

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES,
 room 123-S, Statehouse, at 8:00 a.m./~~p.m.~~ on February 4, 1988

Ron Gaches referred to written testimony prepared by Rob Hodges of KCCI which has been made available to the committee. (Attachment II)

Mr. Gaches recommends inserting a provision in the bill that would clarify a clean up contractor's liability as there is no limitation of liability for firms conducting such operations.

Karen McClain stated the provision permitting KDHE access to private property is an invasion of private property rights and potentially constitutes unlawful search & seizure. Ms. McClain questioned how adequate notice to prospective buyers of property listed on the registry could be given and strongly disagrees with the issue of first and prior lien rights for the state. It is felt the definition of contaminant in line 30 is too broad as it includes many substances found on property of typical homeowners. Careful consideration of the consequences of this legislation and potential impact for all property owners was requested of the committee before enacting SB 455. (Attachment III)

Joe Lieber stated there is no opposition to the intent of SB 455 but he does have concerns regarding the power given to KDHE and the far reaching aspects of the bill. Mr. Lieber suggested that KDHE could work closely with other agencies and industries most affected by this legislation to establish the regulations being considered in this bill. (Attachment IV)

Bill Fuller stated the concept of SB 455 is not opposed but feels uncertain of ramifications involved in its possible implementation. Mr. Fuller stated the Farm Bureau opposes any legislation and regulations that give a governmental agency authority for access to private property without the property owners permission, as granted in the legislation. Concerns were expressed regarding treatment of landowners innocent of contamination and the responsibility of farmers and ranchers who are properly using chemicals and pesticides listed as contaminants. Continued study and cautious action by the committee was urged by Mr. Fuller. (Attachment V)

Mike Beam stated the definition of contaminant is vague and could be amended to exempt chemicals with government approval. Mr. Beam feels the authority granted KDHE is too broad regarding the determination of contaminated sites as innocent property owners could be liable for prior contamination. Concern was expressed regarding lien priority as it would affect the credit worthiness for agricultural land loans. The bill as drafted could create many difficulties and needless restraints. (Attachment VI)

Jim Maag stated he is in agreement with prior conferees on this legislation and the main concern is with Section 9 regarding the lien priority. It would have serious effects on the availability of credit, most particularly in the agricultural community. Mr. Maag agrees with the concept of addressing contamination and is willing to work with KDHE to achieve a lien procedure acceptable to all. (Attachment VII)

George Champney expressed concern that employers such as himself could be shut down and jobs eliminated if SB 455 is enacted since financial institutions likely would not grant loans since his work involves materials which might be defined as contaminates. Mr. Champney voiced his concerns regarding the placing of responsibility for contamination, the lien priority situation and clean-up aspects of the bill. Mr. Champney proposed a tax be placed on every truck load dumped and this money used to fund clean-up.

Senator Kerr expressed the wish that energies of people interested in the Kansas environment including environmental organizations, businesses, agricultural interests, legislators and state employees could be spent on the number one issue in Kansas as far as environment goes, that being state-wide water quality. Senator Kerr hopes that in later years we will be judged positively on what we were able to accomplish for water quality. Senator Kerr feels more time and energy should be spent on public awareness, state-wide, of the need for maintaining water quality, and what to do about it.

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Senator Feleciano commented that LLRW management has a close relationship to water quality, and that location of the LLRW facility in Nebraska could well result in future water problems in this state. Senator Feleciano feels that the executive branch and legislative branch have been irresponsible in not properly funding water proposals as much planning work has been done in this area. He feels further that lottery revenues are not the proper sources for funding implementation of the water plan.

Meeting adjourned. The next meeting will be February 9, 1988.

2-4-88

Guest List

Robert Anderson Mid Point College Ottawa

Dennis Murphy KDHE

James Power KDHE

Ron Hamerschmidt KDHE

Pat Casey KDHE

Ron Coches Boeing

Janet Stubbles WBAK

Ron Peterson KPC

Jerry Coonrod KGE

Jim Turner KLSI

Joe A. Meers KLSI

Jim Young CWM

Dale Lambly KSBA

W. A. Hawkins, Jr. "

Shelley Sutton KES

Kathy Allen Duncan

Rebecca Rice Amoco

Dou Grant KCCI

Jim May KBA

Ross Martin KPC

STAN GRANT KDHE

ROY WORTHINGTON KLTA

John W. Smith KLTA

W. L. Mitchell KLTA Hatcher

John K. Blythe KFB Manhattan

Bill Fuller KFB "

next page Joe Lieber Ks Co-op Council Topoto

Georg Champney Co Topelw

2-4-88
Guest List

Bill Bryson
~~Julien Dubonell~~
Woody Woodman
Kenneth M. Wilke
Leland E Rolf
M. Hawver

KCC
~~KCC~~
HCP&L
KSBA
DWR, KSBA
Toneki, KS-

TESTIMONY
TO
KANSAS SENATE COMMITTEE
ON
ENERGY AND NATURAL RESOURCES

My name is Donald R. Tannahill. I am a Certified Commercial Applicator in the State of Kansas and am employed by a major lawn care company (Suburban Lawn & Garden, Inc.) in Overland Park, Kansas. My membership in organizations associated with this industry includes; the Professional Lawn Care Association of America, Kansas Turfgrass Foundation, Kansas Arborists, Professional Grounds Management Society, and The Professional Lawn Care Association of Mid-America (PLCAMA). It is as Chairman of the Legislative Committee of PLCAMA that I have the honor to address you today with reference to Senate Bill 455.

