Approved April 6, 1989
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 ~~xxx~~p.m. on March 21, 1989 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Raney Gilliland, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Dennis Murphey, Bureau Manager, Department of Waste Management
Kansas Department of Health and Environment
Jeanne Hankerson, Environmental Coordinator, Federated Mutual
Insurance Company, Owatonna, Minnesota
W. Robert Alderson, Jr., Attorney

The meeting was called to order by Chairman Dennis Spaniol. The hearing on Substitute for Senate Bill 94 - Kansas storage tank act was continued from March 20.

Dennis Murphey provided the committee with information which had been requested at the previous meeting. One was a potential amendment dealing with the right of subrogation which could be inserted in the bill as S.B. 94, 19 (a) (12). Attachment 1. Also presented were potential cost scenarios for leaking underground tank corrective action costs. Attachment 2.

Mr. Murphey discussed the two possible scenarios, followed by questions and discussion by the committee. Discussion concerned the amount of money to be raised by the program, the length of time the program would be in effect and the number of tanks in the state that may be leaking. In response to Representative Lucas' question of March 20 relative to the number of farm tanks that are registered and are in excess of 1100 gallons, Mr. Murphey said that he did not have precise figures, but information he had acquired indicated there were approximately 200 tanks, but that figure might be low.

Responding to a question, Mr. Murphey defined "corrective action" as "cleaning up a site to a point where it poses negligible risk to public health and environment". If there is groundwater contamination, it would involve in some cases, cleanup of contaminated groundwater; this would be decided on a case by case basis. A farmer has a common law liability toward groundwater contamination at the present time, and this bill would not impact that responsibility, but would provide some resources to help pay for the cleanup.

Relative to the minimum federal requirements in the bill for delegation in the underground storage tank program, Mr. Murphey provided copies of the bill with those requirements highlighted for the Chairman and Representative Patrick. Highlighted copies of the bill for all members of the committee were requested. Mr. Murphey discussed the various definitions and sections in detail. Attachment 3.

Jeanne Hankerson appeared as a proponent of Sub. for SB 94, representing Federated Mutual Insurance Company. She described the impact and who would be affected by the EPA regulations regarding underground storage tanks. She related the difficult situations faced by many tank owners and operators. Ms. Hankerson explained the pollution liability coverage

offered in Kansas and commented that her company would be willing to work with a state fund program. She noted that Federated's current policy does not meet EPA requirements, but a new policy was being developed to meet those requirements. Attachment 4.

During discussion, Ms. Hankerson answered an earlier question regarding deductibles. She said that under the program, the owner and operator must pay the deductible up front so the state will not need to collect it back--it will be paid before the state gets involved. Other questions related to the percentage of applications accepted by Federated in an average year, the effect of type of tank on price charged and the thirteen pollution claims that Federated has had in Kansas. It was noted that premiums would vary according to how close the tank was located to ground or surface water.

Bob Alderson, an attorney in Topeka, appeared on behalf of the Kansas Oil Marketers Association (KOMA) with testimony in support of Substitute for Senate Bill 94. Mr. Alderson's testimony covered regulatory requirements, availability and affordability of liability insurance, necessity of the state fund, third-party liability and the method of funding. His written testimony explains why KOMA believes it would be preferable for the EPA's regulations to be administered and enforced by the state (KDHE), rather than by EPA. Attachment 5.

Questions of Mr. Alderson were delayed until a continued hearing could be scheduled.

Natural Gas Pipeline Safety

Attention was called to the subcommittee minutes of February 22, March 1 and March 15, Attachments 6, 6a and 6b, along with a diagram of a customer yard line and a customer service line, Attachment 7 and proposed amendments to House Bill 2454, Attachment 8 and House Bill 2456, Attachment 9, which had been distributed. These documents constituted the subcommittee report.

Representative Patrick, chairman of the subcommittee, explained the diagram, noting that under current law, the service line for which the company is responsible, goes to the gas meter. The yard line, for which the customer is financially responsible, goes from the meter into the house. The amendment to House Bill 2454 would make the gas utility company responsible for maintaining the pipeline from the meter to the wall of the customer's house.

Representative Patrick indicated that testimony before the subcommittee showed that the most cost-effective way to solve the problem of leaking yard lines would be for the utilities to have the responsibility to maintain these lines. All of the utilities' representatives who testified were in favor of this except for Kansas Municipal Utilities; their principal objection was one of cost. The major investor-owned gas service companies estimated that the cost of maintaining these lines would raise the average residential bill between $2 and $3 per year; the City of Chanute had indicated by letter that they estimated it would raise the cost by approximately $20 per year. Representative Patrick moved that this proposed amendment be adopted and incorporated into House Bill 2454. Representative Grotewiel seconded.

Discussion relative to small communities, rural areas and access rights followed. Since several committee members still had questions and there was another amendment to be considered, Chairman Spaniol announced that discussion on House Bills 2454 and 2456 would be continued on March 23.

There were no objections to the minutes of March 14 which were distributed on March 20, and they stand approved.

The meeting was adjourned at 5:00 p.m.

Date: March 21, 1989

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Anne Smith	Heinz Pet	Topeka	273-1441
ED SCHAUB	COASTAL CORP	"	233-4512
DICK COMPTON	MIDWEST ENERGY	HAYS	625-3437
TERRY LEATHERMAN	K.C.C.I.	TOPEKA	357-6321
MIKE BEAM	KS. LVSTK. ASSN.	TOPEKA	232-9358
TOM TUNNELL	KS GRAIN & FEED ASSN	TOPEKA	2340461
Chris Wilson	KS Fertilizer & Chemical Ass'n	Topeka	234-0461
TREVA POTTER	PEOPLES NAT. GAS	"	235-5986
DAN STEVENS	TEXACO	TULSA OK	918 560-6035
ROSS MARTIN	KS PETROLEUM COUNCIL	TOPEKA	234-0589
Wayne Feyereisen	Dupont / Conoco Inc	ok city ok 405	9483345
Dowbar + White Hall	Ks Phtg HTG contractors	Topeka	3571281
Cindy Kelly	KASB	Topeka	2733600
Ken Bahr	KCMB	Topeka	232-0091
Linton Bartlett	City of Kansas City	KCK 913	573-5017
Ralph Luth Jam	KWO	Topeka	296-3185
Bill Fuller	Kansas Farm Bureau	Manhattan	537-2261
Kathy Duncan	Leag of Women Voters - Ks.	Topeka	272-1341
Charles L. Stuart	United Steel Admn	Topeka	232-5566
Bill Bryson	Kans Corp. Comm.	Topeka	296-5113
Jim Crocker	CROCKER'S TEXACO	TOPEKA	232-5366
~~KEVIN ROBERTSON~~	ENRON CORP.	TOPEKA	233-0555
J.K. Hewlett	KDHE	Topeka	1337

Date: March 21, 1994

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Tim Maloney	KBA	Topeka	
Kathy Taylor	KBA	Topeka	
Frank N. Garrett	K.O.M.A	Wakarusa	7612295
JA Power	KDHE	Topek	296-1535
Ron Hammerschmidt	KDHE	Topeka	296-1662
MARVIN SPEES	CAPITOL CITY OIL	TOPEKA	233-8888
Loy Sieker	Topeka Pump Co Inc	Topeka, Ks	354-2180
Dave Corliss	League of Municipalities	Topeka	354-9565
Louie Stroup	KANSAS MUNICIPAL Utilities	McPherson	316 241-1423
Charlene Stenard	Ks Natural Resource Council	Topeka	233-6707
Lisa Bradley	DuPont	Saratoga, Ca	408 741-1682
Joe Liebsch	Ks. Co-op Council	Topeka	233-4085
BOB ANDERSON	KOMA	TOPEKA	232-0753
Dennis Murphey	KDHE	Topeka	296-1592
Charles Hickey	KOMA	Topeka	233 9655
Robert Rockrohr	Natural Cent Oil & Gas	Olathe	764-0589
John Stinkler	Governor's Office	Topeka	6240

[Insert as S.B.94, §19(a)(12)]

Notwithstanding any other provision of this act, payment of corrective action costs through applicable policies of insurance or other means of providing financial responsibility shall be exhausted before reimbursement from the fund is made. In no event shall a person be reimbursed under this act, nor shall the fund be liable, for any corrective action costs which are covered by any policy of insurance or other means of providing financial responsibility. If, after reimbursement from the fund, it is determined that any corrective action costs were covered by any policy of insurance or other means of providing financial responsibility, the department is subrogated, to the extent of payments made from the fund, to all rights the owner or beneficiary, or both, of the policy of insurance or other means of providing financial responsibility, had under such policy of insurance or other means of providing financial responsibility. Funds recovered or received by the department pursuant to such right of subrogation shall be remitted to the state treasurer who shall deposit such funds in the state treasury to the credit of the petroleum storage tank release trust fund. The owner or operator of the storage tank shall be liable to the department for any cost to the department in enforcing its subrogation rights pursuant to this section.

H Energy and NR
3-21-89
Attachment 1

POTENTIAL COST SCENARIOS

FOR LEAKING UNDERGROUND TANK CORRECTIVE ACTION COSTS

ASSUMPTIONS:

-Approximately 17,000 tanks not up to current performance standards

-Approximately 60% of these are owned by marketers (10,000)

-Approximately 10% of the marketers to go out of business, leaving 1,000 orphan tanks to be addressed primarily by the federal LUST Trust Fund

-Approximately 1,000 non-marketers will not be able to comply with the stringent federal performance standards and will cease using their tanks

-This leaves approximately 15,000 old tanks in the system

SCENARIO #1

-If 15% are or will be leaking before they are upgraded, this equals 2,250 tanks needing corrective action

-If the average cost of corrective action is $30,000/tank, this equals an estimated cost of $67.5 million (other than groundwater cleanup)

-If 1,000 of the leaking tanks are the responsibility of a 1 - 12 tank owner/operator with a $5,000 deductible, their share of the total corrective action costs would be $5 million

-If 1,000 of the leaking tanks are the responsibility of a 13 - 99 tank owner/operator with a $10,000 deductible, their share of the total corrective action costs would be $10 million

-If 250 of the leaking tanks are the responsibility of greater than 99 tank owner/operators with a $30,000 deductible, their share of the total corrective action costs would be $7.5 million

-The owner/operator direct share would be

$5.0 million
+$10.0 million
+ $7.5 million
$22.5 million

-If $250,000/site were needed @ 250 groundwater cleanup sites, this would equal an additional $5.25 million

-This would equal a total corrective action cost of $72.75 million and a net cost to the trust fund of approximately $50.25 million.

