

Approved April 8, 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 23, 1989 in room 526-S of the Capitol.

All members were present except:

Representative Fry (excused)

Committee staff present:

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

Conferees appearing before the committee:

Tom Stiles, Kansas Water Office  
Wayland Anderson, Assistant Chief Engineer, Division of Water  
Resources, Kansas State Board of Agriculture  
Charlene Stinard, Kansas Natural Resource Council  
Kansas Chapter of the Sierra Club  
Kansas Audubon Council  
Spencer Tomb, Conservation Vice President, Kansas Wildlife Federation  
Cynthia K. Lutz Kelly, Deputy General Counsel  
Kansas Association of School Boards  
Joe Lieber, Executive Vice President, Kansas Cooperative Council  
James S. Maag, Vice President, Kansas Bankers Association  
W. Robert Alderson, Jr., Attorney  
Terry Leatherman, Executive Director, Kansas Industrial Council

The meeting was called to order and attention called to the minutes of  
March 20, 1989 which had been distributed.

Senate Bill 266 - Minimum desired streamflows.

Tom Stiles represented the Kansas Water Office with testimony in support  
of this bill. He gave a brief overview of the purpose and development  
of streamflows in Kansas, noting that streamflows for five additional  
streams are recommended in Senate Bill 266. Included with Mr. Stiles'  
written testimony, Attachment 1, were a map showing location of minimum  
desirable streamflows, 1a, and a chart showing flows in the Little Blue  
River from January to September, 1988, 1b.

Wayland Anderson appeared on behalf of the Division of Water Resources,  
State Board of Agriculture. Mr. Anderson advised that the proposed  
minimum desirable streamflows were developed through a joint effort of  
the Division of Water Resources and the Kansas Water Office. He also  
explained the effect of these proposed minimum desirable streamflows on  
water rights. Attachment 2.

In addition to the Kansas Natural Resource Council, Charlene Stinard  
represented the Kansas Chapter of the Sierra Club and the Kansas Audubon  
Council with testimony favorable to Senate Bill 266. These organizations  
considered minimum streamflow standards one of the highest achievements  
of the water planning process. Attachment 3.

Spencer Tomb presented testimony in support of Senate Bill 266 on behalf  
of the Kansas Wildlife Federation. He noted that the establishment of  
minimum desirable streamflows would be the first step in stream rehabili-  
tation. A copy of their Resolution on this issue was attached to Mr.  
Tomb's testimony. Attachments 4 and 4a.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,

room 526-S, Statehouse, at 3:30 ~~xxx~~p.m. on March 23, 1989

Substitute for Senate Bill 94 - Kansas storage tank act. (Hearing continued from March 21, 1989.)

Charlene Stinard again appeared on behalf of the Kansas Natural Resource Council, the Kansas Chapter of the Sierra Club and the Kansas Audubon Council. Her testimony supported Sub. for Senate Bill 94 because of concern of the three organizations to preserve and protect the quality of our water resources. They believe that it costs less to prevent pollution than to clean up afterward, and that a regulatory system could prevent costly and dangerous groundwater contamination. Attached to her written testimony was information relative to local UST initiatives. Attachments 5 and 5a.

Cynthia Kelly spoke on behalf of the Kansas Association of School Boards, supporting Sub. for Senate Bill 94. It was believed that the creation of the petroleum storage tank release trust fund would assist boards of education in meeting the federal requirement of "financial responsibility" while protecting the natural resources of the State of Kansas. Attachment 6.

Joe Lieber, representing the Kansas Cooperative Council, testified in favor of Sub. for Senate Bill 94. His organization believed that Kansans would be better served if a state agency did the regulating, rather than EPA. They also felt that establishment of a trust fund would enable many small owners to remain in business. Attachment 7.

James Maag testified on behalf of the Kansas Bankers Association, in support of Sub. for Senate Bill 94. They believed that administration of the federal law and regulations should be vested with the Kansas Department of Health and Environment, rather than with the EPA. Mr. Maag emphasized that the creation of a state trust fund is essential if gasoline services are to be maintained in rural Kansas. Attachment 8.

Bob Alderson was recognized for questions because his time was cut short in the hearing of March 21. He said that approximately 23 percent of the oil marketers in Kansas currently have insurance coverage for pollution. He did not know the average premium, but would obtain this information for the committee. He also would attempt to determine the percentage of total tanks being covered in that 23 percent. Mr. Alderson told the committee that a variety of approaches have been taken by other states, including user fees, tank fees and assessments similar to the 1¢ gas tax. Further discussion related to above ground tanks.

Terry Leatherman testified on behalf of the Kansas Chamber of Commerce and Industry. He advised that the KCCI supported the concept of Sub. for Senate Bill 94, but requested consideration of two amendments to the bill. Attachment 9.

Discussion concerned above ground storage tanks.

Copies of additional information requested from Dennis Murphey of the Kansas Department of Health and Environment at previous hearings were provided for all members of the committee. This included a corrected copy of potential cost scenarios for leaking underground tank corrective action costs. Attachment 10. Also included was a copy of Sub. for Senate Bill 94 with highlights showing the specific elements of the bill which are essential for U.S. Environmental Protection Agency delegation of the underground tank regulatory program to the State of Kansas. Attachment 10a.

Returning to the subcommittee report on Natural Gas Pipeline Safety, Representative Patrick again summarized the proposed amendment to House Bill 2454. During the following discussion, Representative Holmes

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,

room 526-S Statehouse, at 3:30 ~~xxm~~/p.m. on March 23, 1989

suggested that the language be made more definitive by adding in subsection (b), line 4, following "gas main", "to a valve located at the outside wall". This amendment was accepted by Representative Patrick and Representative Grotewiel who seconded the motion on the original amendment. Following discussion concerning higher pressure being closer to the house, it was decided that the wording was clearer in the original amendment. Representative Patrick restated his motion on the original proposed amendment to House Bill 2454. Representative Grotewiel accepted. Representative Patrick moved his amendment as originally proposed on the amendment sheet which was distributed. (Attachment 11.) A vote was taken, division was called for. The motion passed on a count of 12 to 5.

Representative Lacey expressed concern relative to the small, municipally owned gas services. He proposed an amendment that third class cities and smaller, which are generally 2,000 people or less, be responsible for the inspections, but not be required to perform the maintenance work themselves. Representative Lucas seconded and the motion passed.

Discussion regarding the population of small cities followed. It was decided to include unincorporated cities in the above amendment. The Chair asked if there was any objection to the motion just passed and there was none.

Representative Patrick, seconded by Representative Lucas, moved that House Bill 2454 as amended be recommended favorably for passage. The motion passed.

