILIZER CHECKLIST**

DO YOU:	Yes	No	Can Improve* Investigate	Does Not Apply
<ul style="list-style-type: none"> <li>• Soil test every year, including 2 to 3 feet deep? . . . . .</li> </ul> <p><i>(Deep testing is important in drier climates to determine how much of last year's nitrogen fertilizer remains within the plant's reach.)</i></p>	_____	_____	_____	_____
<ul style="list-style-type: none"> <li>• Have a nutrient "BUDGET" for your cropland? . . . . .</li> </ul>	_____	_____	_____	_____
<ul style="list-style-type: none"> <li>• Split nitrogen applications by plant growth stages? . . . . .</li> </ul>	_____	_____	_____	_____
<ul style="list-style-type: none"> <li>• Give fertilizer credits to manure or sewage sludge? . . . . .</li> </ul>	_____	_____	_____	_____
<ul style="list-style-type: none"> <li>• Give nitrogen credits for previous crops such as alfalfa, soybeans, clover, vetch and other legumes? . . . . .</li> </ul>	_____	_____	_____	_____
<ul style="list-style-type: none"> <li>• Band fertilizers where possible? . . . . .</li> </ul> <p><i>(Bandng reduces the amount of rainfall that contacts the fertilizer as the rainfall percolates down through the soil. Bandng also reduces the chances of weeds using the fertilizer before your crop does.)</i></p>	_____	_____	_____	_____
<ul style="list-style-type: none"> <li>• Use goggles and rubber gloves around anhydrous ammonia? . . . . .</li> </ul>	_____	_____	_____	_____
<ul style="list-style-type: none"> <li>• Reduce use of nitrogen fertilizers in the fall? . . . . .</li> </ul> <p><i>(Spring use increases yield and reduces NO<sub>3</sub> leaching.)</i></p>	_____	_____	_____	_____
<ul style="list-style-type: none"> <li>• Use N-inhibitors, such as N-Serve? . . . . .</li> </ul>	_____	_____	_____	_____
<ul style="list-style-type: none"> <li>• Set "Realistic" yield goals? . . . . .</li> </ul> <p><i>(10 percent higher than the average yield for the last 3 years is reasonable.)</i></p>	_____	_____	_____	_____

*\*Even if you checked the YES or the NO column you also should check the "Can Improve" if you think there's the slightest chance you could reduce your system's pollution potential and/or your production costs.*

## V. STORAGE OF AG CHEMICALS

DO YOU:	Yes	No	Can Improve* Investigate	Does Not Apply
• Know whether your fire department would let a building burn if it contained ag chemicals, rather than risk having their water carry chemicals to groundwater or nearby streams? . . . . .	___	___	___	___
• Padlock chemical storage areas? . . . . .	___	___	___	___
• Keep duplicate records of amounts and types of chemicals in storage and keep one set someplace else other than your chemical storage building? . . . . . <i>(The extra record is useful in case of fire.)</i>	___	___	___	___
• Know which chemicals must be stored in a heated area to prevent lose of effectiveness due to freezing? . . . . .	___	___	___	___
• Have any chemical containers with missing or unreadable labels? . . . . .	___	___	___	___

## VI. HANDLING & APPLICATION OF AG CHEMICALS

DO YOU:

- Know that different parts of your body absorb pesticides at different rates? . . . . .

Anatomy	% Parathion Absorption
scalp	32.1
ear canal	46.5
forehead	36.3
forearm	8.6
palm	11.8
abdomen	18.4
scrotum	100.0
ball of foot	13.5

(Researchers in California measured the percent absorption of parathion by different parts of the anatomy;) Most other pesticides have not been checked for body absorption rate.

Can  
improve\*  
Investigate

Does  
Not  
Apply

**DO YOU:**

Yes No

- Know that symptoms of low-level organophosphate insecticide poisoning closely mimic the symptoms of exhaustion or flu? . . . . .

*(Symptoms include headaches, loss of appetite, nausea, dizziness, weakness and sweating.)*

\_\_\_\_\_
- Know that a product with higher water solubility, longer persistence, and low soil absorption has a greater potential of reaching groundwater? . . . . .

\_\_\_\_\_
- Use integrated Pest Management (IPM) to determine whether the \$ loss to the pest is great enough to warrant spraying, rather than spraying by schedule? . . . . .

\_\_\_\_\_
- Use one of the five specifically defined types of conservation tillage (reduced till, mulch till, slot till, ridge till, or no-till? . . . . .