H Energy and NR
3-21-89
Attachment 2

SCENARIO #2

-If 10% are or will be leaking before they are upgraded, this equals 1,500 tanks needing corrective action

-If the average cost of corrective action is $25,000/tank, this equals an estimated cost of $37.5 million (other than groundwater cleanup)

-If 500 of the leaking tanks are the responsibility of a 1 - 12 tank owner/operator with a $5,000 deductible, their share of the total corrective action costs would be $2.5 million

-If 800 of the leaking tanks are the responsibility of a 13 - 99 tank owner/operator with a $10,000 deductible, their share of the total corrective action costs would be $8 million

-If 200 of the leaking tanks are the responsibility of greater than 99 tank owner/operators with a $30,000 deductible, their share of the total corrective action costs would be $5 million ($25,000/tank)

-The owner/operator direct share would be

	$2.5 million
	$8.0 million
	$5.0 million
	$15.5 million

-If $250,000/site were needed @ 100 groundwater cleanup sites, this would equal an additional $2.5 million

-This would equal a total corrective action cost of $40 million and a net cost to the trust fund of approximately $24.5 million

Prepared by KDHE, March 21, 1989

(f) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought it shall be sufficient to show that a violation of the provisions of this act, or the rules and regulations adopted thereunder has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.

Sec. 14. (a) There is hereby established as a segregated fund in the state treasury the petroleum storage tank release trust fund, to be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

(1) The proceeds of the environmental assurance fee imposed by this act;

(2) any moneys recovered by the state under the provisions of this act, including administrative expenses, civil penalties and moneys paid under an agreement, stipulation or settlement;

(3) interest attributable to investment of moneys in the fund; and

(4) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for the purposes of the fund, but excluding federal grants and cooperative agreements.

(b) The fund shall be administered so as to assist owners and operators of petroleum storage tanks in providing evidence of financial responsibility for corrective action required by a release from any such tank. Moneys deposited in the fund may be expended for the purpose of reimbursing owners and operators for the costs of corrective action, subject to the conditions and limitations prescribed by this act, but moneys in the fund shall not be used for compensating third parties for bodily injury or property damage caused by a release from a petroleum storage tank, other than property damage included in a corrective action plan approved by the secretary. In addition, moneys deposited in the fund may be expended for the following purposes:

(1) To permit the secretary to take whatever emergency action

Session of 1989

Substitute for SENATE BILL No. 94

By Committee on Energy and Natural Resources

3-1

AN ACT enacting the Kansas storage tank act; providing for the regulation of storage tanks thereunder; establishing the petroleum storage tank release trust fund; providing authorities and duties for the secretary and department of health and environment; establishing an environmental assurance fee and providing duties and authorities for the department of revenue relating thereto; prescribing unlawful acts and providing penalties therefor.

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

Section 1. This act shall be known and may be cited as the Kansas storage tank act.

Sec. 2. As used in this act:

(a) "Above ground storage tank" means any storage tank in which greater than 90% of the tank volume, including volume of the piping, is not below the surface of the ground;

(b) "board" means the petroleum storage tank release compensation advisory board;

(c) "department" means the Kansas department of health and environment;

(d) "facility" means all contiguous land, structures and other appurtenances and improvements on the land used in connection with one or more storage tanks;

(e) "federal act" means the solid waste disposal act, 42 U.S.C. sections 3152 *et seq.*, as amended, particularly by the hazardous and solid waste amendments of 1984, P.L. 98-616, 42 U.S.C. sections 6991 *et seq.*, as amended by P.L. 99-499, 1986, and rules and regulations adopted pursuant to such federal laws and in effect on the effective date of this act;

(f) "financial responsibility" means insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other

method satisfactory to the secretary to provide for taking corrective action, including cleanup and restoration of any damage to the land, air or waters of the state, and compensating third parties for cleanup, bodily injury or property damage resulting from a sudden or nonsudden release of a regulated substance arising from the construction, relining, ownership or operation of an underground storage tank and in the amount specified in the federal act;

(g) "fund" means the petroleum storage tank release trust fund;

(h) "department" means the Kansas department of health and environment;

(i) "guarantor" means any person, other than an owner or operator, who provides evidence of financial responsibility for an owner or operator;

(j) "operator" means any person in control of or having responsibility for the daily operation of a storage tank, but such term shall not include a person whose only responsibility regarding such storage tank is filling such tank with a regulated substance and who does not dispense or have control of the dispensing of regulated substances from the storage tank;

(k) "own" means to hold title to or possess an interest in a storage tank or the regulated substance in a storage tank;

(l) "owner" means any person who is or was the owner of any storage tank which was in use on November 8, 1984, or brought into use subsequent to that date, and it also means any person who, in the case of a storage tank in use prior to November 8, 1984, owned such tank immediately prior to the discontinuation of its use. Such term does not include: (1) A person who holds an interest in a petroleum storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the petroleum storage tank; and (2) any city or county which obtains a storage tank or regulated substance as a result of tax foreclosure proceedings;

(m) "person" means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association, state, interstate body, municipality, commission, political subdivision or any agency, board, department or bureau of this state or of any other state or of the United States government;

upon receipt of information that the storage or release of a reg substance may present a hazard to the health of persons or to the environment, may take such action as the secretary determines to be necessary to protect the health of such persons or the environment. The action the secretary may take shall include, but is not limited to:

(1) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing the owner or operator of the storage tank, or the custodian of the regulated substance which constitutes such hazard, to take such steps as are necessary to prevent the act, to eliminate the practice which constitutes such hazard, to investigate the extent of and remediate any pollution resulting from the storage or release. Such order may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing an owner, tenant or holder of any right of way or easement of any real property affected by a known release from a storage tank to permit entry on to and egress from that property, by officers, employees, agents or contractors of the department or of the person responsible for the regulated substance or the hazard, for the purposes of monitoring the release or to perform such measures to mitigate the release as the secretary shall specify in the order.

(3) Commencing an action to enjoin acts or practices specified in this subsection or requesting the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices. Upon a showing that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.

(4) Applying to the appropriate district court for an order of that court directing compliance with the order of the secretary pursuant to the act for judicial review and civil enforcement of agency actions. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this sub ion shall have precedence over other cases in respect to order d.

(a) Fraudulently or deceptively obtained or attempted to obtain a license;

(b) failed at any time to meet the qualifications for a license or to comply with any provision or requirement of this act or of any rule and regulation adopted thereunder; or

(c) failed to comply with local requirements of any jurisdiction within which the licensee has installed, repaired or removed an underground storage tank.

Sec. 12. The secretary and the governing body of any city, county or other political subdivision may enter into agreements authorizing the local fire department, building inspection department, health department, department of environmental control or other municipal, county or local governmental agency, to act as the secretary's agent to carry out the provisions of this act under such terms and conditions as the secretary shall prescribe.

Sec. 13. (a) Any person who violates any provisions of section 9 or section 10 shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to $10,000 for every such violation, and in case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of section 9 or section 10 may impose a penalty within the limits provided in subsection (a), which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No penalty shall be imposed pursuant to this section except upon the written order of the director of the division of environment to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Within 15 days after service of the order, any such person may make written request to the secretary for a hearing thereon in accordance with the Kansas administrative procedure act.

(d) Any action of the secretary pursuant to subsections (c), (f)(1) or (f)(2) is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(e) Notwithstanding any other provision of this act, the secretary,

(n) "petroleum" means petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pound per square inch absolute), including but not limited to, gasoline, gasohol, diesel fuel, fuel oils and kerosene;

(o) "petroleum product" means petroleum other than crude oil;

(p) "petroleum storage tank" means any storage tank used to contain an accumulation of petroleum;

(q) "regulated substance" means petroleum or any element, compound, mixture, solution or substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 of the United States as in effect on January 1, 1989, but not if regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Secs. 6921 through 6939b) as in effect on January 1, 1989;

(r) "release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into groundwater, surface water or soils;

(s) "removal" means the process of removing and disposing of a storage tank, no longer in service, and also shall mean the process of abandoning such tank, in place;

(t) "repair" means modification or correction of a storage tank through such means as relining, replacement of piping, valves, fillpipes, vents and liquid level monitoring systems, and the maintenance and inspection of the efficacy of cathodic protection devices, but the term does not include the process of conducting a tightness test to establish the integrity of a tank;

(u) "secretary" means the secretary of health and environment;

(v) "storage tank" means any one or combination of tanks used to contain an accumulation of regulated substances, the associated piping and ancillary equipment and the containment system;

(w) "tank" means a stationary device designed to contain an accumulation of substances and constructed of non-earthen materials such as concrete, steel or plastic, that provide structural support;

(x) "terminal" means a bulk storage facility for storing petroleum supplied by pipeline or marine vessel;

(y) "trade secret" means, but is not limited to, any customer

lists, any formula, compound, production data or compilation of information which is not patented and which is known only to certain individuals within a commercial concern using it to fabricate, produce or compound an article of trade, or any service having commercial value, which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(z) "underground storage tank" means any storage tank in which 10% or more of the tank volume, including volume of the piping, is below the surface of the ground;

(aa) "underground storage tank contractor" or "contractor" means a business which hold itself out as being qualified to install, repair or remove underground storage tanks; and

(bb) "underground storage tank installer" or "installer" means an individual who has an ownership interest or exercises a management or supervisory position with an underground storage tank contractor. The term shall include the crew chief, expediter, engineer, supervisor, leadman or foreman in charge of a tank installation project.

Sec. 3. Except as provided in paragraph 13 of subsection (a) of section 5 and section 19, this act shall not apply to:

(a) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) tanks used for storing heating oil for consumptive use on a single family residential premise where stored;

(c) a pipeline facility, including gathering lines, regulated under:

(1) The Natural Gas Pipeline Safety Act of 1968; and

(2) the Hazardous Liquid Pipeline Safety Act of 1979; or

(3) state laws relating to intrastate pipelines comparable to the provisions of law referred to in subparagraphs (1) and (2);

(d) surface impoundments, pits, ponds, septic tanks or lagoons;

(e) storm water or waste water collection systems;

(f) flow-through process tanks;

(g) liquid traps, storage tanks or associated gathering lines directly related to oil or gas production and gathering operations;

(h) storage tanks situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor;

(i) above ground storage tanks of agricultural materials regulated

(f) A contractor must meet the following requirements to qualify for a contractor license:

(1) At least one active officer or executive of the business must possess a valid underground tank installer's license.

(2) The contractor must submit documentation showing that it has insurance, surety bonds or liquid company assets which, in combination, represent a value of not less than five times the value of the largest underground storage tank installation, removal or repair contract performed by the contractor during the previous two years.

(3) The contractor must state in its license application and agree that at all times on any and all jobs involving the installation, repair or removal of an underground storage tank, an individual who possesses a valid tank installer's license will be present at the job site not less than 75% of the time during the progress of the work, and that such installer shall exercise responsible supervisory control over the work.

(g) The secretary may elect to establish reciprocal arrangements with states having similar licensing requirements and to provide for the licensing in this state of persons who have successfully completed examinations and otherwise qualified for licensure in another state.

(h) A valid interim contractor license or an unexpired contractor license shall be valid in all counties and municipalities throughout the state, and the issuance of either license to a contractor shall serve as authority for the contractor to engage in the installation, repair and removal of underground storage tanks in any jurisdiction within the state without requirement for obtaining additional county or local licenses. However, local jurisdictions may impose more stringent requirements for installation, repair or removal of such tanks than are imposed by state regulations, in which case a contractor shall be required to conduct its operations in the local jurisdiction in conformity with the local requirements.