House Bill 2456 - Corporation commission investigation of natural gas accidents and fires.

Representative Mollenkamp presented a proposed amendment relating to possession of property which constitutes evidence of the cause or origin of such accident or fire. Attachment 12. He felt that the serving utility should take possession of and retain such property and the property should remain available to the KCC in any continuing investigation of any accident. Representative Mollenkamp, seconded by Representative Patrick, moved this amendment to House Bill 2456. During discussion, Representative Patrick advised that this language was suggested in testimony by one of the utility companies in order to protect the "chain of evidence", to make it clear that the KCC has access to such evidence as a matter of statutory right. A vote was taken and the motion passed.

Representative Patrick presented another proposed amendment to House Bill 2456. Attachment 13. He explained that currently under federal law, the state designates an agency as having the authority and jurisdiction to inspect all gas pipelines. This amendment would give the KCC the authority to train city building inspectors to inspect gas lines coming into new residential property. The KCC has only five inspectors for the whole state. One additional inspector has been requested, but it is not clear if that will be granted. Representative Patrick, seconded by Representative Lucas, moved this amendment to House Bill 2456. The motion passed.

Representative Patrick, seconded by Representative Lucas, moved that House Bill 2456 as amended be reported favorably for passage. The motion passed.

House Bill 2457 - Gas pipeline safety; penalties for violations.

Representative Patrick told the committee that as a result of the Union Gas situation, the KCC recommended that the minimum fine be raised from \$1,000 to \$10,000 and the maximum fine be raised to \$500,000. Representative Patrick, seconded by Representative Grotewiel, moved that House Bill 2457 be reported favorably for passage.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
room 526-S Statehouse, at 3:30 ~~xxx~~ p.m. on March 23, 1989

Representative Rezac, seconded by Representative Roenbaugh, moved an amendment on line 28 to lower the maximum fine to \$250,000. A vote was taken and division was called for. The motion failed. Representative Patrick, seconded by Representative Lucas, made a motion to recommend House Bill 2457 favorably for passage. The motion carried.

Senate Bill 121 - Civil enforcement of Kansas groundwater exploration and protection act.

A balloon amendment which addressed concerns relative to existing sand points primarily on residential property within the State of Kansas was explained by the staff revisor. Attachment 14. Representative Freeman, seconded by Representative Barr, made a motion to adopt the amendment. The motion passed. Representative Freeman, seconded by Representative Shore, moved that Senate Bill 121 as amended be reported favorably. The motion passed.

Senate Bill 84 - Protection of riparian and wetland areas.

The Chairman advised that this was a clean-up bill which was passed in 1987 and was inadvertently removed in 1988 when it was redrafted. Representative Freeman, seconded by Representative Sughrue, moved that this bill be recommended favorably. The motion passed.

Senate Bill 266 - Minimum desired streamflows.

Representative Barr, seconded by Representative Lacey, moved that Senate Bill 266 be reported favorably for passage. The motion carried. Representative Guldner voted no.

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

The next meeting of the House Energy and Natural Resources Committee will be held at 3:30 p.m. on March 27, 1989 in Room 526-S.

Date: March 23, 1989

## GUEST REGISTER

## HOUSE

## COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Dick Compton	MINWEST ENERGY, INC.	HAYS, KS.	(913) 625-3437
<del>Robert G. Jones</del>	<del>Mid East Oil Co</del>	<del>Ottawa</del>	<del>913 389-5266</del>
TREVA POTTER	PEOPLES NAT. GAS	TOPEKA	235-5996
Anne Smith	Hain + Ebert	Topeka	273-1441
Jim Ludwig	KPL GAS SERVICE	TOPEKA	296-1978
Rick Kready	" " "	"	296-6474
ED SCHAUB	COSTAL Corp	"	233-4512
Louie Stroup	KANSAS MUNICIPAL UTILITIES	McPherson	316 241-1423
Joe Lieber	Ks Cooperative Council	Topeka	913 233-4080
Tom Tunwell	KANSAS GRAIN & FEED ASSN	TOPEKA	234-0460
JEVING CHRISTSON	ENRON CORP.	TOPEKA	233-0555
Jim Brink	College Hill P/B	Topeka	235-6201
Cindy Kelly	KASB	Topeka	273-3600
Pat Casey	KDHE	"	296-1330
Yvonne Anderson	KDHE	Topeka, Kansas	296-1330
Donna Plummer	KDHE	Topeka, Ks	296-5523
Wennis Anderson	KOMA	Topeka	233-9655
Terry Leatherman	KCCI	Topeka	357-6321
Don Schmecke	KIOGA	Topeka	273-1501
Charles Nicolay	KOMA	Topeka	233-9655
Dennis Murphy	KDHE	Topeka	296-1592
Jim Meaney	KBA	"	232-3444



Testimony of the Kansas Water Office  
to the  
House Energy and Natural Resources Committee  
Re: S.B. 266  
Minimum Desirable Streamflows  
March 23, 1989

History

Minimum desirable streamflows are identified in the State Water Plan to preserve, maintain or enhance baseflows for instream water users relative to water quality, fish, wildlife, aquatic life, recreation, general aesthetics and domestic uses and for the protection of existing water rights. The 1980 Legislature passed a law to protect streams from depletion by new water rights. The 1983 Legislature directed the Kansas Water Authority and the Kansas Water Office to develop procedures for establishing and administering minimum streamflows. To that end, the Kansas Water Authority and the Kansas Water Office have worked to establish minimum streamflows on streams in the state. Streamflow standards have been set by the Legislature in 1984, 1985 and 1987 on a total of 18 streams. Streamflows for five additional streams are recommended in Senate Bill 266. Figure 1 shows the location of existing and proposed streams under the minimum desirable streamflow program. Note that the program is associated with streams in the eastern two-thirds of the state.

In 1984, the Legislature passed a law which effectively gave any minimum streamflow a priority date of April 12, 1984, provided the streamflow was enacted prior to July 1, 1990. Water rights with priority dates on or before April 12, 1984, retained their

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seniority over minimum streamflows. As we approach the end of the "window of establishment" in 1990, the minimum streamflow program is undergoing a shift in emphasis from one of establishment to one of operation and administration. Barring extraordinary conditions, the proposed streams in Senate Bill 266 represent the last set of minimum streamflows to be presented to the Legislature.

#### Purpose and Limitations of Minimum Streamflows

The purpose of the minimum streamflow program is to protect the previously stated instream water uses from over-appropriation. The program is administered within the framework of the Water Appropriation Act. K.S.A. 82a-703a authorizes the Chief Engineer of the Division of Water Resources to withhold minimum streamflows from appropriation. Since the appropriation of water is done on a time-based priority system, only those water rights applied for after April 12, 1984, can be administered under the minimum streamflow program. Additionally, domestic water rights are not subject to administration.