*(They reduce the amount of soil, chemicals & fertilizer that is eroded to surface waters.)*

\_\_\_\_\_
- Band herbicides, insecticides, and other chemicals, rather than broadcasting them, to cut your costs and reduce their potential for pollution? . . . . .

\_\_\_\_\_
- Read the label before applying any chemical, and follow it? . . . . .

\_\_\_\_\_
- Calibrate spray nozzles before use? . . . . .

\_\_\_\_\_

*\*Even if you checked the YES or the No column you also should check the "Can Improve" if you think there's the slightest chance you could reduce your system's pollution potential and/or your production costs.*



DO YOU:

Yes

No

Im-  
prove\*  
Inves-  
tigate

Does  
Not  
Apply

- Mix and load chemicals and fertilizers at least 100 feet away from your well? . . . . . \_\_\_\_\_  
*(The closer you are, the easier it is for spilled chemicals to get into well.)*
- Use rubber gloves and boots when handling chemicals? . . . . . \_\_\_\_\_  
*Leather absorbs chemicals and keeps it in contact with your skin for days.)*
- Measure concentrates and dilutions accurately before adding to tank? . . . . . \_\_\_\_\_
- Drain the container into the spray tank by holding it in the vertical position for 30 seconds? . . . . . \_\_\_\_\_
- Rinse containers as soon as they are emptied before the residue dries? . . . . . \_\_\_\_\_
- Empty rinsate into your spray tank? . . . . . \_\_\_\_\_
- Have an air gap between the water supply hose and the top of your spray tank to prevent back-siphoning? . . . . . \_\_\_\_\_
- Have check valve and proper safety equipment on irrigation wells? . . . . . \_\_\_\_\_
- Pump tailwater pits often and reuse the water for irrigation to prevent chemical residue from leaching into groundwater? . . . . . \_\_\_\_\_
- Use irrigation scheduling? . . . . . \_\_\_\_\_  
*(If soil is at field capacity, excess water and chemicals will likely move down past root zone.)*

Can  
prove\*  
Investigate  
Does  
Not  
Apply

DO YOU:

Yes No

- Delay application to prevent wash-off or surface runoff if heavy rain is forecast? . . . . .
- Drive tractor into wind or at right angles to the wind whenever possible when spraying to prevent drift from getting on you? . . . . .
- Refrain from draining rinse water from equipment near or into ditches, streams, ponds, lakes or other water sources? . . . . .
- (Rinse waters containing any quantity of certain pesticides are classified as hazardous wastes according to state and federal laws.)*
- Wear one of the new types of disposable coveralls when mixing or applying chemicals? . . . . .
- (It's not very expensive and they do a good job of protecting you.)*
- Wash spray clothes separately? . . . . .
- Use crop rotation to avoid buildup of pest populations and maintain or improve soil conditions? . . . . .
- Alternate pest control products and use crop varieties that are pest resistant? . . . . .
- Have general groundwater pollution liability insurance? . . . . .

**KEEP COMPLETE APPLICATION RECORDS?** . . . . .

*i.e. which chemical, how much, application rate, date, time, temperature, wind conditions, which field, and reason for spraying.)*

## VII. COI CONTAINER DISPOSAL

DO YOU:	Yes	No	Can Improve* Investigate	Does Not Apply
• Return unopened chemicals for a refund? . . . . .	_____	_____	_____	_____
• Check the product label for specific container disposal instructions from the manufacturer? . . .	_____	_____	_____	_____
• Triple rinse and puncture metal pesticide containers and recycle or dispose of them in approved landfills? . . . . .	_____	_____	_____	_____
• Follow local and state laws on disposal of plastic and paper pesticide containers? . . . . .	_____	_____	_____	_____
• Live in an area that sponsors voluntary container collection programs? . . . . . <i>(If not, you might want to help start one.)</i>	_____	_____	_____	_____
• Burn plastic, paper, and other combustible materials after each day's use per application site? . . . . .	_____	_____	_____	_____
• Burn only in daylight hours and have one person responsible to be in attendance for the entire period of the burn? . . . . .	_____	_____	_____	_____
• Dispose of used motor oil at recycling centers? . . . . .	_____	_____	_____	_____

*\*Even if you checked the YES or the NO column you also should check the "Can Improve" if you think there's the slightest chance you could reduce your system's pollution potential and/or your production costs.*

## VIII. HOW TO TAKE A WATER SAMPLE

Always contact the lab where you plan to have the water tested, and ask them for sampling methods, containers, and packaging and delivery instructions.