PLCAMA supports the need for a bill such as Senate Bill No. 455; however there are several areas that cause concern.

FIRST - This bill serves as an after the fact bill and does not provide assistance or guidelines to help prevent a "Contaminant" contributing to a "contaminated site".

We in the lawn care industry strive for safe and selective usage of those chemicals as approved by The United States Environmental Protection Agency and registered for use as approved by the State of Kansas. In 1987 there were approximately 420 companies that possessed a Commercial Business License for the purpose of applying such approved chemicals in the State of Kansas. These companies have approximately 528 applicators that have been tested and certified by the state. Each lawn care company must have at least one assigned person who has been certified in Turf Grass and/or ornamental categories. Certification in both categories requires successfully passing three written examinations administered by the state. If only one category is necessary to perform their work, two examinations are required. Recertification is required every three years.

The homeowner is not so protected. In 1987 there were 1738 companies registered as Pesticide Dealers in the State of Kansas. These "Dealers" include such stores as your Department, Drug, Hardware, Grocery, COOP, Lumber, and Garden Centers. These stores are authorized to sell to the homeowner a majority of the same chemicals that we in the lawn care industry use. The concern is that these "Contaminants" could be sold by a non-trained clerk to a homeowner, who likewise has not been trained in safe chemical usage.

SECOND - There is no place for safely disposing of chemicals on hand that are no longer needed. Lawn Care Industry personnel frequently see shelves of chemicals in our customers garages. Inclosed is a copy of a brochure "HAZARDOUS WASTE - What You Should And Shouldn't Do", published by the Water Pollution Control Federation. This pamphlet was going to be sent to each of my company's customers but wasn't, because I knew that they would call asking where they could properly dispose of such items. At present there is not such a place. Kansas House Bill No. 2850 established a pilot project to provide for the safe, environmentally sound disposal of small amounts of hazardous wastes accumulated by Kansas households, farms, schools, state agencies, local units of government, and small businesses. Their concern also included:

" Injuries to refuse workers when containers of hazardous waste burst or leak during collection, transportation, or disposal;

Damage to solid waste handling equipment from explosions or corrosion,

Leachate migration for landfills;

Contamination of shallow groundwater by leakage of contaminants from septic tank and lateral field systems;

Direct disposal onto ground; and

Injuries to children or animals from spillage or tampering."

It is estimated that up to 1% of the household waste stream is hazardous. That 1% would convert to approximately 17,250 tons of hazardous materials to be disposed of by Kansas citizens each year.

Your attention is invited to the FINAL REPORT - Kansas Household Hazardous Waste Collection Days Project, February 1987, prepared by Kansas Department of Health and Environment from which the above and the following information is taken. Collection was done at the following locations.

Great Bend/Barton County (Nov 6-9, 1986) 77 participants - 7,388 pounds of material was collected. (51 or 66.2% of participants were from households)

Wichita/Sedwick County (Nov 12-19, 1986) 433 participants - 35,435.5 pounds of material collected. (335 or 77.4% of participants were from households)

At the time of collection a survey was taken from the participants - of the 414 that completed the questionnaire there were 340 that stated they would have a continuing need for such service.

One of their CONCLUSIONS was " A comprehensive and ongoing system for collection and safe disposal of these waste materials could ensure that these wastes will be disposed of in an environmentally safe manner.

THIRD - Section 2(a) (Line 0030) - The definition of " Contaminant is too general. As written the lawn care industry could be in violation whenever we applied any pesticide that had been approved by the United State Environmental Protection Agency (EPA) and the State of Kansas.

Section 2(b) (Line 0038) - "Contaminated Site" as written would prevent any one from applying any fertilizer or pesticide. (by definition a pesticide includes any insecticide, herbicide or fungicide) Should excessive nitrogen reach surface water it can reduce the amount of oxygen thus pose a danger to aquatic life. Applying a fungicide to control the Black Spot Fungus on your roses would contaminate the surrounding environment. To control the Black Vine Weevil it is necessary to saturate the soil thus the soil has been contaminated.

Section 2(f) (Line 0054) - The definition of "release" needs to include "unless previously approved by the State of Kansas and in compliance with the application instructions as stated on the label as authorized by the EPA."

Section 3(c) (Line 0073) We have concern with the wording of " gaining access" to a known or suspected contaminated site.

Section 5(e)(1) (Line 0210) We question the broad authority for entry with or without owner/occupant notification.