Sec. 11. The secretary may deny any license applied for, or suspend or revoke any license issued, pursuant to section 10 if the secretary finds, after notice and the opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant or licensee, whichever is applicable, has:

and Pipe Manufacturers Institute, National Fire Protection Association, Western Fire Chiefs Association and Underwriters Laboratories. Additional questions shall be derived from state and federal regulations applicable to storage tanks. The secretary shall make available sample questions and related material to qualified candidates to be used as a study guide in preparation for the examination.

(2) Conduct at least one on-site inspection annually, observing procedures used by each licensed underground storage tank contractor for installing, repairing or removing an underground storage tank.

(c) Any person who willfully violates any provision of subsection (a) shall be guilty of a class C misdemeanor and, upon conviction thereof, shall be punished as provided by law.

(d) Prior to 12 months after the effective date of this act, the department shall conduct written examinations, at such times and locations within the state as the department may designate, for the purpose of identifying installers as being qualified to receive an underground tank installer's license. Each underground tank installer's license shall be issued for a period of two years and shall be subject to periodic renewal thereafter under procedures prescribed by the department.

(e) (1) Beginning six months after the effective date of this act, no contractor shall engage in the installation, repair or removal of an underground storage tank unless the contractor shall have filed with the department, on a form prescribed by the secretary, documentation demonstrating that within the previous two years the contractor has been regularly and specifically engaged in the installation, repair and removal of underground storage tanks, as a primary business activity, and the department shall have issued to such contractor, as a result of such documentation, an interim contractor license.

(2) Beginning 18 months after the effective date of this act, no contractor shall engage in the installation, repair or removal of an underground storage tank unless such contractor shall have been issued a contractor license. Each contractor license shall be issued for a period of two years and shall be subject to periodic renewal thereafter under procedures prescribed by the department.

by the state board of agriculture; and

(j) above ground storage tanks located at a petroleum refining facility.

Sec. 4. (a) Each owner of a storage tank shall notify the department of the tank's existence, including age, size, type, location, associated equipment and uses;

(b) In addition and to the extent known, each owner of an underground storage tank which has not been removed, but was taken out of service after January 1, 1974 and prior to May 8, 1986, shall notify the department of the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the capacity, type and location of the tank, and the type and quantity of substances stored in the tank on the date taken out of operation.

(c) Notice shall be made on an approved form provided by the department.

Sec. 5. (a) The secretary is authorized and directed to adopt rules and regulations necessary to administer and enforce the provisions of this act. Any rules and regulations so adopted shall be reasonably necessary to preserve, protect and maintain the waters and other natural resources of this state, and reasonably necessary to provide for the prompt investigation and cleanup of sites contaminated by a release from a storage tank. In addition, any rules and regulations or portions thereof which pertain to underground storage tanks or the owners and operators thereof shall be adopted for the purpose of enabling the secretary and the department to implement the federal act, and such rules and regulations so adopted shall be consistent with the federal act. Consistent with these purposes, the secretary shall adopt rules and regulations:

(1) Establishing performance standards for underground storage tanks first brought into use on or after the effective date of this act. The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection and product compatibility standards;

(2) establishing performance standards for above ground storage tanks brought into use after the effective date of this act. The performance standards for new above ground storage tanks shall include, but are not limited to, design, construction, installation, release

detection and product compatibility standards;

(3) establishing performance standards for the inground repair of underground storage tanks. The performance standards shall include, but are not limited to, specifying under what circumstances an underground storage tank may be repaired and specifying design, construction, installation, release detection, product compatibility standards and warranty;

(4) establishing performance standards for maintaining spill and overfill equipment, leak detection systems and comparable systems or methods designed to prevent or identify releases. In addition, the secretary shall establish standards for maintaining records and reporting leak detection monitoring, inventory control and tank testing or comparable systems;

(5) establishing requirements for reporting a release and for reporting and taking corrective action in response to a release;

(6) establishing requirements for maintaining evidence of financial responsibility to be met by owners and operators of underground storage tanks;

(7) establishing requirements for the closure of underground storage tanks including the removal and disposal of underground storage tanks and regulated substance residues contained therein to prevent future releases of regulated substances into the environment;

(8) for the approval of tank tightness testing methods, including determination of the qualifications of persons performing or offering to perform such testing;

(9) establishing site selection and clean-up criteria regarding corrective actions related to a release and which address the following: The physical and chemical characteristics of the released substance, including toxicity, persistence and potential for migration; the hydrogeologic characteristics of the release site and the surrounding land; the proximity, quality and current and future uses of groundwater; an exposure assessment; the proximity, quality and current and future use of surface water; and the level of the released substance allowed to remain on the facility following cleanup;

(10) prescribing fees for the registration of storage tanks, the issuance of permits, the approval of plans for new installations and the conducting of inspections. The total amount of fees shall not

(2) construct, modify or operate an underground storage without a permit or other written approval from the secretary on or after January 1, 1990, construct, modify or operate an above ground storage tank without a permit or other written approval from the secretary, or otherwise be in violation of the rules and regulations, standards or orders of the secretary;

(3) prevent or hinder a properly identified officer or employee of the department or other authorized agent of the secretary from entering, inspecting or sampling at a facility on which a storage tank is located or from copying records concerning such storage tank as authorized by this act;

(4) knowingly make any false material statement or representation in any application, record, report, permit or other document filed, maintained or used for purposes of compliance with this act;

(5) knowingly destroy, alter or conceal any record required to be maintained by this act or rules and regulations promulgated hereunder; or

(6) knowingly allow a release, knowingly fail to report a release or knowingly fail to take corrective action in response to a release of a regulated substance in violation of this act or rules and regulations promulgated hereunder.

(b) Any person who violates paragraphs (1) through (6) of subsection (a) shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished as provided by law.

Sec. 10. (a) It shall be unlawful for any person to practice, or hold oneself out as authorized to practice, as an underground storage tank installer or underground storage tank contractor or use other words or letters to indicate such person is a licensed installer or contractor unless the person is licensed in accordance with this section.

(b) The secretary shall:

(1) Develop and administer a written examination to candidates for licensing under the terms of this section. Questions used in the examination shall be derived from standard instructions and recommended practices published by such authorities as the Petroleum Equipment Institute, American Petroleum Institute, Steel Tank Institute, National Association of Corrosion Engineers, Fibergl

(2) Any officer, employee or other authorized representative of the secretary is authorized to enter at reasonable times any establishment or place where a storage tank is located, to inspect and obtain samples from any person of any regulated substance contained in such storage tank, and to conduct or require the owner or operator to conduct monitoring or testing of the tanks, associated equipment, tank contents or surrounding soils, air, surface water or groundwater.

(b) Each inspection shall be commenced and completed with reasonable promptness.

(c) Any records, reports, documents or information obtained from any person under this act shall be available to the public except as provided in this section.

(d) Any person submitting any records, reports, documents or information required by this act, may, upon a showing satisfactory to the secretary, claim any portion of such record, report, document or information confidential as a trade secret. The department shall establish procedures to insure that trade secrets are utilized by the secretary or any authorized representative of the secretary only in connection with the responsibilities of the department pursuant to this act. Trade secrets shall not be otherwise used or disseminated by the secretary or any representative of the secretary without the consent of the person furnishing the information.

(e) Notwithstanding any limitation contained in this section, all information reported to, or otherwise obtained by the department under this act, shall be made available to the administrator of the United States environmental protection agency, or an authorized representative of the administrator, upon written request. In submitting any trade secrets to such administrator or the authorized representative of such administrator, the secretary shall submit the claim of confidentiality to the administrator or authorized representative of the administrator.

Sec. 9. (a) It shall be unlawful for any person to:

(1) Knowingly deposit, store or dispense, or permit any person to deposit, store or dispense, any regulated substance into any storage tank which does not comply with the provisions of this act, the rules and regulations promulgated hereunder, or any order of the secretary;

exceed the amount of revenue required for the proper administration of the provisions of this act. All fees shall be deposited in the state general fund;

(11) for determining the qualifications, adequacy of performance and financial responsibility of persons desiring to be licensed as underground storage tank installers or contractors. In adopting rules and regulations, the secretary may specify classes of specialized activities, such as the installation of corrosion protection devices or inground relining of underground storage tanks, and may require persons wishing to engage in such activities to demonstrate additional qualifications to perform these services;

(12) prescribing fees for the issuance of licenses to underground storage tank installers and contractors. The fees shall not exceed the amount of revenue determined by the secretary to be required for administration of the provisions of section 10;

(13) requiring the registration with the department of any class of storage tank otherwise exempted from regulation by this act except tanks specified in subsections (i) and (j) of section 3 and crude oil storage tanks located on oil and gas production leases. Such registration shall not require the payment of any registration fee; and

(14) adopting schedules requiring the retrofitting of storage tanks in existence on the effective date of this act and for the retirement from service of underground storage tanks placed in service prior to the effective date of this act. Such schedules shall be based on the age and location of the storage tank and the type of substance stored. Such retrofitting shall include secondary containment, corrosion protection, linings, leak detection equipment and spill and overfill equipment.

(b) In adopting rules and regulations under this section, the secretary shall take notice of rules and regulations pertaining to fire prevention and safety adopted by the state fire marshal pursuant to K.S.A. 31-133(a)(1), and amendments thereto.

(c) Nothing in this section shall interfere with the right of a city or county having authority to adopt a building or fire code from imposing requirements more stringent than those adopted by the secretary pursuant to paragraphs (1), (2), (3), (7) and (14) of subsection (a), or affect the exercise of powers by cities, counties and townships

regarding the location of storage tanks and the visual compatibility of above ground storage tanks with surrounding property.

Sec. 6. (a) On and after the effective date of this act, no person shall construct, modify or operate an underground storage tank unless a permit or other approval is obtained from the secretary. On and after January 1, 1990, no person shall construct, modify or operate an above ground storage tank unless a permit or other approval is obtained from the secretary. Applications for permits shall include proof that the required performance standards will be met and evidence of financial responsibility. For purposes of administering this section, any storage tank registered with the department on the effective date of this act shall be deemed to be a permitted storage tank so long as the owner or operator shall comply with all applicable provisions of this act.

(b) Permits may be transferred upon acceptance of the permit obligations by the person who is to assume the ownership or operational responsibility of the storage tank from the previous owner or operator. The department shall furnish a transfer of permit form providing for acceptance of the permit obligations. A transfer of permit form shall be submitted to the department not less than seven days prior to the transfer of ownership or operational responsibility of the storage tank.

(c) The secretary may deny, suspend or revoke any permit issued or authorized pursuant to this act if the secretary finds, after notice and the opportunity for a hearing conducted in accordance with the Kansas administrative procedure act, that the person has:

(1) Fraudulently or deceptively obtained or attempted to obtain a storage tank permit;

(2) failed at any time to maintain the storage tank in accordance with the requirements of this act or any rule and regulation promulgated hereunder;

(3) failed at any time to comply with the requirements of this act or any rule and regulation promulgated hereunder; or

(4) failed at any time to make any retrofit or improvement to a storage tank which is required by this act or any rule and regulation promulgated hereunder.

(d) Any person aggrieved by an order of the secretary may appeal

the order in accordance with provisions of the act for judicial review and civil enforcement of agency actions.