Your method and timing of taking a sample will vary slightly depending on which point in the system you are concerned about:

1. Actual quality of the main source of water, (groundwater, stream, river, or main distribution lines of a public water system). Remove the faucet's aerator, sterilize the faucet opening by flaming and let the water run for 10 minutes before taking the sample.
2. Condition of your water pipes or storage tanks. Remove the aerator from your faucet, sterilize the faucet opening with flame, and take the sample within 3 or 4 seconds after you turn the water on.

**TYPE OF SAMPLING CONTAINER.** For some tests, water samples can be submitted in a plastic bag or bottle. Other tests require special dark-colored glass bottles. **ASK THE LAB!**

**TIMELINESS.** Usually, it's best to test the sample as soon as possible. Some tests must be done on site, others can wait a day or two, and others can be analyzed several weeks later (and often are).

### **HANDLING OF SAMPLE CONTAINERS.**

- Do not touch the inside of the container or inside of the lid.
- Refrigerate or pack in ice and deliver to lab as quickly as possible if lab so instructs. (Don't throw the sample in the back seat and run all your errands before you stop at the lab.)
- Don't pump gasoline before taking the sample; ethylene dibromide (EDB) in the gasoline will evaporate off your hands into the sample.

For most accurate results, water samples should always be collected by a disinterested third party trained in proper sample collection procedures, and samples should be tested at an Environmental Protection Agency certified laboratory.

## IX. RECOMMENDED INDIVIDUAL ACTIONS

1. Even if no obvious water problems exist, **household water supplies should be tested ANNUALLY** by your county or state Health Department for: pH, nitrates, total coliform bacteria, and total dissolved solids.

Testing water for every contaminant is possible, but very expensive and not necessary. **It is more important to test on a regular basis for a few indicators of contamination and to maintain a record of water quality.** This helps to identify changes in the supply, contamination of the water source or deterioration of the water system.

2. Test livestock and poultry water supplies ANNUALLY for pH, total dissolved solids, sulfate, flouride, calcium, magnesium, iron, copper, arsenic, cadmium, lead, nitrate, barium, total coliform, fecal coliform bacteria, and total plate count.
3. **Review this Checklist at the end of each calendar year and jot down which potential problem areas you improved on, and which ones you can work on in the coming year.**

<b>Record of Household Water Tests</b>						
Year	Date	pH 6.8 to 7.5*	Nitrates NO <sub>3</sub> -N 10ppm*	Total Coliform Bacteria 0/100ml*	Total Dissolved Solids 500ppm*	Other
1987						
1988						
1989						
1990						
1991						
1992						
1993						
1994						
1995						
1996						
1997						
1998						
1999						
2000						

ppm = parts per million      ml = milliliters  
\*ACCEPTABLE LIMITS WITHOUT TREATMENT

4. **Test your water.** Many contaminants are not detectable by taste, odor or appearance. To help assure that your private water supply is safe, have your water analyzed by:

- State Certified Water Testing Lab...for a list contact:

Laboratory Certification Officer		Kansas Farm Bureau
Office of Laboratories	or	2321 Anderson Ave.
Ks. Dept. of Health & Environment		Manhattan, Kansas
Topeka, Kansas		(913/537/2261)
(913/296-1639)		

- An Alternative...Testing is available at

Kansas Department of Health and Environment  
 Environmental Laboratories  
 Forbes Field, Bldg. 740  
 Topeka, Kansas 66620  
 (913/296-1657)

## X. SUGGESTED LOCAL FARM BUREAU ACTIVITIES

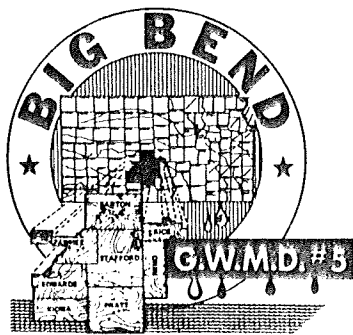
- **Distribute Checklists**

- **Set up a booth and promote water testing...** at county fair, farm show, field day.

- **Conduct Safe Drinking Water Clinic...** in cooperation with Extension Service, county Health Department, local well driller, and local water conditioning and testing companies.