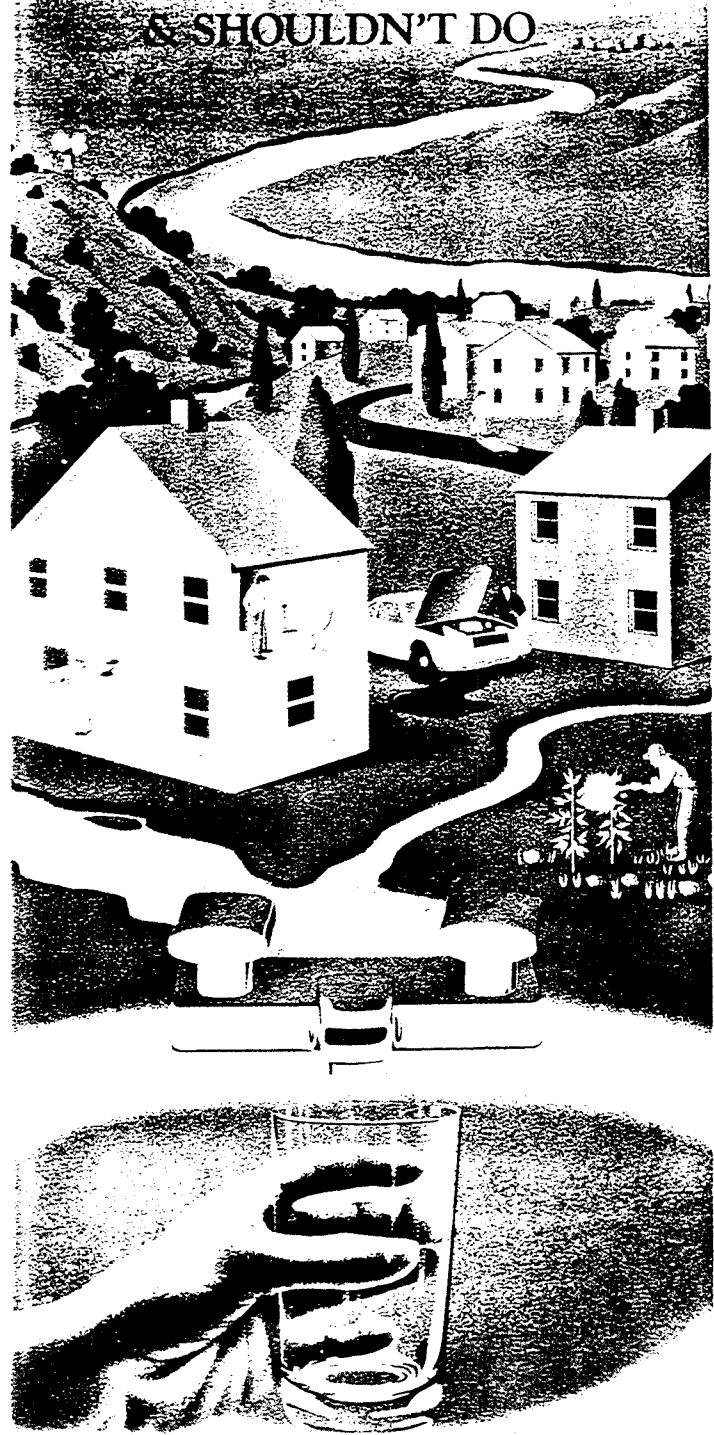
I thank you for this opportunity to address these issues. The Professional Lawn Care Association of Mid-America offers any assistance that you may desire.

Are there any questions.

Donald R. Tannahill
11690 Renner Road
Olathe, Kansas 66061
(913) 782-2561 home
(913) 491-5100 work

HAZARDOUS WASTE

WHAT YOU SHOULD & SHOULDN'T DO



Are You Poisoning Your Water ?

If someone were to drop a poisonous substance into your community's water supply, the act would be considered a serious crime and a state of public emergency would be declared.

But when you dump a can of paint thinner down the drain or throw out an old car battery with the trash, no alarms are sounded, no news flashes are issued. Yet, the impact on your water resources could be just as disastrous.

That is not a far-fetched statement. The average household contains between three and ten gallons of materials that are hazardous to human health or to the natural environment. Collectively, these materials can poison our water if they are not stored carefully and disposed of properly.

What Is A Hazardous Material?

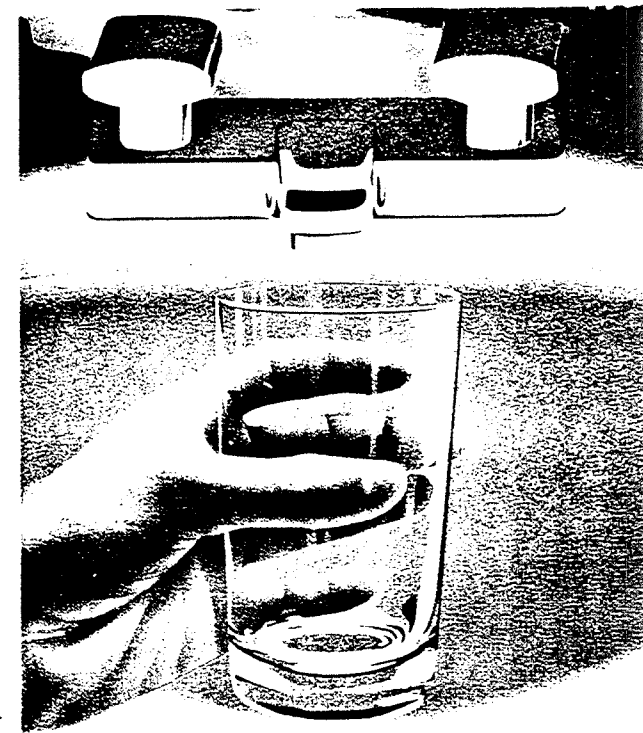
The United States Environmental Protection Agency considers a substance hazardous if it can catch fire, if it can react or explode when mixed with other substances, if it is corrosive, or if it is toxic. In addition, EPA has designated four hundred specific substances (such as battery acid) to be hazardous.

This definition includes many things that you probably are storing right now in your garage, basement, bathroom, or kitchen. Some, like paint thinner or car batteries, are pretty obvious, but there are many that you might not ordinarily think of such as polishes, insecticides and glues.