Sec. 7. (a) Each owner or operator of an underground storage tank shall provide evidence of financial responsibility.

(b) If the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this act may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this subsection, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.

(c) The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. This subsection does not limit any other state or federal statutory, contractual or common-law liability of a guarantor to its owner or operator, including, but limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or other applicable law.

Sec. 8. (a) For the purposes of developing or assisting in the development of any regulation, conducting any study or enforcing the provisions of this act:

(1) It shall be the duty of any owner or operator of a storage tank, upon the request of any duly authorized representative of the secretary made at any reasonable time, to furnish information relating to the storage tank, including tank equipment and contents, to conduct monitoring or testing, to permit such authorized representative to have access to and to copy all records relating to such tanks.

is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release from a petroleum storage tank;

(2) to permit the secretary to take corrective action where the release presents an actual or potential threat to human health or the environment, if the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to, providing for alternative water supplies;

(3) payment of the state's share of the federal leaking underground storage tank trust fund cleanup costs, as required by the resource conservation and recovery act, 42 U.S.C. § 6991b(h)(7)(B); and

(4) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of sections 14 to 24, inclusive.

(c) The petroleum storage tank release trust fund shall be used for the purposes set forth in this act and for no other governmental purposes. It is the intent of the legislature that the fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a and amendments to such sections.

(d) Neither the state of Kansas nor the petroleum storage tank release trust fund shall be liable to an owner or operator for the loss of business, damages or taking of property associated with any corrective or enforcement action taken pursuant to this act.

(e) The pooled money investment board may invest and reinvest moneys in the fund established under this section in obligations of the United States or obligations the principal and interest of which are guaranteed by the United States or in interest-bearing time deposits in any commercial bank or trust company located in Kansas or, if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than 30 days' duration with a Kansas bank or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof. Any income or interest

earned by such investments shall be credited to the fund.

(f) All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

Sec. 15. Except as otherwise provided in this act, an owner or operator of a petroleum storage tank, or both, shall be liable for all costs of corrective action taken in response to a release from such petroleum storage tank. Eligibility to participate in the petroleum storage tank release trust fund may be submitted as evidence of financial responsibility required of owners and operators of underground storage tanks.

Sec. 16. (a) There is hereby established the petroleum storage tank release compensation advisory board composed of seven members, including the state fire marshal or the state fire marshal's designee, the director of the division of environment of the department, two representatives from the petroleum industry, at least one of which shall be a petroleum marketer, one representative from the insurance industry, one member of the governing body of a city and one county commissioner. The governor shall appoint the appointive members of the board, and the members so appointed shall serve for terms of two years. The governor also shall designate a member of the board as its chair, to serve in such capacity at the pleasure of the governor. The secretary shall provide staff to support the activities of the board.

(b) Appointed members of the board attending meetings of such board, or attending a subcommittee meeting thereof, when authorized by such board, shall receive the amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto.

(c) The board shall provide advice and counsel and make recommendations to the secretary regarding the rules and regulations to be promulgated by the secretary regarding the financial responsibility of owners and operators required by this act and, upon request of the secretary, shall provide advice and counsel to the secretary with respect to the disbursement of moneys from the fund.

Sec. 17. (a) There is hereby established an environmental assurance fee of $.01 on each gallon of petroleum product manufactured

in or imported into this state. The environmental assurance fee shall be paid by the manufacturer, importer or distributor first selling, offering for sale, using or delivering petroleum products within this state. The environmental assurance fee shall be paid to the department of revenue at the same time and in the same manner as the inspection fee established pursuant to K.S.A. 55-426, and amendments thereto, is paid. The secretary of revenue shall remit daily the environmental assurance fees paid hereunder to the state treasurer, who shall deposit the same in the state treasury to the credit of the petroleum storage tank release trust fund. Exchanges of petroleum products on a gallon-for-gallon basis within a terminal and petroleum product which is subsequently exported from this state shall be exempt from this fee.

(b) Environmental assurance fees as specified in subsection (a) shall be paid until the unobligated principal balance of the fund equals or exceeds $5,000,000, at which time no environmental assurance fees shall be levied unless and until such time as the balance in the fund is less than or equal to an unobligated balance of $2,000,000, in which case the collection of the environmental assurance fee will resume within 90 days following the end of the month in which such unobligated balance occurs. The director of accounts and reports shall notify the secretary of revenue whenever the unobligated balance in the fund is $2,000,000, and the secretary of revenue shall then give notice to each person subject to the environmental assurance fee as to the imposition of the fee and the duration thereof.

(c) Every manufacturer, importer or distributor of any petroleum product liable for the payment of environmental assurance fees as provided in this act, shall report in full and detail before the 25th day of every month to the secretary of revenue, on forms prepared and furnished by the secretary of revenue, and at the time of forwarding such report, shall compute and pay to the secretary of revenue the amount of fees due on all petroleum products subject to such fee during the preceding month.

(d) All fees imposed under the provisions of this act and not paid on or before the 25th day of the month succeeding the calendar month in which such petroleum products were subject to such fee

shall be deemed delinquent and shall bear interest at the rate of 1% per month, or fraction thereof, from such due date until paid. In addition thereto, there is hereby imposed upon all amounts of such fees remaining due and unpaid after such due date a penalty in the amount of 5% thereof. Such penalty shall be added to and collected as a part of such fees by the secretary of revenue.

(e) The secretary of revenue is hereby authorized to adopt such rules and regulations as may be necessary to carry out the responsibilities of the secretary of revenue under this section.

Sec. 18. (a) Whenever the secretary has reason to believe that there is or has been a release into the environment from a petroleum storage tank, and has reason to believe that such release poses a danger to human health or the environment, the secretary shall obtain corrective action for such release from the owner or operator, or both, or from any past owner or operator who has contributed to such release. Such corrective action shall be performed in accordance with a plan approved by the secretary. Upon approval of such plan, the owner or operator shall obtain and submit to the secretary at least three bids from persons qualified to perform the corrective action except that, the secretary may waive this requirement upon a showing that the owner or operator has made a good faith effort but has not been able to obtain three bids from qualified bidders.

(b) If the owner or operator is unable or unwilling to perform corrective action as provided for in subsection (a) or no owner or operator can be found, the secretary may undertake appropriate corrective action utilizing funds from the petroleum storage tank release trust fund. Costs incurred by the secretary in taking a corrective action, including administrative and legal expenses, are recoverable from the responsible party and may be recovered in a civil action in district court brought by the secretary. Corrective action costs recovered under this section shall be deposited in the petroleum storage tank release trust fund. Corrective action taken by the secretary under this subsection need not be completed in order to seek recovery of corrective action costs, and an action to recover such costs may be commenced at any stage of a corrective action.

(c) An owner or operator shall be liable for all costs of corrective

action incurred by the state of Kansas as a result of a release from a petroleum storage tank, unless the owner or operator, or both, enter into a consent agreement with the secretary in the name of the state within a reasonable period of time, which time period may be specified by regulation. At a minimum, the owner or operator, or both, must agree that:

(1) The owner or operator shall be liable for the appropriate deductible amount, as established in section 19;

(2) the state of Kansas and the petroleum storage tank release trust fund are relieved of all liability to an owner or operator for any loss of business, damages and taking of property associated with the corrective action;

(3) the department or its contractors may enter upon the property of the owner or operator, at such time and in such manner as deemed necessary, to monitor and provide oversight for the necessary corrective action to protect human health and the environment;

(4) the owner or operator shall be fully responsible for removal, replacement or retrofitting of petroleum storage tanks and the cost thereof shall not be reimbursable from the fund;

(5) the owner or operator shall effectuate corrective action according to a plan approved by the secretary pursuant to subsection (a);

(6) the liability of the state and the petroleum storage tank release trust fund shall not exceed $1,000,000, less the appropriate deductible amount, for any release from a petroleum storage tank; and

(7) such other provisions as are deemed appropriate by the secretary to ensure adequate protection of human health and the environment.

(d) For purposes of this act, corrective action costs shall include the actual costs incurred for the following:

(1) Removal of petroleum products from petroleum storage tanks, surface waters, groundwater or soil;

(2) investigation and assessment of contamination caused by a release from a petroleum storage tank;

(3) preparation of corrective action plans approved by the secretary;

(4) removal of contaminated soils;

(5) soil treatment and disposal;

(6) environmental monitoring;

(7) maintenance of corrective action equipment;

(8) restoration of a private or public potable water supply, where possible, or replacement thereof, if necessary; and

(9) other costs identified by the secretary as necessary for proper investigation, corrective action planning and corrective action activities to meet the requirements of this act.

Sec. 19. (a) An owner or operator of a petroleum storage tank, other than the United States government or any of its agencies or the owner or operator of any above ground storage tank specified in subsection (g) or (j) of section 3, who is in substantial compliance, as provided in subsections (c) and (d), and who undertakes corrective action, either through personnel of the owner or operator or through response action contractors or subcontractors, is entitled to reimbursement of reasonable corrective action costs from the fund, subject to the following provisions:

(1) The owner or operator of not more than 12 petroleum storage tanks shall be liable for the first $5,000 of costs of corrective action taken in response to a release from any such petroleum storage tank;

(2) the owner or operator of at least 13 and not more than 99 petroleum storage tanks shall be liable for the first $10,000 of costs of corrective action taken in response to a release from any such petroleum storage tank;

(3) the owner or operator of more than 99 petroleum storage tanks shall be liable for the first $30,000 of costs of corrective action taken in response to a release from any such petroleum storage tank;

(4) the owner or operator must submit to and receive from the secretary approval of the proposed corrective action plan, together with projected costs of the corrective action;

(5) the owner or operator or any agents thereof shall keep and preserve suitable records demonstrating compliance with the approved corrective action plan and all invoices and financial records associated with costs for which reimbursement will be requested;

(6) within 30 days of receipt of a complete corrective action plan, the secretary shall make a determination and provide written notice as to whether the owner or operator responsible for corrective action,

thority, power and remedies provided in this act are in addition to any authority, power or remedy provided in any statute other than a section of this act or provided at common law.

(e) If a person conducts a corrective action activity in response to a release from a petroleum storage tank, whether or not the person files a claim against the fund under this act, the claim and corrective action activity conducted are not evidence of liability or an admission of liability for any potential or actual environmental pollution or third party claim.

Sec. 22. On or before March 1 of each year, the secretary shall prepare and submit a report to the governor and each member of the legislature regarding the receipts and disbursements from the fund during the preceding calendar year, indicating the extent of the corrective action taken under this act.

Sec. 23. (a) Any person adversely affected by any order or decision of the secretary may, within 15 days of service of the order or decision, request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person adversely affected by any action of the secretary pursuant to this act may obtain review of such action in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 24. Except as provided in K.S.A. 74-7246, and amendments thereto, the board and the fund shall be and are hereby abolished on July 1, 1994.