In establishing minimum streamflows, the state has recognized such a program only works when there is water to protect under normal conditions. Thus, there has been no effort to propose streamflow standards on western Kansas streams which only flow with the occasional rain. Likewise, minimum streamflow are established at baseflow levels that ensure a high likelihood of occurrence. Establishing streamflow levels at values that have been historically met less than half the time is infeasible. The state



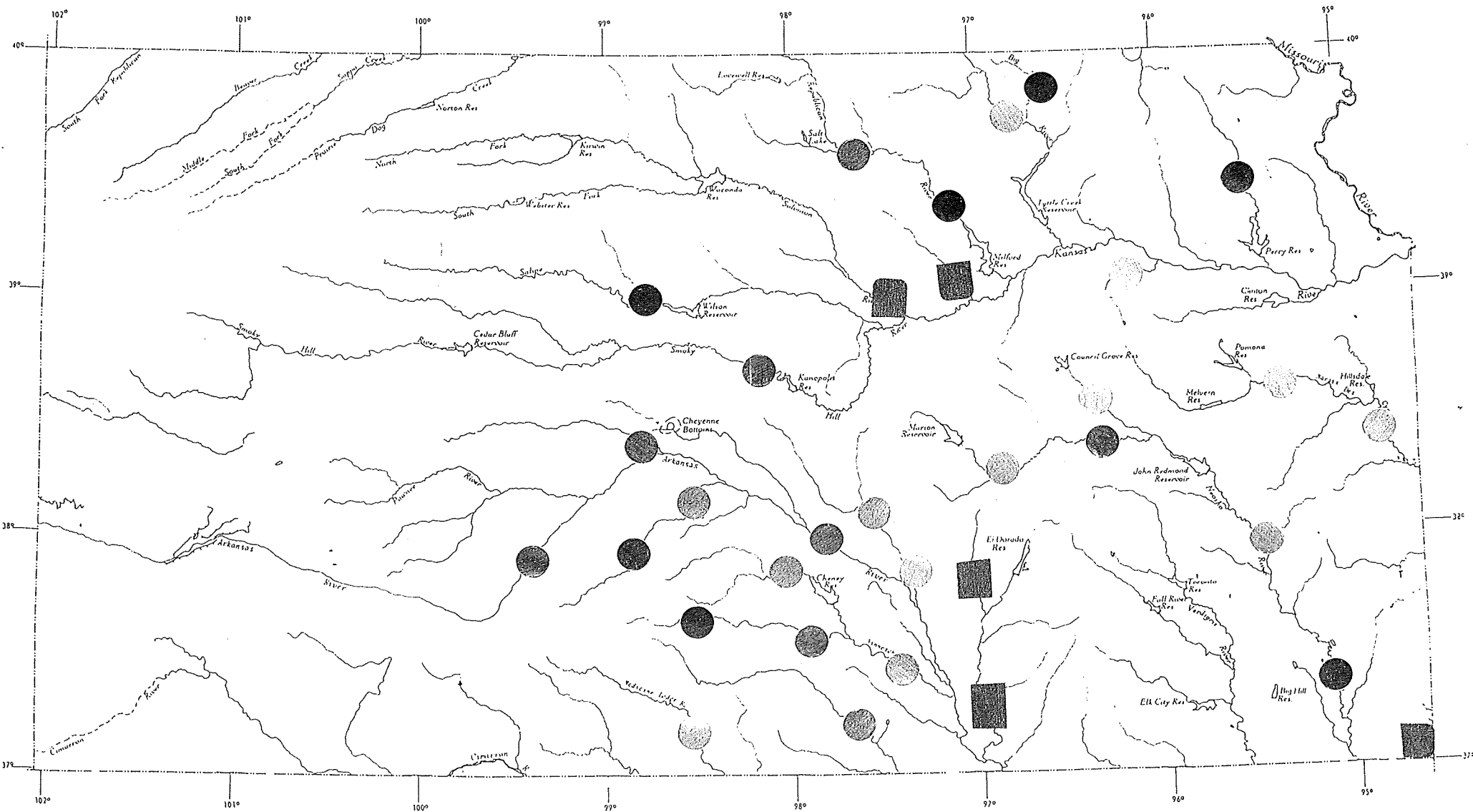
also recognizes the limitation of trying to maintain minimum streamflows in the face of drought. The goal of minimum streamflows is not to keep streams flowing during drought. Their purpose is to prevent streams from depletion through over-use. Figure 2 shows the relation of minimum streamflows to normal and drought flows on the Little Blue River in 1988.

#### Recommended Flows for 1989

Senate Bill 266 lists the streamflow standards for five additional streams to be added to K.S.A. 82a-703c. These streams include the Walnut, Whitewater, Spring and Solomon rivers and Chapman Creek. These streams exhibit aquatic characteristics and flow reliability which make minimum streamflows a viable management option. The proposed flows have been met historically 80-90 percent of the time, they are baseflows. These flows have been developed through the interagency process which has produced minimum streamflow recommendations since 1984 and are consistent with the methodology of establishing minimum desirable streamflows. This includes public review and comment in the basins of concern. The Kansas Water Office supports approval of these flows. We also propose to present to the 1990 Legislature, final evaluations and recommendations on the 23 streams based on field investigations and data from 1984 to 1989.

Thank you for your time.