Dangers Of Hazardous Waste

The improper disposal of household hazardous wastes can cause problems for the entire community. Wastes can be explosive or highly flammable. Sewers have exploded and garbage trucks have burned because people have carelessly discarded flammable or reactive wastes.

Hazardous wastes can also be corrosive. The acid from discarded auto batteries can eat away many substances. Some wastes are poisonous to humans or wildlife, while others can cause cancer, birth defects or other serious medical problems.



Where Do We Put Them

One of the worst ways to dispose of many hazardous materials is to "just dump them down the drain." Wastewater treatment plants are not designed to handle certain types of hazardous wastes.

Unfortunately, disposing of wastes in a landfill has not proven an effective solution either. Without special design, the modern sanitary landfill is not equipped to accept hazardous wastes. Hazardous wastes improperly disposed of in a landfill can pollute the environment through the groundwater, surface water and air.

If the public can not dispose of most hazardous wastes in the sewer system or a landfill, what can be done? This brochure describes some preventive measures you can take in your home to reduce the quantity of waste you must dispose. The Household Hazardous Waste chart indicates the best way of dealing with most hazardous materials found in the home.

First: Reduce The Amount

You do not need a Ph.D. in Chemistry to reduce hazardous wastes in your home. The following suggestions can help:

- Before you buy a product, read the label and make sure that it will do what you want. Once you buy something you are also responsible for disposing of it properly.
- Do not buy more than you need. That way, you will not need to dispose of the surplus.
- Read and follow direction on how to use a product and dispose of the container. (There is a good reason why the labels say "do not incinerate" or "do not mix with bleach.")

Second: Take Care Of The Wastes

Even if you reduce the wastes that must be dealt with as outlined above there is still the question of what to do with what is left over.

Recycling is an excellent way of handling some hazardous wastes. Used motor oil, paint thinners and some other solvents can be refined and reused just as aluminum cans are. Local civic groups can help you identify recycling programs.

Incineration is another effective means of dealing with some hazardous wastes. However, a specially designed incinerator is needed to destroy hazardous materials. "Incinerators" in your home, such as your fireplace or wood stove, can not get hot enough to destroy hazardous wastes and should never be used to destroy wastes.

Take your household hazardous wastes to a licensed contractor. Your local wastewater treatment operator can give you more information on this matter, along with details on other methods of disposing of hazardous materials.

The Household Hazardous Waste Chart will guide you in disposing of potentially hazardous materials around your home. You should display this chart where you store hazardous wastes.

Remember to never dump hazardous wastes on the ground, and always check the chart before pouring them down the drain.

What You Can Do In Your Community

By working together, the people in a community can plan and create effective systems for managing hazardous wastes. Many communities have begun to sponsor Hazardous Waste collection days. These efforts have helped reduce the amount of hazardous waste in many areas while heightening public awareness of the problem.

Successful collection efforts in many cities have helped officials protect their community's wastewater treatment plants and groundwater from hazardous waste contamination. Many communities were able to collect thousands of pounds of hazardous materials on the strength of a one or two day effort. If your community has a program for disposal of hazardous wastes, please support it.

We also encourage you to:

- Learn as much as you can about your wastewater treatment plant and share that information with your family and friends. Clean water is for everyone.
- Learn about your community's landfill system and special programs for the disposal of hazardous wastes.
- Contact your state hazardous waste agency. They can provide information on companies which are licensed to handle hazardous wastes along possible funding sources for such efforts.



What The Future Holds

Billions of dollars have been spent to clean up lakes and streams. Many millions more have been spent to build and maintain adequate sanitary landfills.

Modern wastewater treatment plants have led us all to expect clean water and a safe environment as a part of our everyday lives. We now realize that we can not just discharge our wastes into a stream or bury hazardous waste without thinking about their impact on the environment.

For that reason and others, household hazardous waste collection has really caught on. Communities throughout the world have begun to develop programs to deal with household wastes. These efforts need to be expanded to include as many areas as possible.

For details on what you can do, contact your local wastewater treatment facility, Department of Public Works or Sanitation District. Or, for further information you can contact:

**WATER POLLUTION CONTROL FEDERATION
601 WYTHE STREET
ALEXANDRIA, VA 22314-1994**

Direct inquiries to the Public Education department.

HOUSEHOLD HAZARDOUS WASTE CHART

The following chart prepared by the Water Pollution Control Federation will help you establish the most effective means of disposing of typical hazardous wastes used around your home or garden.

Blue dots (●) indicate products which can be poured down the drain with plenty of water. If you have a septic tank, additional caution should be exercised when dumping these items down the drain. In fact, there are certain chemical substances that cannot be used with a septic tank. Read the labels to determine if a product could damage the septic tank.

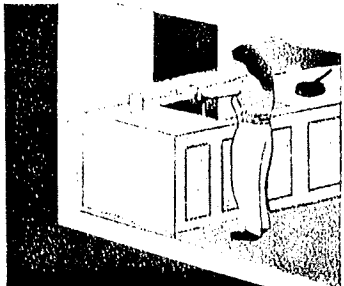
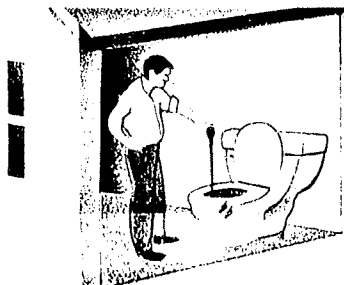

Yellow diamonds (◆) indicate materials which cannot be poured down the drain, but can be safely disposed of in a sanitary landfill. Be certain the material is properly contained before it is put out for collection or carried to the landfill.