Sec. 25. This act shall take effect and be in force from and after its publication in the Kansas register.

is eligible or ineligible for reimbursement of corrective action costs, and should the secretary determine the owner or operator is ineligible, the secretary shall include in the written notice an explanation setting forth in detail the reasons for the determination;

(7) the owner or operator shall submit to the secretary a written notice that corrective action has been completed within 30 days of completing corrective action;

(8) no later than 30 days from the submission of the notice as required by paragraph (7), the owner or operator must submit an application for reimbursement of corrective action costs in accordance with criteria established by the secretary, and the application for reimbursement must include the total amount of the corrective action costs and the amount of reimbursement sought. In no case shall the total amount of reimbursement exceed the lesser of the actual costs of the corrective action or the amount of the lowest bid submitted pursuant to section 18 less the appropriate deductible amount;

(9) interim payments shall be made to an owner or operator in accordance with the plan approved by the secretary pursuant to section 18, except that the secretary, for good cause shown, may refuse to make interim payments or withhold the final payment until completion of the corrective action;

(10) the owner or operator shall be fully responsible for removal, replacement or retrofitting of petroleum storage tanks and the cost thereof shall not be reimbursable from the fund; and

(11) the owner or operator shall provide evidence satisfactory to the secretary that corrective action costs equal to the appropriate deductible amount have been paid by the owner or operator, and such costs shall not be reimbursed to the owner or operator.

(b) Notwithstanding the provisions of subsection (c) of section 18, should the secretary find that any of the following situations exist, the owner or operator, or both, may be liable for 100% of costs associated with corrective action necessary to protect health or the environment, if:

(1) The release was due to willful or wanton actions by the owner or operator;

(2) the owner or operator is in arrears for moneys owed, other than environmental assurance fees, to the petroleum storage tank

release trust fund;

(3) the release was from a tank not registered with the department;

(4) the owner or operator fails to comply with any provision of the agreement specified in subsection (c) of section 18;

(5) the owner or operator moves in any way to obstruct the efforts of the department or its contractors to investigate the presence or effects of a release or to effectuate corrective action; or

(6) the owner or operator is not in substantial compliance with any provision of this act or rules and regulations promulgated hereunder.

(c) Except as otherwise provided in subsection (d), an owner or operator of a petroleum storage tank is in substantial compliance with this act and the rules and regulations adopted hereunder, if:

(1) On and after January 1, 1990, each petroleum storage tank owned or operated by such owner or operator has been registered with the secretary, in accordance with the applicable laws of this state and any rules and regulations adopted thereunder;

(2) the owner or operator has entered into an agreement with the secretary, as provided in subsection (c) of section 18;

(3) the owner or operator has complied with any applicable financial responsibility requirements imposed by the storage tank act and the rules and regulations adopted thereunder; and

(4) the owner or operator has otherwise made a good faith effort to comply with the federal act, this act, any other law of this state regulating petroleum storage tanks and all applicable rules and regulations adopted under any of them.

(d) Prior to July 1, 1990, an owner or operator of any of the following underground petroleum storage tanks shall be deemed to be in substantial compliance with this act:

(1) Any farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; and

(2) any tank used for storing heating oil for consumptive use on the single family residential premise where stored.

On and after July 1, 1990, an owner or operator of any petroleum storage tanks specified above shall be deemed to be in substantial compliance with this act, if each such tank has been registered with

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the secretary in accordance with the applicable laws of ate and any rules and regulations adopted thereunder.

(e) Any owner of a petroleum storage tank who at no time has placed petroleum in such tank or withdrawn petroleum from such tank shall be eligible for reimbursement from the fund of all costs of any necessary corrective action and shall not be subject to the provisions of paragraphs (1), (2) or (3) of subsection (a) if such owner submits a corrective action plan prior to July 1, 1990.

Sec. 20. Notwithstanding any other provision of this act, an owner or operator of a petroleum storage tank who has undertaken corrective action prior to the effective date of this act pursuant to a corrective action plan approved by the secretary on or after January 1, 1989, shall be eligible for reimbursement from the fund for costs incurred in conjunction with such corrective action performed subsequent to plan approval by the secretary.

Sec. 21. (a) Nothing in this act shall establish or create any liability or responsibility on the part of the board, the secretary, the department or its agents or employees, or the state of Kansas to pay any corrective action costs from any source other than the fund created by this act. In no event shall the fund be liable for the payment of corrective action costs incurred in response to any one release from a petroleum storage tank in an amount in excess of $1,000,000, less the applicable deductible amount of the owner or operator of such tank.

(b) This act is intended to assist an owner or operator only to the extent provided for in this act, and it is in no way intended to relieve the owner or operator of any liability that cannot be satisfied by the provisions of this act.

(c) Neither the secretary nor the state of Kansas shall have any liability or responsibility to make any payments for corrective action if the fund created herein is insufficient to do so. In the event the fund is insufficient to make the payments at the time the claim is filed, such claims shall be paid in the order of filing at such time as moneys are paid into the fund.

(d) No common law liability, and no statutory liability which is provided in a statute other than in this act, for damages ting from a release from a storage tank is affected by this act au-

My name is Jeanne Hankerson. I represent Federated Mutual Insurance Company of Owatonna, Minnesota. We are currently providing Pollution Liability Insurance to owners of underground storage tanks. There are some other companies in this market and others are planning to enter the market. My statements today are based on Federated's experience in this market. Other companies may have different opinions on these issues.

EPA estimates that 10 - 30% of the over two million underground storage tanks (UST) in the United States are currently leaking. This does not include the sites where there is contamination from spills and overfills which need to be cleaned up or contamination at aboveground tanks.

Many of the underground tanks are owned by small businesses. EPA estimates that 45% of small businesses in retail motor fuel marketing will go out of business in the next five years because of the technical and financial responsibility regulations. This assumes they can find insurance. Without insurance the number could be higher. EPA has not developed statistics for the impact of the regulations on owners of tanks who are not in the retail motor fuel business.

The EPA regulations affect more than just gas stations. Anyone who owns an underground tank, except state or federal government entities, must comply with the technical rules as well as the financial responsibility requirements. Cities, counties, school districts, park districts, trucking companies, auto dealers, golf courses, - any individual business or organization that may have its own fuel tanks is required to comply. Even farmers must comply if they have tanks over 1100 gallons.

Many tank owners are unable to secure the financial responsibility coverage required by the EPA regulations. Many do not qualify financially for self-insurance, surety bonds, guarantees or letters of credit. They do not have the money to establish a fully funded trust fund. They do not meet the underwriting guidelines of insurance company or risk retention groups. Some who do meet underwriting guidelines for insurance or risk retention group coverage cannot afford the premiums.

If a state program is not established to assist owners and operators of petroleum storage tanks in providing evidence of financial responsibility for corrective action, many tank owners will be forced to abandon use of their tanks. In the case of fuel retailers this means going out of business. In some cases the tank owner can't afford the cost of going out of business. In order to stop using a tank the owner/operator must "close" the tank which involves a site assessment and cleanup of contamination. A potentially costly job.

Senate Bill 94
~~House Bill~~ _____ will provide a method of establishing financial responsibility for tank owners and operators. It will allow them to put their assets to use where they will do the most good in protecting the environment - in tank upgrading and leak detection. Tank owners and operators will be able to concentrate their resources on finding and correcting current problems and preventing future problems. It may well keep many in business.

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My company, Federated Mutual Insurance Company, currently provides pollution liability coverage for 179 policyholders in Kansas. Our primary market for this coverage is petroleum marketers. We also write this coverage for auto dealers, equipment dealers and contractors who have UST or other pollution exposures. The annual premium is based on many factors dealing with tank construction, equipment and location. The premium is figured on a per site basis and can currently range from $750 to $8000 per site per year. There is a $5000/policy/year minimum premium. In addition to the per site charges, there are charges for leased or loaned tanks and dispensers and delivery locations.

Our policy covers underground and aboveground tanks at insured locations. As of 1-1-89 we have had 13 pollution claims in Kansas. We estimate our total expense for cleanup at approximately $400,000. This amount does not include any deductibles our insureds may have to pay. The deductibles range from $0 to $25,000 depending on when the policy was issued. These claims are for cleanup only - we do not currently have any third party bodily injury claims in Kansas.

Nationwide we have an average cleanup cost of approximately $80,000 not including our insureds' deductibles. Currently our reserves for third part bodily injury are less than 1% of total reserves.

My company is willing to work with a state fund program you establish. For persons who meet our underwriting guidelines we will continue to provide the third party bodily injury and property damage coverage which is required in addition to cleanup coverage under Federal EPA rules. Our current policy does not meet EPA requirements but a new policy is being developed to meet these requirements. That policy should begin to be issued this summer.

The establishment of a state fund should help to make insurance coverage more available and affordable to tank owners and operators.

Jeanne Hankerson
Environmental Coordinator
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OF COUNSEL
C. DAVID NEWBERY

MEMORANDUM

TO : House Committee on Energy and Natural Resources
FROM : Kansas Oil Marketers Association
DATE : March 21, 1989
RE : 1989 Substitute for Senate Bill No. 94

Chairman Spaniol and Members of the Committee, I am Bob Alderson, an attorney in private practice in Topeka, appearing today on behalf of the Kansas Oil Marketers Association (KOMA) in support of Substitute for Senate Bill No. 94. KOMA is a statewide association of petroleum distributors, and it also represents the interests of hundreds of other underground storage tank owners and operators who market petroleum products.

Before addressing the provisions of Sub. for SB 94, I have two prefatory comments. First, even though an association of petroleum marketers has an obvious interest in legislation affecting underground storage tanks, it must be remembered that our interest is not exclusive. The Kansas Department of Health and Environment (KDHE) estimates that 40% of the underground tanks in Kansas are owned by non-marketers.

Second, I recognize at the outset that this statement will be somewhat lengthy, but I trust the Committee understands that such length is needed to address a most difficult, complex issue, with far-reaching consequences.

As the Committee is aware, the bill under consideration is essentially an amalgamation of the provisions of SB 94 and SB 122. Both bills were introduced in response to the EPA's regulations applicable to underground storage tanks. SB 94 restated as Kansas law the substantive provisions of these regulations, and SB 122 established a trust fund to assist owners and operators of underground petroleum storage tanks to comply with the financial responsibility requirements in these regulations. Sub. for SB 94 combines these legislative proposals into a single bill.

Regulatory Requirements

The Committee has been advised that federal regulations are now in place to implement Subtitle I of the Resource Conservation and Recovery Act, which was enacted by Congress in 1984 and vested the Environmental Protection Agency (EPA) with the authority to develop a regulatory program for underground storage tanks. However, the federal act contemplates the possible enforcement of these regulations by state agencies, acting pursuant to appropriate enabling legislation.

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Sub. for SB 94 is intended to provide such enabling legislation in Kansas, authorizing KDHE to administer and enforce the federal regulations. It would, in effect, establish as state law the substantive provisions of the federal rules and regulations. Thus, considering the fact that the federal act and the EPA's rules and reguations are now in force and effect in Kansas, the only real issue presented by Sub. for SB 94 is who will administer and enforce these regulations--the EPA or KDHE?

For a variety of reasons, KOMA firmly believes that the federal requirements regarding underground storage tanks should be administered and enforced by KDHE as the "implementing state agency." Chief among these reasons is the KDHE's history of administering other laws regulating industries which have an impact on our environment, including the laws requiring the registration of underground storage tanks and regulating the installation of new underground storage tanks.