FIGURE 1. LOCATION OF MINIMUM DESIRABLE STREAMFLOWS

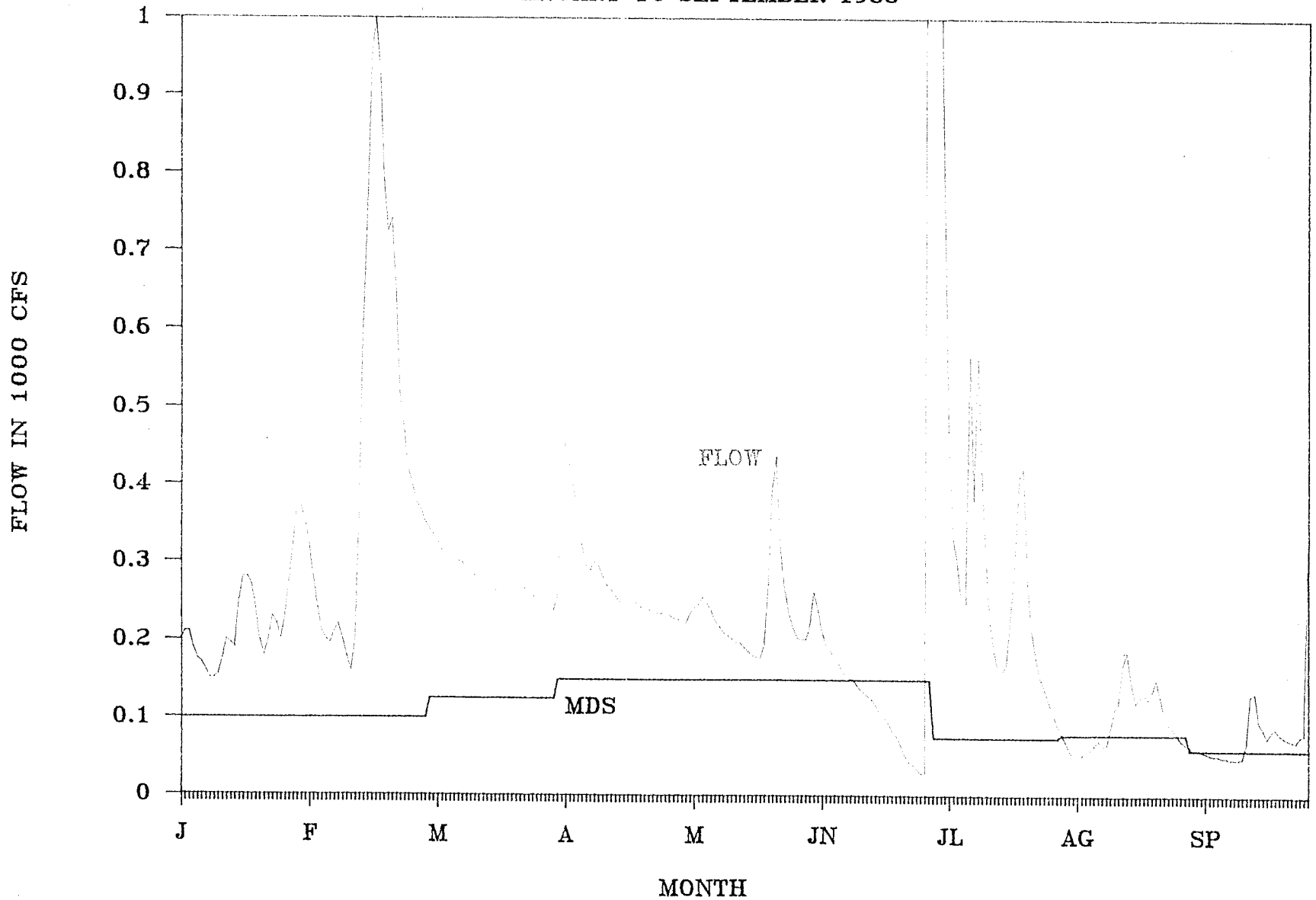


21

● = Existing Standards      ■ = Proposed Standards

# FLOWS IN THE LITTLE BLUE RIVER

JANUARY TO SEPTEMBER 1988



16

STATEMENT OF WAYLAND ANDERSON  
ASSISTANT CHIEF ENGINEER  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE  
BEFORE THE  
HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES  
ON SENATE BILL NO. 266

March 16, 1989

Chairman Spaniol and Members of the Committee, thank you for this opportunity to appear and testify about Senate Bill No. 266 which would establish minimum desirable streamflows for five new rivers and streams. If the legislature passes Senate Bill No. 266 establishing minimum streamflows on these five new streams (the Walnut River, White Water River, Spring River, Chapman Creek and Solomon River), it will be the responsibility of the Chief Engineer to withhold from appropriation that amount of water deemed necessary to establish and maintain, for these water courses, the desired minimum streamflow. In other words, our office would be required to determine whether or not there was sufficient water available for appropriation in excess of the amount of water deemed necessary to satisfy the existing senior water rights and the minimum desirable streamflow requirements. In those cases where additional water is not available, additional permits for the appropriation of water would not be granted. If water is available a significant portion of the time, new appropriations would be granted, however, these appropriation rights would be junior to the minimum desirable streamflow requirements.

These proposed minimum desirable streamflows would not affect the holders of existing senior water rights with a priority date on or before April 12, 1984, provided they are operating in compliance with the conditions of their

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permits during times of streamflow administration.

Any junior appropriation (i.e., one with an application filed after April 12, 1984) would be subject to regulation during periods of low flow and would not be allowed to divert water if such diversion would cause the minimum desirable streamflow to not be satisfied.

In some cases, groundwater withdrawals from wells in the alluvial aquifer along streams can significantly affect the streamflow. Therefore, it will be necessary for us to analyze the effect of new wells on these streamflow requirements in order to determine whether new wells should be allowed, and if so, at what distance to the stream. Groundwater - surface water interrelationships are normally quite complex and vary from one stream system to another. Therefore, it is necessary for the Chief Engineer to have stream specific policies and procedures concerning the approval of wells.

In essence, the minimum desirable streamflow program does not change the way the water rights are administered, except to leave a certain portion of streamflow, when available, in the stream for in-stream flow purposes, rather than to allow that water to be appropriated for new consumptive uses. In addition to the environmental and water quality benefits associated with this in-stream flow, it should make it easier to protect existing water rights, such as domestic rights for livestock watering. Said another way, once a stream has been dried up or severely depleted, even regulation of junior upstream water users may still not make it possible to provide an adequate supply of water for senior downstream users. However, if we can maintain some limited amount of water in the stream, this problem can normally be overcome.

The Division of Water Resources, Kansas State Board of Agriculture, has had an opportunity to provide input into the development of the proposed minimum desirable streamflows through an interagency technical committee working closely with the Kansas Water Office. The proposal for minimum desirable streamflow standards on the five new stream reaches contained in Senate Bill No. 266 is the result of extensive discussions between the water related agencies and has resulted in the best consensus of opinion between those agencies, taking into consideration extensive public input at the public meeting and hearings, as to what those minimum desirable streamflows should be. The Division is satisfied with the process that took place in order to set those minimum desirable streamflow values which are being brought before the legislature for approval this year.

Thank you very much. I would be happy to answer any questions the Committee might have.

# Kansas Natural Resource Council

Testimony before the House Energy & Natural Resources Committee  
SB 266: minimum streamflow

Charlene A. Stinard, Kansas Natural Resource Council

March 15, 1989

My name is Charlene Stinard, and I represent the Kansas Natural Resource Council, a private, non-profit organization whose members advocate sustainable resource policies and practices. Our organization has supported minimum streamflow legislation since the first rivers were designated in 1984. I appear today also on behalf of the Kansas Chapter of the Sierra Club and the Kansas Audubon Council.