The red boxed squares (◻) indicate hazardous wastes which should be saved for a community wide collection day or given to a licensed hazardous wastes contractor. (Even the empty containers should be taken to a licensed contractor).

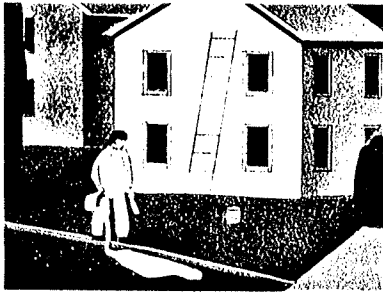
Green packages (◆) in the fourth column indicate recyclable material. If there is a recycling program in your area, take the materials there. If not, encourage local officials to start such a program.

For more information on the safest way to dispose of these and other products contact the United States Environmental Protection Agency. We suggest that you note here these important phone numbers in your local area:

Hazardous Waste Management Agency ☎ _____
Poison Control Center ☎ _____

	TYPE OF WASTE	●	◻	◆
 <p>KITCHEN</p>	Aerosol cans (empty)			
	Aluminum cleaners	●		
	Ammonia based cleaners	●		
	Bug sprays		◻	◆
	Drain cleaners	●		
	Floor care products		◻	
	Furniture polish		◻	
	Metal polish		◻	
	Window cleaner		◻	
	Oven cleaner (lye base)	●		
 <p>BATHROOM</p>	Alcohol based lotions (aftershave, perfumes, etc.)	●		
	Bathroom cleaners	●		
	Depilatories	●		
	Disinfectants	●		
	Permanent Lotions	●		
	Hair relaxers	●		
	Medicine (expired)	●		
	Nail polish			
	Nail polish remover		◻	
	Toilet bowl cleaner	●		
Tub and tile cleaners	●			
 <p>GARAGE</p>	Antifreeze		◻	
	Automatic transmission fluid		◻	
	Auto body repair products			
	Battery acid (or battery)		◻	◆
	Brake fluid		◻	
	Car wax with solvent		◻	
	Diesel fuel		◻	◆
	Fuel oil		◻	◆
	Gasoline		◻	◆
Kerosene		◻	◆	

Motor oil	●	□	
Other oils		□	
Windshield washer solution	●		



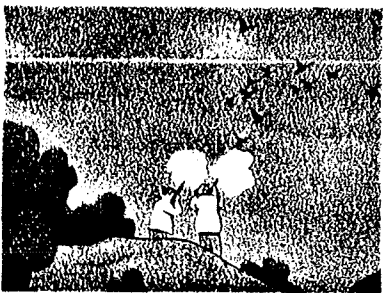
WORKSHOP

Paint brush cleaner with solvent		□	❖
Paint brush cleaner with TSP	●		
Aerosol cans (empty)			
Cutting oil		□	
Glue (solvent based)		□	
Glue (water based)	●		
Paint — latex	●		
Paint — oil based		□	
Paint — auto		□	
Paint — model		□	
Paint thinner		□	❖
Paint stripper		□	
Paint stripper (lye base)	●		
Primer		□	
Rust remover		□	
Turpentine		□	❖
Varnish		□	
Wood preservative		□	



GARDENING

Fertilizer		□	
Fungicide		□	
Insecticide		□	
Rat poison		□	
Weed killer		□	



MISCELLANEOUS

Ammunition		□	
Artists' paints, mediums		□	
Dry cleaning solvents		□	❖
Fiberglass epoxy		□	
Gun cleaning solvents		□	❖
Lighter fluid		□	
Mercury batteries		□	
Moth balls		□	
Old fire alarms		□	
Photographic chemicals (unmixed)		□	
Photographic chemicals (mixed and properly diluted)	●		
Shoe polish			
Swimming pool acid		□	

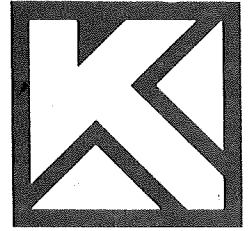
The preceding chart is based on information from the United States Environmental Protection Agency's Hazardous Waste regulations.

For information on obtaining copies of this brochure contact:

WATER POLLUTION CONTROL FEDERATION • 601 WYTHE STREET • ALEXANDRIA, VA 22314-1994

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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

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

SB 455

February 3, 1988

Testimony Before the
Senate Committee on Energy and Natural Resources

by

Rob Hodges
Executive Director
Kansas Industrial Council

Mr. Chairman, members of the committee, I appreciate this opportunity to present the Chamber's position on SB 455, a bill to enact the Environmental Contamination Response Act.

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

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

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

KCCI's involvement with SB 455 began last November, when Dennis Murphey of the Kansas Department of Human Resources made a presentation to the KCCI Energy and Natural Resources Committee. Dennis distributed copies of what was then a draft

proposal of the bill, explained the concepts behind the proposal, and answered questions of members. Early this session, when the proposal was printed as SB 455, I mailed 15-20 copies to several of those same people who had heard Dennis' presentation, asking them to review the "new" version and give me their input.