We believe KDHE's regulatory objectives under these other laws have been achieved, to an important extent, through cooperation and persuasion, which we believe produces the best long-term results for the entire state. There is no reason to believe that KDHE would not approach its responsibilities under Sub. for SB 94 in the same manner, which is evidenced by the fact that the industry committee established by our association was invited to participate in the deliberations which accompanied the drafting of this legislation.

However, we would note that, to have an acceptable regulatory framework, i.e., one which not only addresses the federal requirements, but also takes into account the owners and operators of underground storage tanks, the Committee needs to consider the financial responsibility requirements imposed by the federal law. The Committee should determine how best the owners and operators of underground storage tanks in Kansas may comply with those requirements, and we respectfully submit that a mere restatement of the federal requirements for financial responsibility as the law in Kansas may not accomplish the intended result. It will not necessarily ensure that sufficient moneys are available to pay the clean up costs incurred in the event of an accidental spill, leak or other discharge from a petroleum storage tank.

Availability and Affordability of Liability Insurance

Even though the federal financial responsibilty requirements (as restated in Sub. for SB 94) contemplate a variety of ways in which an underground petroleum storage tank owner or operator may satisfy such requirements, the vast majority of such owners and operators in Kansas will not be able to provide the requisite financial assurances, unless a state fund is established and made available to them.

For example, we would respectfully suggest that there are few petroleum marketers or other owners or operators of underground storage tanks having net worths in excess of $10 million, so as to enable them to qualify as self-insurers under the federal regulations. Similarly, we doubt that there are many who will be able to qualify for or afford surety bonds or letters of credit as the means of satisfying the financial responsibility requirements. More disturbing, however, is the fact that the traditional means of satisfying these types of requirements (liability

insurance) does not appear to be either readily available or affordable where it is available.

Before discussing the availability and affordability of pollution liability insurance, I want to suggest to the Committee that neither I nor any other representative of KOMA provides the Committee with the best witness regarding this issue. While we will provide you with information regarding the experiences of KOMA's members and other information derived from credible sources (which will be identified for the Committee), the information we will provide you is, nonetheless, secondhand.

Perhaps testimony of appropriate representatives from the insurance industry can identify for the Committee those insurance companies and risk retention groups which provide for Kansas risks policies of pollution liability insurance that satisfy the federal financial responsibility requirements. These conferees also might identify the amount of premium, the fluctuation of such premium based on the insured's compliance with underwriting standards, eligibility limitations on insureds, the amount of any initial capital contribution required to participate and other similar information.

However, having recognized that there are others who can provide this Committee with firsthand data regarding the availability and affordability of pollution liability insurance, I want to share with the Committee the information which leads KOMA to believe that such insurance is neither generally available, nor affordable where it is available. Assuming the accuracy of that information, we believe it dictates the necessity of a state fund to assist tank owners and operators in complying with financial responsibility requirements.

Several weeks ago, KDHE shared with us a memorandum it had been provided by the EPA. The memorandum was dated December 19, 1988, and although it was originally intended to be an interagency communication, it was subsequently shared with appropriate state agencies. The subject of the memorandum was "Update on the Availability of Commercial Pollution Liability Insurance for Underground Storage Tanks," and it was stamped "PRIORITY" and "IMPORTANT" at the top.

The EPA memorandum indicates that there were, at that time, three major providers of commercial pollution liability insurance: PETROMARK, Federated Mutual and the Pollution Liability Insurance Association (PLIA). In the past, those three providers have combined to cover approximately 25% of the underground storage tanks nationally, and the memorandum also notes that self-insurance covers another 25% of the underground storage tanks, leaving nearly one-half of these tanks either uninsured or covered by other sources. The purpose of the memorandum was to discuss two major changes in that situation.

First, it noted Federated Mutual's reduction in coverage limits and concurrent increases in premiums, which produced a conclusion in the memorandum that "it is likely that" Federated Mutual is pricing itself out of its current market. Second, the memorandum discusses the anticipated dissolution of PLIA, an expectation that eventually has been realized.

The EPA memorandum assessed the impact of these developments, as follows: "The potential effect of losing two insurance programs providing coverage for up to 200,000 USTs will be tremendous. We had based our

phase-in compliance schedule on our best estimate of who can obtain the necessary coverage and when." The memorandum continues by expressing concern that these actions "may have very negative effects on the willingness of other insurance companies to enter this market."

KOMA also has obtained a copy of the December, 1988 monograph of the Technical Affairs Department of the Independent Insurance Agents Association regarding pollution liability insurance. One of the conclusions reached in that paper is that "standard markets can not, on a wholesale basis, include environmental liability coverages within its [sic] standard commercial policy packages. They cite adverse judicial interpretations and limited insurer capacity as reasons to exclude all pollution related coverages from their basic products."

This technical advisory identifies 11 insurance companies, risk retention groups or programs of one or the other which offered environmental impairment liability coverages as of December 1, 1988. Included in that list is PLIA, which subsequently dissolved, as I previously indicated. It also includes three risk retention groups which are styled as "non-accessible" by independent insurance agents, because of the restricted membership requirements. PETROMARK, for example, is limited to petroleum marketers. These three risk retention groups also require an initial capital contribution from their participants, normally equal in amount to one year's premium.

Of the remaining companies, this paper notes some very limited coverages and extremely high premiums. One such company has a minimum premium of $10,000 and also requires $25,000 self-insurance retention covering on-site clean up and third-party liability.

Testimony by a representative of Federated Mutual Insurance Company before the Senate Committee supported these conclusions. Federated Mutual, which currently writes most of the insurance covering underground storage tanks in Kansas, is re-writing its policies to meet the federal financial responsibility requirements. The revised coverage will have a minimum annual premium of $5,000, with premium increases depending on the age and condition of the tanks and the number of tank sites being covered.

Finally, I want to share with the Committee the results of a recent survey conducted by the Petroleum Marketers Assocation of America (PMAA). I am aware that legislative committees can almost "drown" in statistics; however, I believe in this instance that statistics may promote an understanding of the issue. Specifically, some of the statistical results of the PMAA's survey may help the Committee define the problem, not only in terms of the availability and affordability of pollution liability insurance coverage, but also in terms of the potential consequences of the situation addressed by Sub. for SB 94.

The PMAA is a federation of 43 state and regional trade associations, with more than 10,000 independent petroleum marketer members nationwide. Collectively, these marketers sell at wholesale or retail more than 1/2 of the gasoline, 60% of the diesel and 75% of the residential heating oil consumed nationally. Members of the state and regional associations affiliated with PMAA are the primary suppliers of fuel to persons in rural areas throughout the country, and PMAA estimates that the marketers it represents supply more than 60% of the fuel used by American farmers.

In November, 1988, PMAA asked each of its member associations to mail a one-page survey to each of its petroleum marketer members, seeking information on a variety of subjects relating to the advent of federal regulations on underground storage tanks. More than 2,100 marketers (approximately 25% of the marketers represented by PMAA) located in 35 states responded to the survey. Members of KOMA responded in approximtaely the same proportion, with 76 of the 300 distributor members of KOMA completing and returning the survey.

Nationally, nearly 52% of the marketers reported having no pollution liability insurance coverage, with 60% of those indicating that such coverage was unaffordable and another 32% stating that insurance was unavailable. Of the KOMA members responding to the survey, nearly 78% stated that they did not have pollution liability insurance coverage, and of that total, 37% indicated that such insurance was not available to them and nearly 53% of them stated that such insurance was not affordable.

Necessity of State Fund

We trust that the Committee's study will confirm our conclusion that pollution liability insurance coverage is either unavailable for a substantial number of owners and operators of underground petroleum storage tanks in Kansas, or in those instances where such coverage is available, it is not affordable. Notwithstanding, the Committee needs to address the issue of the state's obligation to respond to this situation. Why is it important to the state that owners and operators of underground petroleum storage tanks be able to provide assurance of financial responsibility in compliance with federal requirements? What is the Legislature's responsibility beyond enacting legislation which restates the federal requirements as state law and enables the KDHE to administer and enforce these provisions in Kansas? What are the consequences of not enacting Sub. for SB 94 or other similar legislation establishing a state fund which is available to owners and operators of underground petroleum storage tanks?

The provisions of Sub. for SB 94 provide a partial response to these questions. Section 14 of the bill would establish the Petroleum Storage Tank Release Trust Fund in the state treasury. The fund is to be administered by the Secretary of Health and Environment not only to "assist owners and operators of petroleum storage tanks in providing evidence of financial responsibility for corrective action required by a release from any such tank," but also to permit the Secretary to take emergency action to assure the public health and safety when there is a release or substantial threat of a release from a petroleum storage tank, and to permit corrective action by the Secretary when an owner or operator of any such tank cannot be identified or is unable or unwilling to perform the corrective action. Thus, the state needs to have such fund available to adequately protect the citizens of this state in emergency situations and in situations where the owners and operators cannot or will not take the required corrective action.

The PMAA survey referenced earlier also provides additional information which supports the establishment of a state fund to assist owners and operators in providing evidence of financial responsibility. In

addition to the availability of insurance coverage for petroleum marketers, that survey requested information on the number of service stations owned or operated by marketers which had closed in anticipation of the effective date of the technical standards established by federal regulations or were likely to close as a result of these technical standards or the financial responsibility requirements. The 2,128 marketers who responded to the survey anticipated the closing of 7,097 service stations as a result of either the EPA's technical standards or financial responsibility requirements.

Extrapolating those responses to the entire marketer population represented by PMAA indicates the likelihood that over 26,250 service stations owned by petroleum marketers either have or will soon close as a result of these new regulations. This estimate represents one-half of the total number of stations owned by these marketers.

However, as suggested by PMAA's report, a more critical issue than the number of stations anticipated to close is the location of those stations. The survey shows that more than 86% of the stations to be closed are in population centers of less than 50,000, and over 61% of the stations are in population centers of less than 10,000. Thus, the potential impact of the new federal regulations on rural America will be significant.

The impact in the rural areas of Kansas could be even greater. Based on the responses to the survey from KOMA members, it is likely that over 91% of the stations to be closed will be in population centers of less than 50,000, with nearly 80% located in population centers of less than 10,000.

In addition to the service stations directly owned or operated by the marketers responding to PMAA's survey, these marketers supply petroleum products to 53,395 commercial tanks. Of this number, the responding marketers anticipated the closing of 29,498 of these tanks as a result of the federal regulations. As noted in PMAA's report: "This requires the owners of these tanks to seek other means of refueling their trucks, vans, buses, cabs and other vehicles . . . ." In Kansas, the responses to the survey indicate that 359 of the 655 commercial tanks (approximately 55%) estimated to be supplied by Kansas distributors will close.

The results of PMAA's survey suggest a significant, adverse impact on the rural areas of Kansas. This impact will likely be evidenced by reduced consumer choice and convenience, as well as an increased price paid by consumers in rural areas for motor fuel. In those rural communities which presently have two, three or even four choices for purchasing motor fuels, there likely will be only one in the future, which will probably be located many miles away, and the prices charged at the pump for motor fuels will likely reflect its captive market.