The protection of minimum streamflows recognizes the inherent value of our rivers, apart from their capacity to meet our consumptive needs. Historically, the legacy of rivers and streams was reflected in many Indian treaties, which pledged lands "for as long as rivers flow and the grasses grow." These two conditions were understood as essential to the human spirit; without them, there was no reason to remain on dying land.

Water in Kansas is a public trust, and preserving our rivers and streams recognizes their inherent value -- their value for wildlife, fish, recreation, and aesthetics. The condition of our rivers and streams is a prime indicator of our environment's ability to support our lives and our economic activities. Policies hostile to our rivers and streams are ultimately hostile to our agriculture, our economy, and our communities. When we compromise the integrity of our water, we jeopardize our own.

Setting minimum streamflow standards ranks as one of the highest achievements of the water planning process. We urge your support of SB 266.



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Attachment 3

# *Kansas Wildlife Federation, Inc.*

200 S.W. 30th, Suite 101 • P.O. Box 5715 • Topeka, KS 66605

March 16, 1989

Kansas Wildlife Federation Presentation on Senate Bill 266  
By Spencer Tomb, Vice President, KWF

Mister Chairman, members of the Committee, my name is Spencer Tomb. I am from Manhattan and currently serve as Conservation Vice President of the Kansas Wildlife Federation.

The Kansas Wildlife Federation is a not-for profit, wildlife and natural resource conservation and education organization. Our 8000 volunteer members join with the 10,000 Kansas members of our affiliate organization, The National Wildlife Federation to support the sound use, management and enjoyment of our vital air, water, soil and wildlife resources.

The Kansas Wildlife Federation has followed most of the public meetings, legislative hearings and discussions that led to the development of the Kansas Water Plan. The establishment of minimum desirable stream flows are the first step in stream rehabilitation. We support the addition of these streams to the list of Kansas streams with Minimum Desirable Stream Flows. A copy of our resolution on this issue is attached. We urge you to pass SB266 on to the house floor with a favorable recommendation.

Mr. Chairman, as I look at your committee's schedule, I see that this may be the last time that someone from the Federation will appear before you this session. I would like to thank you for time you have taken to listen to and consider what Jerry Hazlett and I have said in front of this committee for the Kansas Wildlife Federation. Natural resource issues are not easy to sort through and resolve, but your work so far this year gives me a large measure of confidence in your ability to do what is best for our state's natural resources. We look forward to working with you in the future.

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Attachment 4



Resolution 1988-19

MINIMUM DESIRABLE STREAMFLOWS

WHEREAS, minimum desirable streamflows are critical in maintaining stream ecosystems and their fish and wildlife populations; and

WHEREAS, standards for flows in eighteen streams have been adopted by previous Kansas Legislatures; and

WHEREAS, five additional minimum desirable streamflows have been supported by the Kansas Water Office, Kansas Water Authority, Division of Water Resources, Kansas Department of Wildlife and Parks, and the Kansas Department of Health and Environment for the following systems: Spring River, Walnut River, Whitewater River, Chapman Creek, and Solomon River; and

WHEREAS, minimum desirable streamflows standards for these streams have been determined; and

WHEREAS, support from the public is strong for these measures indicated in numerous public meetings across Kansas;

NOW, THEREFORE, BE IT RESOLVED that the KWF, Inc., in annual meeting assembled on October 30, 1988, in Lawrence, Kansas, hereby urges the Kansas Legislature to accept the recommended minimum desirable streamflows for the five additional streams: and

BE IT FURTHER RESOLVED that copies of this resolution be sent to the Kansas Water Authority, Kansas Water Office, Kansas Department of Health and Environment, Division of Water Resources of the Kansas State Board of Agriculture, Kansas Department of Wildlife and Parks, members of the Kansas Legislature, and the governor of the State of Kansas.

# Kansas Natural Resource Council

Testimony before the House Energy & Natural Resources Committee  
SB 94: The Storage Tank Act

Charlene A. Stinard, Kansas Natural Resource Council  
March 20, 1989

My name is Charlene Stinard and I represent the 700 members of the Kansas Natural Resource Council, a non-profit organization that promotes sustainable natural resource policies for the state of Kansas. Today I appear as well on behalf of the 2200 members of the Kansas Chapter of the Sierra Club and the 5000 members of the Kansas Audubon Council. Our members share a common concern to preserve and protect the quality of our water resources.

Several million underground storage tank systems in the United States contain petroleum or hazardous substances. According to the US Environmental Protection Agency, tens of thousands of these storage tanks, including their piping, are leaking. Many older tanks will soon begin to leak. To address these actual and potential threats to the US groundwater supplies, EPA has promulgated new regulations to detect and prevent leakage.

Because of the enormous size of the regulated community -- 19,000 tanks are currently registered in Kansas -- effective compliance monitoring and enforcement require that state and local governments share this responsibility to protect public health and the environment. SB 94 addresses the state's responsibilities to protect our resources from contamination by leaking underground storage tanks.

The need is great. The EPA estimates that:

- 75% of existing UST systems are not protected from corrosion. In Kansas that could mean over 14,000 tanks.

- 10-30% of the UST systems already leak or soon will without upgrading. That means more than 5000 tanks could pose immediate environmental and health threats here in Kansas.

Confirming the abstract numbers from the national estimates, KDHE's "identified sites list" includes 162 known sites contaminated by leaking underground storage tanks.



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Attachment 5

One thing we have learned about environmental contamination: it costs much less to prevent pollution than to clean up afterward. We have here an opportunity to establish a regulatory system that can prevent costly and dangerous groundwater contamination.

The members of KNRC, the Sierra Club, and the Audubon Council urge your favorable consideration of SB 94 to prevent the contamination of our water resources by leaking underground storage tanks.

TO: Members of the House Energy & Natural Resources Committee

FROM: Charlene A. Stinard  
Kansas Natural Resource Council

DATE: March 20, 1989

RE: SB 94: Local UST Initiatives

Precisely because the community regulated under Underground Storage Tank (UST) programs is enormous and varied, the EPA selected a regulatory approach that can be decentralized. For example, there is substantial flexibility in standards for equipment -- based on industry codes and practices -- for the proper management of UST systems.

In addition, the UST program is one that depends for its success on voluntary compliance by the regulated community. These programs are most effective when the closest level of government creates a visible presence and is able to respond quickly when needed.

EPA drew upon the experience of local and state government UST programs in designing the new federal regulations. Problems with UST systems emerged first at the local level, where the need to protect citizens and their water supplies demanded immediate initiatives.

California, New York, and Florida have programs that include standards for new systems' design/construction/installation.

Suffolk County (NY), Dade County (FL), and Austin, TX also have repair/closure standards for for existing systems.