Let me quote to you a sentence which I believe fairly represents the input I received. "Generally, I feel KDHE needs the statutory authority which will allow them to investigate and remediate a site in lieu of a responsible party; and this bill provides it." Another member has responded to an inquiry for input in these words: "...without knowing the legislative history, I would tend to support this legislation with some minor changes." It is in this spirit of support, with minor changes, that KCCI would like to offer some suggestions.

First, we support the recommendation made by Secretary Grant yesterday to remove Section 4 of the bill. Some of our members saw the financial impact which was the root of the Secretary's recommendation, while others had more general problems with the proposed system of petitioning the Secretary for inclusion on a registry and the public hearings that would follow.

Second, we had a member who identified the problems addressed in Jim Turner's testimony yesterday on behalf of the Kansas League of Savings Institutions. We lend our support to Jim's suggestion that the "priority lien" provisions be deleted.

Nearly every member who responded to our call for input mentioned the "strict liability" provision for cleanup responsibility. We wholeheartedly support this concept and would oppose any attempt to replace it with a "joint and several" liability provision because of its potential for "deep pockets" application.

Along this same line, and in the interest of consistency, we have two specific suggestions for change on page 3 of the bill. In line 0092, a member suggested deleting the comma and the words "including any person responsible." In keeping with the strict liability concept, investigation and remedial action orders in this context would be appropriate to responsible persons only. Then in line 0095, our suggestion

would be to add the following language before the semicolon "to the proportion such person is responsible for contamination at a site." Again, we feel this reinforces the strict liability concept.

Comparing the current bill to the version which Dennis Murphey discussed with our committee in November, a change was made which we would like this Committee to reconsider. Originally, there was language which would have limited the liability of a firm which had contracted to conduct of cleanup operations. Without that limitation of liability, our members see a potential problem cleanup firms not being willing to enter such contracts because their liability is not defined. If that results in fewer cleanup firms, then the cost for cleanup may increase for business and for the state. We hope you will reconsider this matter.

Turning to page 6, in line 0222, we suggest that word "may" should be replaced with "shall." It seems appropriate the Secretary would provide reasonable compensation for the taking of property or any damage done in remedial action.

Our final suggestion or recommendation for change is more conceptual in nature. In two places in this bill, the Secretary is told to adopt rules and regulations. We would prefer that language be inserted which would keep the legislature involved in these two areas. Specifically, on page 1, in line 0036, and on page 6, in line 0204, we ask that this committee delete the word adopt and, before the words 'rules and regulations' insert the following: "propose criteria to the legislature to be used in adopting." Our members agree that the crux of this whole matter comes down to deciding what is a contaminant? And determining how clean is clean? It's our feeling that those are broad policy questions and should not be placed outside the legislative decision making process.

Mr. Chairman, members of the committee, that reflects the input we have received from members to date. Should we get more information, I hope you'll permit us to present that to you at the appropriate time. I'll attempt to answer any questions you may have.



Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611
Telephone 913/267-3610

TO: THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
FROM: KAREN MCCLAIN, DIRECTOR, GOVERNMENTAL AFFAIRS
DATE: FEBRUARY 3, 1988
SUBJECT: SB 455, ENVIRONMENTAL CONTAMINATION RESPONSE ACT

On behalf of the Kansas Association of REALTORS®, I appear today to oppose SB 455, in its current form.

First, we want to say that we understand and support the efforts which are being made here. We recognize the environmental contamination problem is a serious one which needs to be addressed. However, we feel this act has potentially broader impacts than perhaps were intended. We also want the committee and KDHE to know we are willing to sit down and help work out a reasonable solution to this problem.

Specifically, we have four objections to the bill at this time. First, the Kansas Association of REALTORS® have long stood for the protection of private property rights. We feel the provision which permits KDHE to enter onto private property to collect environmental samples for analyses (Section 4 (d) beginning at line 147) is not only an invasion of private property rights, but also potentially constitutes unlawful search and seizure.

Under criminal law, a warrant issued by a judge must be obtained in order to enter a premises to collect the kind of evidence which could incriminate someone, unless they willingly consent to the search. A warrant is issued only on a showing of probable cause. This process prevents against self-incrimination.

We feel the potential for criminal penalties which are provided for in this act, in addition to the potential economic consequences for a property owner which are at stake here requires adherence to the same legal principles which protect against unlawful search and seizure.

Second, we are asking how the Register of Deeds of the county in which the property is located is going to give "adequate notice" to prospective purchasers that a piece of property is on the state registry of contaminated sites, as is required in Sec. 4 (a) (3), line 12. Will a notation be made on the deed itself? Will a notation be made in the grantor/grantee index? Will a separate file of the listings of these properties have to be created and maintained in the Register of Deeds office in each county?

While this may seem like a small issue here, the effect of being listed on the registry and where such information is recorded has a major impact on property owners. As a point of information, it has always been a basic premise in the law to protect and promote the ability to freely transfer real estate. A corollary to this premise is that the deed to real estate should be kept as clear and unburdened as possible. We would encourage that these principles be followed in any attempt to address the environmental contamination problem.

Third, we also strongly disagree with the issue of first and prior lien rights for the state. As those in the business of making home mortgages will or have attested, few, if any, lenders will be willing to make home mortgages where there is a possibility that their lien rights can be superseded, whether it be by the state or any other party. The availability of purchasers of mortgages in the secondary market will also disappear. Homeowners of the future cannot afford to have their ability to obtain a mortgage put in such jeopardy.