The available service station likely is to be a new station built specifically to capitalize on the closing of the smaller stations. It probably will be operated in conjunction with a convenience store, but it no longer will provide the convenience of automotive repair services in many rural areas. Obtaining those services will require a trip to a larger population center.

These negative consequences in rural areas may produce correspondingly negative impacts on the entire state's economy. Thus, KOMA respectfully suggests that the Kansas Legislature has a responsibility to assist owners

and operators of underground petroleum storage tanks to provide evidence of financial responsibility in compliance with federal requirements. Such assistance is not merely for these owners and operators, but for the entire state. The establishment of a state fund, as contemplated by Sub. for SB 94, will potentially alleviate the negative impact of the federal financial responsibility requirements.

The potential service station and commercial tank closings identified by PMAA's survey were predicated, in part, on the petroleum marketers' inability to comply with federal financial responsibility requirements, due to the unavailability or unaffordability of pollution liability insurance. Thus, assisting owners and operators of underground petroleum storage tanks to comply with federal financial responsibility requirements will counteract, to some extent, the negative impact that will result from implementation of the federal underground storage tank regulations.

In commenting on PMAA's survey, in an article entitled "PMAA Survey: Tank Insurance Will Wipe Out Rural Stations," U.S. Oil Week notes that the result of service station and commercial tank closings, due to the inability of owners and operators to comply with federal requirements, will be less competition, higher consumer prices and poorer service.

Third-Party Liability

Although KOMA supports Sub. for SB 94 to the extent that it will enable its members to provide assurance of financial responsibility for the payment of clean up costs incurred in connection with corrective action, we remain concerned that our members and other owners and operators will still be unable to provide complete assurance of financial responsibility.

The federal regulations require assurance of financial responsibility not only for payment of clean up costs, but also for third-party liability. Sub. for SB 94 does not address the latter requirement, and we have not as yet been able to determine either the availability or affordability of pollution liability insurance providing only third-party liability coverage. It is our understanding that third-party liability represents a relatively small portion of the costs paid by pollution liability insurance carriers in the past, but we are unable to tell the Committee whether such coverage will be available by itself and, if so, the amount of premium required for such coverage.

Method of Funding

Once the question of whether a state fund is needed has been answered affirmatively, the question arises as to the method of funding. Although the technical standards established by the federal regulations which went into effect in September of 1988 apply to underground storage tanks containing products other than petroleum products, the financial responsibility requirements that went into effect in October of 1988 apply only to underground petroleum storage tanks. Thus, there is some logic to funding the Petroleum Storage Tank Release Trust Fund established in Sub. for SB 94 by a fee imposed on petroleum products manufacturered in or imported into this state, particularly since the fee established by the bill can be collected and paid at the same time and in the same manner as the inspection fee established by K.S.A. 55-426, thereby negating any

significant administrative costs.

There are three points that need to be made regarding the funding mechanism provided in Sub. for SB 94. First, the maximum amount of the fund ($5 million) can be generated in a relatively short period of time by a one cent per gallon fee on all petroleum products. Under our current motor fuel tax structure, each penny of tax produces about $15 million annually, and since the environmental assurance fee established by the bill would be imposed on a broader range of petroleum products, the initial fee should not be in place longer than four months, perhaps no longer than three months, in order to generate the maximum amount of the fund.

Second, KDHE and KOMA would not expect the fee to be reimposed for a considerable period of time thereafter (until the balance of the fund reaches $2 million), and the amount to be raised at that time will be $3 million, which should require the fee to be in place for no longer than two months. There is no way to accurately predict when it might be necessary to reimpose the fee. Once the technical standards authorized by Sub. for SB 94 have been promulgated by the KDHE, it is likely that the number of leaking underground petroleum storage tanks discovered will increase, but it also is probable that leaking tanks will be discovered sooner than they might otherwise, which should minimize clean up costs. Thus, we think it reasonable to assume that it will not be necessary to replenish the fund on an annual basis.

Third, I believe KDHE shares our belief that the necessity of a state fund will be of relatively short duration. To that end, Section 24 of the bill provides a sunset provision on July 1, 1994. Even though the legislature may not find it appropriate to abolish the fund at that time, this sunset provision is not merely window dressing. As the Committee has previously been advised, the technical standards and regulations regarding the removal, replacement and retrofitting of underground tanks is phased in by federal regulations over a ten-year period. As old tanks are removed, replaced or retrofitted during this ten-year period, the likelihood of accidental spills, leaks or releases from the new or retrofitted tanks becomes much less likely. This, in turn, should make pollution liability insurance coverage much more available and affordable, thereby eliminating the necessity of the fund, or at least reducing the level of funding required to an amount sufficient only to enable KDHE to respond to emergency situations.

In the short term, though, the information available to us has compelled our conclusion that a state fund is necessary to assist not only petroleum marketers, but all owners and operators of underground petroleum storage tanks in complying with the federal financial responsibility requirements. Therefore, we commend to you the enactment of Sub. for SB 94 as being a very prudent, far-sighted decision, one that will potentially have enduring benefits to the rural areas of the state and thereby benefitting the entire state, as well.

I appreciate very much your attention to this lengthy testimony, and I will be pleased to respond to any questions you might have.

Approved _____
Date

MINUTES OF THE HOUSE-SUB COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Representative Kerry Patrick at
Chairperson

3:30 ~~x.m.~~/p.m. on February 22, 19 89 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Lynne Holt, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Lynne Holt, Legislative Research
Robert Elliott, Chief Engineer, Kansas Corporation Commission
Karen Arnold-Burger, First Assistant City Attorney,
City of Overland Park, Kansas

The meeting was called to order by Subcommittee Chairman Kerry Patrick.

Lynne Holt of the Legislative Research Department provided background information relative to Regulation of Natural Gas Pipeline Safety. Staff commented that the information in her overview had come primarily from the Kansas Corporation Commission (KCC). In the section dealing with federal regulations, it was emphasized that states are authorized to adopt additional or more stringent safety standards for intrastate pipeline transportation if these standards are compatible with the federal minimum standards. Temporary rules and regulations adopted by the KCC in October, 1988 incorporating minimum federal standards were addressed. Also discussed were proposed, more stringent safety regulations (on file in the Legislative Research Department). Differences between the minimum standards and the more severe restrictions proposed by the KCC were noted. Budget and staff responsibilities were included in the briefing. Attachment 1.

Staff responded to questions of the committee.

Karen Arnold-Burger represented the City of Overland Park, Kansas. She discussed two natural gas explosions in that city in December, 1987 and September, 1988 which had prompted their delving into the area of gas pipeline safety. She related their observations in this area and their encounters with the Kansas Corporation Commission. The December, 1987 explosion in Overland Park and another in September, 1987 in Independence, Kansas both were on Union Gas lines. The September, 1988 explosion in Overland Park was on a KPL line. Ms. Arnold-Burger listed several problems found and recommendations made as a result of Overland Park's investigation of natural gas pipeline safety. Attachment 2. Included with her written testimony were copies of Mayor Ed Eilert's testimony at both the technical and public hearings in Overland Park. Attachments 2a and 2b.

Discussion followed.

Robert Elliott appeared on behalf of the Kansas Corporation Commission. He listed legislation proposed for improving safety of the natural gas system. Attachment 3.

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During discussion, Mr. Elliott commented that one more inspector would raise Kansas above the federal requirement. He felt that more stringent regulations, rather than more inspectors, would be the best way to handle the situation. He commented that in Kansas as well as other states, the emphasis is on minimum standards of safety and enforcing those when violations occur. Further discussion related to training of classified inspectors, the safety factor in rate increase applications and the complexity of the natural gas system.

Chairman Patrick announced that the Special Subcommittee on Natural Gas Pipeline Safety would meet again at 3:30 p.m. March 1, 1989 in Room 526-S.

The meeting was adjourned at 4:40 p.m.

Approved _____
Date

MINUTES OF THE HOUSE SUB COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Representative Kerry Patrick at
Chairperson

3:30 ~~a~~/p.m. on March 1, 1989 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Raney Gilliland, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Betty, Ellison, Committee Secretary

Conferees appearing before the committee:

William E. Brown, Executive Vice President, Chief Operating Officer, KPL Gas Service
Richard Kready, Director, Governmental Affairs, KPL Gas Service
Louis Stroup, Jr., Executive Director, Kansas Municipal Utilities, Inc.

The second meeting of the Subcommittee on Natural Gas Pipeline Safety was called to order by Chairman Kerry Patrick. Attention was called to the minutes of February 22 which had been distributed.

William E. Brown of KPL Gas Service made a brief statement on behalf of his company in which he commented that their first concern was to keep their natural gas delivery system safe for all customers. Inspection of bare steel customer-owned service lines in Kansas had been completed and leaks had been repaired when found. All other service lines would soon be finished. In the interest of safety, KPL Gas Service would welcome any inspections and oversights deemed necessary by the Legislature or the Kansas Corporation Commission (KCC). It was suggested that the Legislature could help Kansas utilities by enacting a "One-call" bill requiring contractors to call for underground utility locations before they dig. It was believed that such legislation could help reduce accidents that involve buried electric and gas lines.

Richard Kready presented Mr. Brown's testimony which included KPL Gas Service's stand on proposed changes in state law. Attachment 1.

The following discussion concerned types of tests for gas leaks, equipment and training required for testing, as well as plastic vs. steel lines and causes of deterioration. Mr. Brown also explained the difference between service lines and yard lines.

Louis Stroup, Jr. testified on behalf of Kansas Municipal Utilities, Inc. He spoke in support of the new gas pipeline safety rules adopted by the KCC. He explained the operator's responsibility relative to installation, testing and inspection of gas lines. Mr. Stroup described some options relative to training building inspectors as gas inspectors, noting that he felt it would be much more practical to enlarge the current KCC inspection program by adding additional inspectors. Attachment 2.

Further discussion followed.

At the conclusion of the hearing, Chairman Patrick announced that House Bills 2456, 2454 and 2457 would be touching a committee exempt from the March 3 deadline for House Bills to be reported out of committee. Another subcommittee meeting would be scheduled at which time Union Gas, Peoples Gas and KN Energy would be invited to testify, as well as anyone from the public who might desire to do so.

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,

room 526-S Statehouse, at 3:30 ~~a.m.~~/p.m. on March 1, 1989

On behalf of the Chairman of the Energy and Natural Resources Committee and this subcommittee, Chairman Patrick announced that they would be seeking two major changes in Kansas law. Since it is not clear who has the legal responsibility to maintain gas lines from the main to individual homes, an amendment would be drafted to House Bill 2454 or House Bill 2456 that would mandate that all utilities serving gas residential customers would be financially responsible for maintaining all of those yard lines. Mr. Caro of the KCC staff had been requested to meet with Mary Torrence of the Revisor's Office to draft suitable legislation. Over time, as yard lines need to be repaired, the ratepayers would in effect be paying to have their own yard lines replaced. It was believed that this would be the only equitable solution.

Ms. Arnold-Burger from the City of Overland Park, Mr. Caro, Ms. Torrence and someone from the City of Wichita would draft an amendment to one of these bills requiring that city inspectors be trained by the KCC so that when a new home is built, a city building inspector would examine the new gas pipeline going into the home to see that it met all state and federal standards. This was believed to be the most cost-efficient means of solving this problem.