Manageable regulatory programs at the local level have used local officials (inspectors, fire marshalls) to inspect installations and to oversee periodic testing, closures, and cleanup.

Eighteen states have UST programs. There are many differences among them, for state/local requirements can be more stringent than federal requirements, and are designed to meet specific environmental and safety needs.

Some examples of such programs are listed below.

California and Florida have stringent release detection requirements for existing systems.

New York, California, and New Hampshire emphasize state-of-the-art prevention techniques for new UST systems.

Florida, Connecticut, and Delaware drew up programs to phase in replacement of sub-standard UST systems.

Maine and South Carolina developed standards concerning proximity to sensitive groundwater locations.

More than 100 major cities have local UST ordinances/programs. Some are independent, some are part of state programs. All make use of local officials (fire marshalls, building code inspectors, e.g.) to improve administration and enforcement.

New York delegated program responsibilities to many counties -- allowing the state to focus its resources on less urban counties.

In Florida, Dade and Broward counties have authority to implement UST programs.

California delegated the administration and enforcement of state UST program responsibilities to 100 local county/city agencies.

Some local governments have taken the initiative to meet immediate problems by passing zoning ordinances, regulations, and by-laws to maintain stringent controls : Savannah, GA; New Orleans, LA; and San Antonio and Austin, TX are examples.

While I have no more specific data on the nature or success of these local/state initiatives, I am sure that information could be obtained from EPA Regional Office staff dealing with UST programs.



TESTIMONY ON SUBSTITUTE SENATE BILL NO. 94  
BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

BY

CYNTHIA K. LUTZ KELLY, DEPUTY GENERAL COUNSEL  
KANSAS ASSOCIATION OF SCHOOL BOARDS

March 21, 1989

Mr. Chairman, members of the committee, I appreciate the opportunity to appear before you in support of Substitute for Senate Bill 94 on behalf of our 301 member school districts. New federal regulations on underground storage tanks require public school districts, and others, to take certain measures with regard to underground storage tanks. Persons who have control of such tanks must, among other requirements, present evidence of "financial responsibility," to cover the cost of cleanup if leakage occurs. This guarantee may take a number of forms, including insurance. However, it has come to the attention of schools throughout the country, as well as in Kansas, that insurance is often not available, and, when available, the cost is prohibitive. The creation of the petroleum storage tank release trust fund would assist boards of education in meeting the federal requirement of "financial responsibility" while protecting the natural resources of the State of Kansas.

We ask for your favorable consideration of Substitute for Senate Bill 94.

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Attachment b

Testimony on SB 94  
House Committee on Energy and Natural Resources  
March 21, 1989  
Prepared by Joe Lieber  
Kansas Cooperative Council

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

The U.S. Environmental Protection Agency (EPA) has developed regulations to protect human health and the environment from leaking underground storage tank systems (USTs).

These regulations will be enforced either by the EPA or the Kansas Department of Health and Environment. The Kansas Cooperative Council believes that Kansans would be better served if a State agency did the regulating. SB 94 does this.

We also support the concept of the storage tank release fund. The Federal regulations require an owner of a USTs to either have a net worth of \$10,000,000 or have clean up insurance.

Some small owners do not have a net worth of \$10 million and even if they could get the insurance, it would be cost prohibitive. Establishing a trust fund would enable many of these small owners to stay in business.

(OVER)

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Attachment 7

Since SB 94 allows a State agency to regulate USTs and because a trust fund would allow small owners to stay in business, the Kansas Cooperative Council will support the bill.

Thank you for your time and I will attempt to answer questions.





The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

March 21, 1989

TO: House Committee on Energy and Natural Resources  
FROM: James S. Maag, Kansas Bankers Association  
RE: Substitute for SB 94 - The Kansas Storage Tank Act

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to express our views on Substitute for SB 94. This legislation is an attempt to resolve a very difficult problem and the Department of Health and Environment are to be commended for their willingness to work with various groups concerned about the implementation of Subtitle I of the Resource Conservation and Recovery Act.

While there may be legitimate disagreement as to the specific provisions of this bill, we believe it does contain two basic concepts which must be retained in any final version of the legislation. First, the administration of the federal law and regulations should be vested with the Kansas Department of Health and Environment rather than the Environmental Protection Agency of the federal government. The ability to work with state officials on the complex problems created by the federal act is definitely superior to dealing with a federal regional office or administrators in Washington.

Second, the creation of a state trust fund is essential if gasoline services are to be maintained in rural Kansas. Previous testimony has made it abundantly clear that insurance - even if available - would be prohibitive in cost and thus would eliminate any possibility that owners and operators could fulfill the "financial responsibility" requirements of the federal law.

We are quite willing to leave to the committee's wisdom the extent of state control of the program and which parties should be eligible for the use of the trust fund, but we do strongly urge the committee to incorporate the two basic concepts of state control and establishment of a trust fund in the final version of the bill.

*H Energy and NR  
3-23-89  
Attachment 8*

# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

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



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

Sub. for SB 94

March 20, 1989

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Committee on Energy and Natural Resources

by

Terry Leatherman  
Executive Director  
Kansas Industrial Council

Mr. Chairman and members of the committee, I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry.

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

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

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

H Energy and NR  
3-23-89  
Attachment 9

KCCI supports the concept behind Sub. SB 94, which would bring state regulation of underground storage tanks in line with federal law. However, we would request the committee consider two amendments to the bill. Both amendments are consistent with the Kansas Chamber's policy that Kansas should not adopt regulatory guidelines which exceed requirements from the federal government. The suggested amendments are:

1. Eliminate from the bill additional regulations of above ground storage tanks. Kansas should wait for the federal program before implementing an above ground storage tank regulation program, beyond the current KDHE requirements.
2. Expand the proposed exemption for heating oil to include all users. Federal law excludes heating oil stored for use on premise regardless of whether the user is a family or a business.

During hearings on this bill before the Senate Committee on Energy and Natural Resources, it was constantly stated that the purpose of SB 94 was to give the Kansas Department of Health and Environment consistent regulatory authority contained in Environmental Protection Agency regulations of storage tanks. These two amendment would achieve that purpose, and create a workable state program of storage tank regulation.

Thank you for your consideration of our suggestions.

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 (worst case estimate)

- 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 @ 25 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.