- **Seek information and assistance:**

County & Kansas Farm Bureau	Regional U.S. EPA Office
County Extension Agent	Kansas Board of Agriculture
Soil Conservation Service	Kansas Dept. of Health and
Local Water Testing Lab	Environment



# *Big Bend Groundwater Management District No. 5*

125 South Main • P. O. Box 7 • Stafford, Ks 67578 • Phone 316-234-5352

Testimony Presented to:  
House Energy and Natural Resources Committee  
Concerning House Bill 3022

Presented by: Ralph K. Davis  
Manager, Big Bend Groundwater  
Management District #5, Stafford, Kansas  
March 1, 1988

The Big Bend Groundwater Management District #5 supports the protection of the groundwater resource from all sources of contamination including, the potential of contamination from the application of ag-chemicals by chemigation. It appears that the practice of chemigation is being singled out as the only potential avenue of contamination of the water resources by ag-chemicals. Chemigation represents only one mode of ag-chemical application. Other methods are, conventional land spray and aerial spraying. Chemigation comprises only a small percentage of all ag-chemicals applied and when properly conducted can actually help to reduce the potential of non point source pollution by ag-chemicals. This is because, the chemicals can be applied in only the amount needed at the proper time. The major potential for contamination from chemigation is from direct back siphoning of chemicals into the well bore.

The district feels that the equipment and requirements of the chemigation safety law, K.S.A. 2-3301 to 2-3316, provide sufficient safeguards to protect the groundwater resource from the threat of direct back siphoning into the well bore.

The district feels that the chemigation program was not adequately funded from its inception. This lack of funding has put the responsibility for inspection and enforcement on one individual, who is responsible for covering the entire state. This individual has done a tremendous job of providing education and demonstrations of the equipment and requirements of the law. There is a drastic need for additional field personnel to properly implement the program.

The district does not see the need for two specific portions of House Bill No. 3022. Section 1 (b), requiring applications to be notarized, appears to serve no purpose and only makes application filing more time consuming and tedious.

Section 2 (b), increasing the penalties, is not warranted. The program is just getting off the ground. The regulated community, under this law, is striving to become informed of all the requirements of the law and to come into compliance with these requirements. There has been no indication that the original penalties section was not sufficient to force those few individuals who persist in violations, to comply with the law.

In conclusion, the district feels that additional manpower for field inspections and subsequent follow up, in conjunction with educational efforts, will be sufficient to bring people into compliance with the law. We feel the existing equipment, educational and penalty requirements are adequate to protect the water resources of the district and the state. The district can support increased fees, if it is necessary, to provide adequate manpower to implement the program but we would caution that the program should be field oriented and should not be allowed to become too heavy on the administrative level.





2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358  
Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

STATEMENT  
OF THE  
KANSAS LIVESTOCK ASSOCIATION  
TO THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
REPRESENTATIVE DENNIS SPANIOL, CHAIRMAN  
REPRESENTATIVE JEFF FREEMAN, VICE CHAIRMAN  
REPRESENTATIVE CARL D. HOLMES, VICE CHAIRMAN  
WITH RESPECT TO HB 3022  
CHEMIGATION  
PRESENTED BY  
RICH MCKEE  
EXECUTIVE SECRETARY, FEEDLOT DIVISION  
MARCH 1, 1988

Mr. Chairman and members of the committee, I am Rich McKee, representing the Kansas Livestock Association. KLA represents a broad range of over 9,000 livestock producers who reside in virtually every geographic corner of the state.

The Kansas Livestock Association opposes HB 3022 in its current form.

First, KLA members would **support** increased staffing within the Board of Ag to help enforce the chemigation law. We would approve some increase in

the chemigation permit fee to accomplish this increase. The \$20 per well charge may be more than necessary. I am sure the committee will review fiscal estimates on this specific portion of the bill to determine how much revenue this user's tax would raise. Then, relate this to how many new employees may be needed.

KLA **supports** the provision requiring examination of individuals who seek a permit for chemigation.

We **oppose** the proposed fine increase of \$500 to \$10,000 per day. Our membership feels this 20 fold increase is simply too much. In numerous cases, when a chemigation well has been found to be operating without a permit, the equipment required to have the permit is already in place. In fact, a number of chemigators had the appropriate equipment in place years before there was even a chemigation law. Should this person be fined up to \$10,000 for not having a permit? We think not! The goal of protecting groundwater has been met.

The Kansas Livestock Association, as every other group that has or will appear before your committee, supports the protection of groundwater quality. A large portion of our membership not only uses water for irrigation and stock watering...but that same water is used for their families. These people have a vested interest in how chemigation may effect their water supply. These same people have expressed concern that HB 3022 may be going a little overboard.