These two steps had been discussed by the subcommittee members and would be recommended to the standing committee. It was noted that the Chairman of the standing committee was supportive of these changes. Another point noted was that presently, electric utilities are liable for the electric line from the pole to the house. These proposed changes would make gas utilities liable to the house in the same manner as electric companies.

A comment was made by Representative Grotewiel that these are the committee's thoughts at the moment, but a public hearing would allow input at some point.

The meeting was adjourned at 4:30 p.m.

Approved _____
Date

MINUTES OF THE HOUSE SUBCOMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Representative Kerry Patrick at
Chairperson

3:30 ~~a.m.~~/p.m. on March 15, 1989 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Raney Gilliland, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

William H. Reeder, Union Gas System, Inc.
William E. Asbury, K N Energy, Inc.
Charles Butterfield, Peoples Natural Gas Company

The third meeting of the Subcommittee on Natural Gas Pipeline Safety was called to order by Chairman Kerry Patrick.

William Reeder, Executive Vice President and Chief Operation Officer of Union Gas System, Inc., explained the policy of the company relative to safety in the past, as well as plans for the future. He also discussed possible causes of the explosions which occurred in Independence, Kansas and Kensington Manor in Overland Park, Kansas. Relative to the new Kansas Corporation Commission regulations, Mr. Reeder said that the company would conduct leak surveys of company mains, company service lines and customer yard lines in all areas on an annual basis. They would repair or replace all customer yard lines determined to be leaking as the result of the leak survey, shut-in tests, or unusual customer consumption pattern. He displayed a chart illustrating the difference between "company service lines" and "customer yard lines."

Mr. Reeder commented that part of the Union Gas agreement with the Kansas Corporation Commission (KCC) was to electrically survey and "hot spot" protect, where required, all 900 miles of bare steel pipe which exist in their system. Another chart was shown, outlining the amount of capital improvements which had been made in the past four years, and showing that $18.5 million had been expended in gross capital expenditures over that period.

It was noted that Union Gas supported the "one-call" system as proposed in House Bill 2453. They also had no objection to House Bills 2454, 2456 and 2457 as proposed by the KCC. Attached to Mr. Reeder's written testimony, Attachment 1, were an illustration of customer yard lines and company service lines, 1a and a paper showing gross capital additions, 1b.

During discussion, Mr. Reeder answered questions regarding implementation of the "one-call" system, percentage of meters located at the house or property line and where leakage is most commonly found. He also explained the difference between plastic, bare steel and wrapped steel pipe. In response to a question, Mr. Reeder said it was safer to have a meter situated at the customer property line, rather than at the house, because a regulator which reduces gas pressure would be located on a meter at the property line.

The details of the "Agreement and Plan" entered into by Union Gas and the KCC on September 16, 1988 were discussed. This dealt with the 32 alleged violations, requirements to rectify those problems and a time frame to complete the work. The $100,000 fine set at that time was

increased to $200,000 on February 16, 1989 when the KCC issued another order and moved the dates for completion of improvements up by one year. The $200,000 fine can be increased to as much as $400,000 if the target dates for compliance are not met. It was determined that the net effect of repairing service lines would probably be less than $7.50 per customer per year.

Charles Butterfield , Vice President of the Nebraska, Colorado and Kansas operations for Peoples Natural Gas Company, noted that their leak survey, cathodic protection and other practices exceed DOT requirements, but these requirements apply only to company-owned facilities, not to customer-owned yard lines. The biggest issue to be addressed is the customer-owned yard line. He believed that the best solution long-term would be for the company to work with the KCC on regulations where the company would have a replacement program for customer-owned yard lines. Their estimate for that would average $400 per service line. Mr. Butterfield described a four to five year plan which Peoples had proposed to the Commission and would be in the range of $3 million per year for the number they estimate would have to be replaced. This would be about $77 per year, or $6.50 per month, for the individual customer. He felt that this proposal to the KCC needed to be coupled with some regulatory process change in Kansas which would make it possible to recoup the return of investments at a more rapid rate. Attachment 2.

Mr. Butterfield answered questions relative to replacement of all steel lines, but did not have a figure for the annual cost. At the request of the Chairman, he agreed to provide for the committee information regarding how many customer yard lines are required to be replaced annually and his best estimate as to the cost of those yard lines.

William E. Asbury, Vice President, Gas Service of K N Energy, Inc., discussed K N's past safety efforts and recommendations for future changes in state law. He commented that K N also believed it was safer to have the meter placed at the property line. In meetings with the KCC staff in 1986, K N had agreed to accept responsibility for operation and maintenance of yard lines, but not for ownership. He suggested that consideration be given to track costs of these additional safety measures specifically on an annual basis, and that all operators be allowed to recover these costs through annual surcharges to Kansas customers. Attachment 3.

Brief discussion followed.

Staff explained the amendments which had been requested by the Subcommittee. The first one would provide that the operator would have full responsibility for maintenance of the yard line regardless of the ownership of it. This change in the law would mean that the operator would now be liable for maintaining the customer yard line in the proper manner from the gas meter to the wall of the customer's house. Attachment 4.

The second amendment would provide for the Corporation Commission to contract with cities in this state to train building inspectors of the cities to inspect new installations of gas pipeline between a main and a customer residence. Also that the city could agree that those building inspectors would inspect those pipelines on behalf of the Corporation Commission and report back the results of the inspections. The Chairman explained that this would not obligate any city or the Corporation Commission to do this--it would be a voluntary agreement between the city and the state.

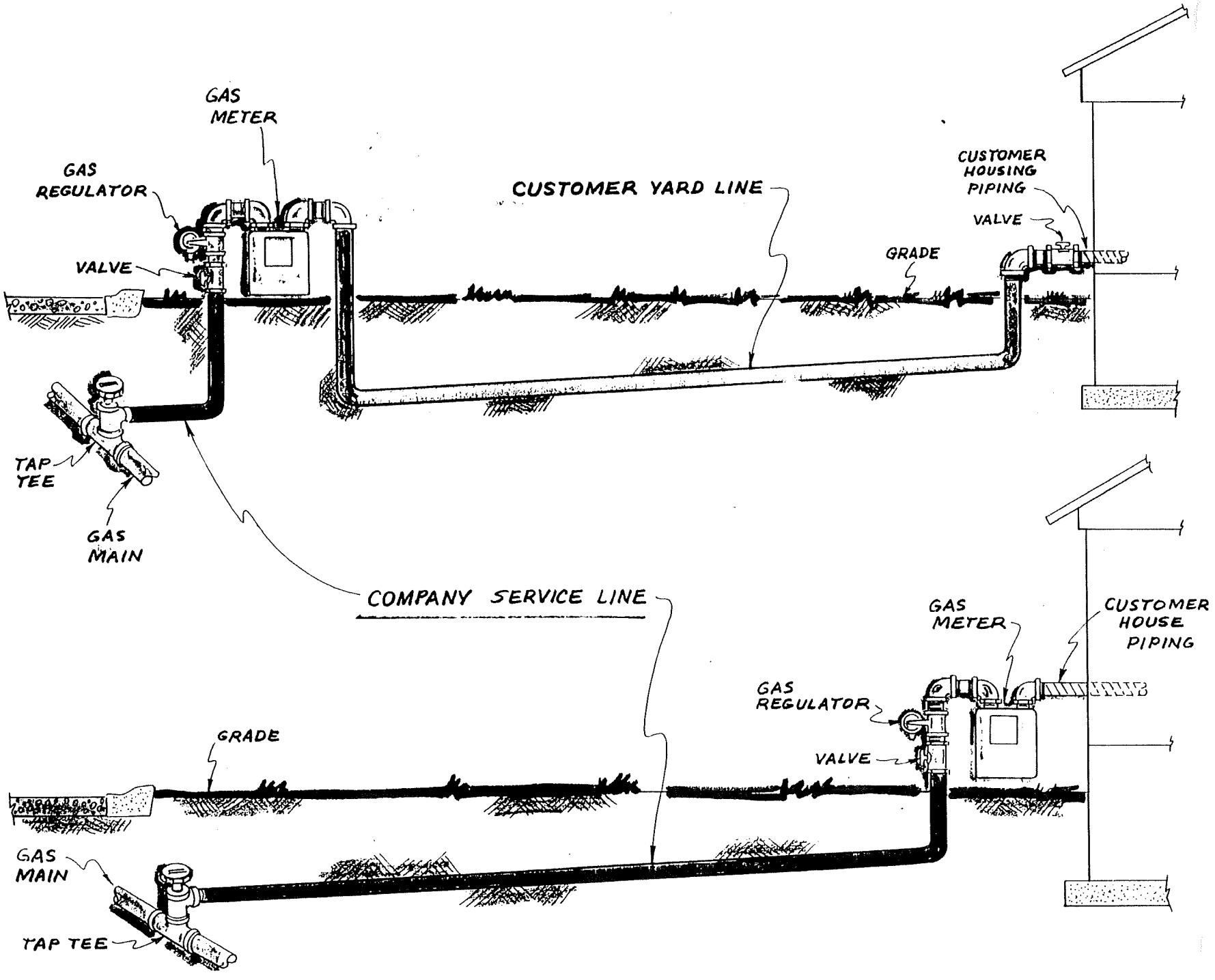
It was noted that this amendment could be expanded to include a county in rural areas which might not have building inspectors. There was a consensus to change "city" to "city or county" and to change "building

inspectors" to "building inspectors or someone designated by the city or county who has had the training."

Chairman Patrick announced that if there was no objection, he would submit these amendments to House Bills 2454 and 2456 in addition to the Subcommittee minutes to serve as a report and recommendation to the Standing Committee on Energy and Natural Resources.

Attention was called to the minutes of March 1 which had been distributed. There were no objections to the minutes of February 22, and they stood approved.

The meeting was adjourned at 5:00 p.m.



H Energy and NR
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Attachment 7

SUBCOMMITTEE ON NATURAL GAS PIPELINE SAFETY

PROPOSED AMENDMENT TO HB 2454

New Sec. 2. (a) As used in this section, terms have the meanings provided by 49 C.F.R. 192.3, as in effect on the effective date of this act.

(b) A public utility, municipal corporation or quasi-municipal corporation which renders gas utility service shall have full responsibility for maintenance of all pipeline between a main and the building wall of a residential property, regardless of the ownership of such pipeline.

H Energy and NR
3-21-89
Attachment 8

SUBCOMMITTEE ON NATURAL GAS PIPELINE SAFETY

PROPOSED AMENDMENT TO HB 2456

Sec. 2. (a) As used in this section, terms have the meanings provided by 49 C.F.R. 192.3, as in effect on the effective date of this act.

(b) The state corporation commission may enter into a contract with any city or county in this state whereby:

(1) The commission agrees to train building inspectors or other persons designated by such city or county to inspect new installations of natural gas pipeline between a main and residential property; and

(2) the city or county agrees that such building inspectors or other designated persons will inspect such new installations of pipeline on behalf of the commission and report the results of such inspections to the commission.

H Energy and NR
3-21-89
Attachment 9