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Attachment 10

SCENARIO #2 (most probable estimate)

- 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 @ 10 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

In both scenarios the "total corrective action costs" represent estimates of those costs required for all projected tank corrective action until the older tanks are brought up to the new stringent performance standards. The "net costs to the trust fund" represent the upper limits of costs to the trust fund under both scenarios, if the fund were in place throughout whatever time period it takes to upgrade the old tanks. If the trust fund is not in place for the full extent of that time period (e.g. the trust fund is continued only for 5 years and only 50-60% of the tank release corrective actions are addressed in that time period), then the trust fund's share of the costs would be correspondingly less. At this point any set of numbers is somewhat speculative, but those identified above in Scenario #2 represent the department's best estimate with the information in hand today.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Division of Environment  
Bureau of Waste Management

M E M O R A N D U M

TO: Rep. Dennis Spaniol, Chairman  
House Energy and Natural Resources Committee

FROM: Dennis Murphey, Director <sup>DM</sup>  
Bureau of Waste Management

DATE: March 22, 1989

SUBJECT: Identification of Minimum Federal  
Requirements for Underground Tank Legislation

At your request I have highlighted the specific elements of the Substitute for Senate Bill 94 which are essential for U.S. Environmental Protection Agency delegation of the underground tank regulatory program to the State of Kansas, and have attached a copy for your information.

In addition to the language which is highlighted, please note that Sections 9 and 13 are also essential since EPA requires adequate enforcement authority to ensure compliance with the standards, rules and regulations adopted pursuant to the federal act. The specific dollar amounts for administrative and civil penalties are prescribed by EPA, but the particular language for the state enforcement program is discretionary on our part (although subject to EPA's review and approval, prior to delegation). The language used in Sections 9 and 13 is parallel to that found in our current hazardous waste statutes.

The basic differences in the Substitute for Senate Bill 94 and the federal requirements are the trust fund and the licensure program for tank installers and contractors.

If you or any members of the Committee have questions regarding this information or other aspects of the bill, I will be happy to provide you with any additional material which may be helpful in your deliberations.

C - Members of the House Energy and Natural Resources Committee

(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

## 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

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

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

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

54 (i) ~~"guarantor" means any person, other than an owner or op-~~  
 55 ~~erator, who provides evidence of financial responsibility for an owner~~  
 56 ~~or operator~~

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

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

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

76 (m) ~~"person" means an individual, trust, firm, joint venture, con-~~  
 77 ~~sortium, joint-stock company, corporation, partnership, association,~~  
 78 ~~state, interstate body, municipality, commission, political subdivision~~  
 79 ~~or any agency, board, department or bureau of this state or of any~~  
 80 ~~other state or of the United States government~~

36 upon receipt of information that the storage or release of a . . . ted  
 37 substance may present a hazard to the health of persons or to the  
 38 environment, may take such action as the secretary determines to  
 39 be necessary to protect the health of such persons or the environ-  
 40 ment. The action the secretary may take shall include, but is not  
 41 limited to:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

89 (q) ~~"regulated substance" means petroleum or any element, com-~~  
90 ~~ound, mixture, solution or substance defined in section 101(14) of~~  
91 ~~the Comprehensive Environmental Response, Compensation and Li-~~  
92 ~~ability Act of 1980 of the United States as in effect on January 1,~~  
93 ~~1980, but not if regulated as a hazardous waste under the Resource~~  
94 ~~Conservation and Recovery Act of 1976 (42 U.S.C. Secs. 6921~~  
95 ~~through 6939b) as in effect on January 1, 1980;~~

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

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

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

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

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

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

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

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

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

124 (z) "underground storage tank" means any storage tank in which  
125 10% or more of the tank volume, including volume of the piping,  
126 is below the surface of the ground;

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

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

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

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

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

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

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

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

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

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

147 (e) storm water or waste water collection systems;

148 (f) flow-through process tanks;

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

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

154 (i) above ground storage tanks of agricultural materials regulated

451 (f) A contractor must meet the following requirements alify  
452 for a contractor license:

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

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

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

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

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

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

8-01

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

192 detection and product compatibility standards;

193 (3) establishing performance standards for the inground repair of

194 underground storage tanks. The performance standards shall include,

195 but are not limited to, specifying under what circumstances an un-

196 derground storage tank may be repaired and specifying design, con-

197 struction, installation, release detection, product compatibility

198 standards and warranty;

199 (4) establishing performance standards for maintaining spill and

200 overflow equipment, leak detection systems and comparable systems,

201 or methods designed to prevent or identify releases. In addition,

202 the secretary shall establish standards for maintaining records and

203 reporting leak detection monitoring, inventory control and tank test-

204 ing or comparable systems;

205 (5) establishing requirements for reporting a release and for re-

206 porting and taking corrective action in response to a release;

207 (6) establishing requirements for maintaining evidence of financial

208 responsibility to be met by owners and operators of underground

209 storage tanks;

210 (7) establishing requirements for the closure of underground stor-

211 age tanks including the removal and disposal of underground storage

212 tanks and regulated substance residues contained therein to prevent

213 future releases of regulated substances into the environment;

214 (8) for the approval of tank tightness testing methods, including

215 determination of the qualifications of persons performing or offering

216 to perform such testing;

217 (9) establishing site selection and clean-up criteria regarding cor-

218 rective actions related to a release and which address the following:

219 The physical and chemical characteristics of the released substance,

220 including toxicity, persistence and potential for migration; the hy-

221 drogeologic characteristics of the release site and the surrounding

222 land; the proximity, quality and current and future uses of ground-

223 water; an exposure assessment; the proximity, quality and current

224 and future use of surface water; and the level of the released sub-

225 stance allowed to remain on the facility following cleanup;

226 (10) prescribing fees for the registration of storage tanks, the

227 issuance of permits, the approval of plans for new installations and

228 the conducting of inspections. The total amount of fees shall not

377 (2) construct, modify or operate an underground stor nk

378 without a permit or other written approval from the secretary, or,

379 on or after January 1, 1990, construct, modify or operate an above

380 ground storage tank without a permit or other written approval from

381 the secretary, or otherwise be in violation of the rules and regula-

382 tions, standards or orders of the secretary;

383 (3) prevent or hinder a properly identified officer or employee

384 of the department or other authorized agent of the secretary from

385 entering, inspecting or sampling at a facility on which a storage tank

386 is located or from copying records concerning such storage tank as

387 authorized by this act;

388 (4) knowingly make any false material statement or representation

389 in any application, record, report, permit or other document filed,

390 maintained or used for purposes of compliance with this act;

391 (5) knowingly destroy, alter or conceal any record required to

392 be maintained by this act or rules and regulations promulgated her-

393 eunder; or

394 (6) knowingly allow a release, knowingly fail to report a release

395 or knowingly fail to take corrective action in response to a release

396 of a regulated substance in violation of this act or rules and regu-

397 lations promulgated hereunder.