Fourth, it may appear that this bill would only apply to Furley or other such "major" sites, and not to individual homeowners. However, we want to point to the definition of "contaminant" found in Line 30.

That definition states "Contaminant" means a substance which because of its presence in the environment and its quantity, concentration, or physical, chemical or biological characteristics will cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness, or pose a significant present or potential hazard to human health or the environment. The secretary shall adopt rules and regulations for a listing of each contaminant."

We feel this definition is so broad it could include substances which are very likely to appear on the property of individual homeowners. We point to examples such as chlordane--which has been used in pesticides for eliminating termites and which now has been found to present a "hazard to human health or environment"; lead paint--which can still be found in homes across the state--either in the home itself or perhaps the old cans are kept out behind the garage and which now has been found to present a "hazard to human health or environment"; and last, the substance which we still know so little about, radon--a radioactive substance which is emitted through the earth, due to the breakdown of various minerals. Intense levels of radon are thought to cause lung cancer. Tests for radon are still inconclusive. It is still unclear what levels of radon are dangerous.

The chance of these substances showing up in a typical home in Kansas are very high. If this bill is passed in its current form, any typical Kansas homeowner can have their private property entered without any previous showing of probable cause. Any typical home could be put on the registry. Any typical Kansas homeowner could see liens placed on their home, and their ability to ever sell their home could be indefinitely delayed.

While we understand the Secretary of KDHE will make the list of which "contaminants" will be qualify, the recent promulgation of rules and regulations by many state agencies makes REALTORS® leary of such broad authority being granted to an administrative agency.

In summary, we ask this committee and KDHE to think through the consequences of this piece of legislation and its potential impacts for all property owners before enacting it. While we know the concept of the registry was created to put prospective purchasers on notice of possible contamination, the procedures established here will do more harm than good for the rights of property owners across the state.

Testimony on SB 455
Committee on Energy and Natural Resources
February 4, 1988
Prepared by Joe Lieber
Kansas Cooperative Council

Mr. Chairman and members of the committee, I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has a membership of nearly 200 cooperatives who have as their members nearly 200,000 Kansas farmers and ranchers.

As your committee studies SB 455 we would ask that you keep a few words in mind.

These words are intent, concerns, and "horror stories."

The Council is not opposed to the intent of SB 455. Everyone is concerned about preserving our water supply, especially the farmers and ranchers who often times take their water directly from the source without the benefit of filtration plants.

But we do have some concerns with the far-reaching aspects of SB 455 and the power it gives the Secretary of Health and Environment.

Our concerns are "horror stories" that have been brought about by bureaucrats who have made regulations without considering the consequence it has on private individuals or companies.

Fortunately or unfortunately, I'm not sure which, in most instances it has been the Federal bureaucracy that has caused the problem.

ATTACH IV
2-4-88

Examples:

1. Blaming the closest facility without proof.
2. "What is irrigation?"
3. Farm wife will have to have a commercial driver's license if she picks up a couple of gallons of chemical.
4. Senator Martin's example he mentioned yesterday. Who's going to pay the \$7,000?

These are just a few "horror stories" that cause us to have concerns about SB 455.

As a suggestion we would hope that the Department of Health and Environment would work with other agencies in the government, including the Department of Agriculture when establishing regulation.

We also suggest that the department work closely with the industries that would be most affected by these regulations.

We are all concerned with contaminated water but let's not throw the baby out with the bathwater, or in this case, the contaminated water.

Thank you.



PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Re: S.B. 455 - Enacting The Environmental Contamination
Response Act

February 4, 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 provide input on S.B. 455.

Our members desire and expect a clean environment. We believe a strong emphasis must be on the prevention of environmental pollution. However, when pollution does occur, clean-up becomes necessary. We do not oppose the concept contained in S.B. 455.

S.B. 455 is comprehensive. Frankly, we are uncertain of the ramifications involved in its possible implementation. We must point out that we have adopted policy that conflicts with one section of the bill. Also, we have several questions. We appreciate the amendments offered by KDHE yesterday. We believe they make the proposed legislation more practical, and may lessen our members concerns.

ATTACH V
2-4-88

Voting Delegates representing the 105 county Farm Bureaus at the 69th Annual Meeting of Kansas Farm Bureau on December 1, 1987 adopted this policy:

Landowners' Rights

Landowners' rights must be safeguarded and protected. Equitable payment must be made for any land, in any "taking," or "partial taking" by eminent domain power. We believe eminent domain procedures should include development of an agricultural impact statement, complete with public hearing, appeal, and a determination of compensation for disruption of normal farming practices. All utility lines, cables, and pipelines should be properly installed according to appropriate specifications. Such installations should be adequately marked. A landowner or tenant shall not be held liable for any accidental or inadvertent breakage or disruption of service on any lines, cables or pipelines.

Pipeline companies, and electric, telephone and water utilities, should be required to preserve and replace top soil, repair terraces, and reseed those portions of native grass pastures disturbed during construction of above ground and underground facility projects. Approved soil conservation practices will be utilized by all public and private companies. These companies shall bear the cost of deepening the burial of pipelines or cables, and moving utility poles or other structures when permanent soil and/or water conservation measures are added or updated by the landowner.

We believe safeguards should be developed for landowners to protect against costs involved in bringing an abstract up-to-date when these costs are the result of transactions generated or incurred by a gas or oil company or railroad.