Thank you for your consideration of our position.

# STATE OF KANSAS



## STATE BOARD OF AGRICULTURE

August 15, 1986

Donald L. Jacka, Jr.  
Acting Secretary

Tom Tunnel  
Executive Secretary  
Kansas Fertilizer & Chemical Institute, Inc.  
1722 N. Plum  
P.O. Box 949  
Hutchinson, KS 67504

Dear Tom:

In response to your inquiry of receipt and expenditures of the fertilizer fees the following information is provided:

Money Generated for FY 1986	\$436,909.71	
Money Expended	\$530,432.37	522,189

The difference was made up from carryover funds.

The disbursements within the Board of Agriculture were as follows:

Board of Agricultural	- Administrative Services	\$ 93,937.71	- 12,112
Division of Inspections	- Administration	14,089.80	- 6,775
	- Control Program	138,581.69	- 109,985
	- NH <sub>3</sub> - Weights & Measurers	63,180.35	- 40,749
Division of Laboratories	- Laboratory Services	205,698.82	} 67,686
	- Capital Outlay	14,944.00	
TOTAL		\$530,432.37	237,307

The costs of performing fertilizer services by each of the above referenced groups is being tabulated and will be provided to you at a later date.

If you would like to receive additional information or if we need to clarify or breakdown in more detail the information provided, please let me know.

Sincerely,

Donald L. Jacka, Jr.  
Acting Secretary

DLJ:AH:ccd  
bcc: Larry D. Woodson  
Archie Hurst  
Glen Searcy  
Max Foster  
Richard Long

Attachment 12

House Energy & NR

3-1-88

# STATE OF KANSAS



## STATE BOARD OF AGRICULTURE

SAM BROWNBACK, Secretary

March 4, 1987

Tom Tunnel  
Executive Secretary  
Kansas Fertilizer & Chemical Institute, Inc.  
1722 N. Plum  
P.O. Box 949  
Hutchinson, KS 67504

Dear Tom:

This is a follow-up of the letter sent to you dated August 15, 1986 relative to monies generated by fertilizer fees (copy attached).

The expenditures for FY 1986 in each area is as follows:

Board of Agriculture	- Administrative Services	\$ 12,112
Division of Inspections	- Administration	6,775
	- Control Program	109,985
	- Anhydrous Ammonia Safety	40,749
Division of Laboratories	-	67,686
TOTAL		<u>\$237,307</u>

If you would like to receive additional information, please let me know.

Sincerely,

Donald L. Jacka, Jr.  
Assistant Secretary

DLJ:ASH:ccd  
bcc: Larry D. Woodson  
Archie Hurst  
Glen Searcy  
Max Foster  
Richard Long

STATEMENT OF DAVID L. POPE  
CHIEF ENGINEER-DIRECTOR  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE  
BEFORE THE  
HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES  
ON  
HOUSE BILL NO. 3007

March 1, 1988

Thank you, Chairman Spaniol and members of the committee, for this opportunity to appear.

House Bill No. 3007 would amend a section of the Kansas Water Appropriation Act, K.S.A. 82a-709, related to the filing of applications for permit to appropriate water. The bill would require all such applications to be notarized. I have since learned it was the committee's intention to require notarization of water use reports, not applications for new permits.

During the hearing held by the subcommittee appointed to study the Kansas Chemigation Act, the matter of whether or not the water use report form required by the Division of Water Resources, Kansas State Board of Agriculture, should be notarized was discussed. The Division of Water Resources currently includes a space on the water use report form requesting that the water user provide us with the file number of any water right or permit that is used in connection with chemigation. This information is then provided to the Plant Health Division, Kansas State Board of Agriculture, for their use in cross checking compliance with the Kansas Chemigation Act.

It is my understanding that the primary reason for consideration of the notarization requirement was so that there would be a stronger and more definite way to determine which irrigators are using the practice of chemigation. Even though the water use report is for the past years usage, I presume we would want

to require the water user to commit as to whether or not they intend to use chemigation during the coming irrigation season.

The annual water use report form is required by the Chief Engineer pursuant to the authority of K.S.A. 82a-705a, which provides in pertinent part, "...The chief engineer, however, may require any person using water for any purpose to furnish information with regard to such use thereof."

The law does not specifically require the filing of an annual water use report. The law merely authorizes the Chief Engineer to request water use information. The Chief Engineer has administratively required annual water use reports since 1957.