We strongly oppose giving the public free access to private property adjacent to rivers and streams. Landowners should be authorized to charge an "access" fee if they choose to allow access to streams and rivers by crossing their property. Access to or across private property for watercraft use on streams and rivers, if granted by the landowner/operator, should be limited to non-motorized fishing boats and canoes. We strongly oppose the addition of any rivers or streams into the category of "navigable" streams.

We oppose legislation or regulations designed to give any person or governmental agency authority for access to private property for inspection or investigation without permission from the property owner or operator.

We support the Department proposed amendment to strike lines 0073 - 0076 which would have given the Secretary the power to "access known or suspected contaminated sites, as well as contiguous lands ...", however, we are aware the "access" issue is provided for in other sections of the bill. Therefore, we still have concerns.

Examples of questions we have in applying this bill to the real world include:

1. Should current landowner innocent of contaminating a site be treated the same as a person actually responsible for the contamination?
2. Would farmers and ranchers be in violation of the Act under the Section defining "contaminant" and "release" when agricultural chemicals are properly used according to the "label"?
3. How clean is clean when pollution must be cleaned up?

Mr. Chairman we thank you and the Members of your Committee for allowing us to express our concerns at this Public Hearing. We urge the Committee to continue their thorough study and cautious action on this proposal. We will attempt to respond to any questions you may have.



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Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

STATEMENT
OF THE
KANSAS LIVESTOCK ASSOCIATION
IN REFERENCE TO
SENATE BILL 455
BEFORE THE SENATE ENERGY & NATURAL RESOURCES COMMITTEE
SENATOR MERRILL WERTS, CHAIRMAN
PRESENTED BY
MIKE BEAM
EXECUTIVE SECRETARY - COW-CALF/STOCKER DIVISION
FEBRUARY 4, 1988

The Kansas Livestock Association (KLA) is a trade organization made up of nearly 10,000 members located in all of the 105 counties. KLA, founded in 1894, has members who are actively involved in numerous aspects of livestock production which include cow-calf/stocker producers, feeders, sheep producers, swine operators and general farming and ranching enterprises.

Thank you Mr. Chairman for the opportunity to comment on the proposed Kansas Environmental Contamination Response Act as outlined in Senate Bill 455. We have several concerns and questions about the legislation and hope the committee will consider the following points in your deliberations.

ATTACH VI
2-4-88

DEFINITION OF "CONTAMINANT" (Page 1, Section 2, lines 30-36)

Like previous conferees, we feel this definition is vague and could have broad implications. Practically any substance could fall within these parameters. As you know, farmers and ranchers depend on many chemicals for their livelihood. Perhaps the definition could be amended to specifically exempt chemicals that are approved by the federal government (i.e. Environmental Protection Agency and Food & Drug Administration) and applied according to label directions.

RULES AND REGULATIONS LISTING CONTAMINANTS (Page 1, Section 2, lines 36-37)

Lines 36 and 37 require the department to list contaminants in the regulations. We are all suspicious and fearful of the contamination definition. It might be more appropriate to list the chemicals in the statutes. This may help ease many fears about the impact of SB 455.

DEFINITION OF "CONTAMINATED SITE" (Page 1, Section 2, lines 38-40)

Once again, this could give the department broad powers. Does contiguous land mean the surrounding 6 acres, 60 or 600? It appears the contaminated site could easily cross property lines and tie up the land of others.

DEFINITION OF "RELEASE" (Page 2, Section 2, lines 54-58)

Common, legal, and approved spraying of agricultural chemicals could be interpreted by some as a release. Chemical rates and applications, within label directions, should be clearly excluded from this definition.

LIEN PRIORITY (Page 11, Section 11, lines 396-403)

Potentially, this section could have a dramatic impact on the credit ability

of agricultural land loans. A lender may be more cautious to loan money for the purchase of a farm if the Kansas Environmental Contamination Response Act lets the state obtain a lien with priority over the mortgage holder. This problem is magnified by the current definition of contaminated site.

These are a few of the problems we see with the proposal. The intent of the bill is noble, but the consequences of the act, as drafted, could lead to many difficulties and needless restraints. Thank you for your consideration.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 3, 1988

TO: Senate Committee on Energy and Natural Resources
FROM: James S. Maag, Director of Research
Kansas Bankers Association
RE: SB 455 - The Environmental Contamination Response Act

Dear Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee on the provisions of SB 455. This proposal addresses a serious problem confronting Kansans and our Association commends the Legislature for their continuing efforts in this area. We do not have any disagreement with most of the recommendations set forth in this bill. We do, however, have serious concerns about Section 9 and would like to discuss those concerns with the committee.

Section 9 of the bill gives the state a priority lien on all property owned by any person liable under the act when a statement of claim naming such person is recorded or filed. First, we do not believe the state should have a priority lien even on the property that has been designated as a contaminated site. We believe there are sufficient remedies available to the state in Sections 7 and 8 of the act. In addition, we strongly believe the state should not have a priority lien on all property owned by the liable person. This would impose an unduly harsh penalty and create confusion in the sale of non-contaminated property. We believe the priority lien provision would have a very depressing effect on the availability of credit for the acquisition of property where any potential contamination could occur which would result in state action.

We, therefore, respectfully ask the committee to delete Section 9 from the bill before any making any final recommendations on the measure to the full Senate. Thank you for your consideration of this important matter.