I have attached a copy of the "inside" portion of our current water use report for irrigation use. This form is addressed and pre-printed by computer showing the water right file numbers, the legal description of the points of diversion and other information needed to process the report. The water user then simply has to open the report package, provide the information and mail the report back to us. As you can see, the report does not contain much extra space. Consequently, a provision requiring notarization would mean that the form would have to be made larger or additional "pages" added or some similar alterative.

As proposed in House Bill No. 3007, the requirement that the annual water use report be notarized might actually hinder our collection of information because it is hard enough to get people to send in water use reports. The notary requirement would be enough extra burden, that fewer people might file water use reports unless there was some additional incentive in the law, such as a criminal sanction. Given the nature of the water use report form we now use,

I believe there is a better alternative available which will achieve just as good or better results.

As an alternative to notarization, the same verification of information on the water use report could be obtained by use of a statement and penalty similar to that used on a federal or state tax return.

In summary, I would like to see you consider making the failure to file the water use report, or to willfully provide wrong or incomplete information, a violation of state law for all holders of water rights or permits, with a suitable penalty.

Attached is a draft of some language which could make filing water use reports mandatory and subject to submission of false information to penalties of perjury without requiring notarization.

New Sec. 1.

- (a) The owner of a permit to appropriate water for beneficial use, or a non-domestic vested right, shall file an annual water use report on a form prescribed by the chief engineer on or before March 1 following the calendar year of the water use. The report shall set forth such water use information as requested by the chief engineer.
- (b) Any person who files a water use report, or other document, with the chief engineer which contains a written declaration that it is made under the penalties of perjury, and the person filing the water use report or other document knows it contains false information as to a material matter shall be subject to the penalties of perjury.

Sec. 2. K.S.A. 82a-728 is hereby amended to read as follows:

**82a-728. Unlawful acts; penalties.** (a) Except for the appropriation of water for the purpose of domestic use, the production and return of salt water in connection with the operation of oil and gas wells in accordance with the written approval granted therefor by the Kansas corporation commission pursuant to K.S.A. 55-901, and amendments thereto, the withdrawal and use of water in accordance with provisions of K.S.A. 82a-1313, and amendments thereto, and the annual diversion and beneficial use of not more than 15 acre feet of surface water impounded in any reservoir having a total water volume of less than 15 acre feet, it shall be unlawful for any person to appropriate or threaten to appropriate water from any source without first applying for and obtaining a permit to appropriate water in accordance with the provisions of chapter 7 of article 82a of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto or, for any person to violate any condition of a vested right, appropriation right or an approved application for a permit to appropriate water for beneficial use or violate any of the provisions of this



act. As used in this subsection salt water shall mean water containing more than 5,000 milligrams per liter chlorides.

(b) (1) The violation of any provision of this section by any person is a class C misdemeanor. (2) Each day that any such violation occurs after notice of the original violation is given by the chief engineer to any such violator by restricted mail shall constitute a separate offense.

WATER USE REPORT – USE ENCLOSED INSTRUCTIONS TO COMPLETE FORM

NOTE: IN ORDER TO PROTECT THE RIGHT TO USE WATER, ANNUAL USAGE CONSUMPTION-MON-USAGE MUST BE REPORTED.  
 POINT OF DIVERSION SHOWN BELOW IS NO LONGER USED, PLEASE CIRCLE THE LOCATION.

FILE NUMBER (1)	LOCATION		(3)	ACRES		METERED		HOURS PMPD (7)	ESTIMATE RATE (8)	ENERGY		WELL DATA			
	QUALIFIERS (2)	SEC TWP RNG		IRR (4)	QUAN (5)	CD(6)	AMT (9)			TY (10)	WELL (11)	WATER (12)	DATE (13)		

OFFICE USE      FIELD OFFICE      CO      GMD      CHEMIGATION ON FILE NOS. (14)

\_\_\_\_\_  
 SIGNATURE      DATE  
 IF:  OWNER     TENANT     AGENT

TELEPHONE NUMBER (      ) \_\_\_\_\_

F  
R  
O  
M

---

---

---

Place stamp  
here  
Post Office  
will not  
deliver mail  
without  
Postage

FIRST CLASS MAIL



**KANSAS STATE BOARD OF AGRICULTURE**  
**DIVISION OF WATER RESOURCES**  
109 9th St. Southwest  
Topeka, Kansas 66612-1283