398 (b) Any person who violates paragraphs (1) through (6) of sub-

399 section (a) shall be guilty of a class A misdemeanor and, upon con-

400 viction thereof, shall be punished as provided by law.

401 Sec. 10. (a) It shall be unlawful for any person to practice, or

402 hold oneself out as authorized to practice, as an underground storage

403 tank installer or underground storage tank contractor or use other

404 words or letters to indicate such person is a licensed installer or

405 contractor unless the person is licensed in accordance with this

406 section.

407 (b) The secretary shall:

408 (1) Develop and administer a written examination to candidates

409 for licensing under the terms of this section. Questions used in the

410 examination shall be derived from standard instructions and rec-

411 ommended practices published by such authorities as the Petroleum

412 Equipment Institute, American Petroleum Institute, Steel Tank In-

413 stitute, National Association of Corrosion Engineers, Fibergl nk

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

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

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

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

362 (e) Notwithstanding any limitation contained in this section, all  
 363 information reported to, or otherwise obtained by the department  
 364 under this act, shall be made available to the administrator of the  
 365 United States environmental protection agency, or an authorized  
 366 representative of the administrator, upon written request. In sub-  
 367 mitting any trade secrets to such administrator or the authorized  
 368 representative of such administrator, the secretary shall submit the  
 369 claim of confidentiality to the administrator or authorized repre-  
 370 sentative of the administrator.

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

372 (1) Knowingly deposit, store or dispense, or permit any person  
 373 to deposit, store or dispense, any regulated substance into any stor-  
 374 age tank which does not comply with the provisions of this act, the  
 375 rules and regulations promulgated hereunder, or any order of the  
 376 secretary;

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

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

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

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

249 (14) adopting schedules requiring the retrofitting of storage tanks  
 250 in existence on the effective date of this act and for the retirement  
 251 from service of underground storage tanks placed in service prior to  
 252 the effective date of this act. Such schedules shall be based on the  
 253 age and location of the storage tank and the type of substance stored.  
 254 Such retrofitting shall include secondary containment, corrosion pro-  
 255 tection, linings, leak detection equipment and spill and overflow  
 256 equipment.

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

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

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

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

280 (b) Permits may be transferred upon acceptance of the permit  
281 obligations by the person who is to assume the ownership or op-  
282 erational responsibility of the storage tank from the previous owner  
283 or operator. The department shall furnish a transfer of permit form  
284 providing for acceptance of the permit obligations. A transfer of  
285 permit form shall be submitted to the department not less than  
286 seven days prior to the transfer of ownership or operational respon-  
287 sibility of the storage tank.

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

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

294 (2) failed at any time to maintain the storage tank in accordance  
295 with the requirements of this act or any rule and regulation pro-  
296 mulgated hereunder;

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

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

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

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

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

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

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

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

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

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

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

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

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

125 (c) The petroleum storage tank release trust fund shall be used  
126 for the purposes set forth in this act and for no other governmental  
127 purposes. It is the intent of the legislature that the fund shall remain  
128 intact and inviolate for the purposes set forth in this act, and moneys  
129 in the fund shall not be subject to the provisions of K.S.A. 75-3722,  
130 75-3725a and 75-3726a and amendments to such sections.

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

135 (e) The pooled money investment board may invest and reinvest  
136 moneys in the fund established under this section in obligations of  
137 the United States or obligations the principal and interest of which  
138 are guaranteed by the United States or in interest-bearing time  
139 deposits in any commercial bank or trust company located in Kansas  
140 or, if the board determines that it is impossible to deposit such  
141 moneys in such time deposits, in repurchase agreements of less than  
142 30 days' duration with a Kansas bank or with a primary government  
143 securities dealer which reports to the market reports division of the  
144 federal reserve bank of New York for direct obligations of, or ob-  
145 ligations that are insured as to principal and interest by, the United  
146 States government or any agency thereof. Any income or interest

147 earned by such investments shall be credited to the fund.

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

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

159 Sec. 16. (a) There is hereby established the petroleum storage  
160 tank release compensation advisory board composed of seven mem-  
161 bers, including the state fire marshal or the state fire marshal's  
162 designee, the director of the division of environment of the de-  
163 partment, two representatives from the petroleum industry, at least  
164 one of which shall be a petroleum marketer, one representative from  
165 the insurance industry, one member of the governing body of a city  
166 and one county commissioner. The governor shall appoint the ap-  
167 pointive members of the board, and the members so appointed shall  
168 serve for terms of two years. The governor also shall designate a  
169 member of the board as its chair, to serve in such capacity at the  
170 pleasure of the governor. The secretary shall provide staff to support  
171 the activities of the board.

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

176 (c) The board shall provide advice and counsel and make rec-  
177 ommendations to the secretary regarding the rules and regulations  
178 to be promulgated by the secretary regarding the financial respon-  
179 sibility of owners and operators required by this act and, upon  
180 request of the secretary, shall provide advice and counsel to the  
181 secretary with respect to the disbursement of moneys from the fund.

182 Sec. 17. (a) There is hereby established an environmental as-  
183 surance fee of \$.01 on each gallon of petroleum product manufactured

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184 in or imported into this state. The environmental assurance fee shall  
185 be paid by the manufacturer, importer or distributor first selling,  
186 offering for sale, using or delivering petroleum products within this  
187 state. The environmental assurance fee shall be paid to the depart-  
188 ment of revenue at the same time and in the same manner as the  
189 inspection fee established pursuant to K.S.A. 55-426, and amend-  
190 ments thereto, is paid. The secretary of revenue shall remit daily  
191 the environmental assurance fees paid hereunder to the state treas-  
192 urer, who shall deposit the same in the state treasury to the credit  
193 of the petroleum storage tank release trust fund. Exchanges of pe-  
194 troleum products on a gallon-for-gallon basis within a terminal and  
195 petroleum product which is subsequently exported from this state  
196 shall be exempt from this fee.

197 (b) Environmental assurance fees as specified in subsection (a)  
198 shall be paid until the unobligated principal balance of the fund  
199 equals or exceeds \$5,000,000, at which time no environmental as-  
200 surance fees shall be levied unless and until such time as the balance  
201 in the fund is less than or equal to an unobligated balance of  
202 \$2,000,000, in which case the collection of the environmental as-  
203 surance fee will resume within 90 days following the end of the  
204 month in which such unobligated balance occurs. The director of  
205 accounts and reports shall notify the secretary of revenue whenever  
206 the unobligated balance in the fund is \$2,000,000, and the secretary  
207 of revenue shall then give notice to each person subject to the  
208 environmental assurance fee as to the imposition of the fee and the  
209 duration thereof.

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

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

221 shall be deemed delinquent and shall bear interest at the rate of  
222 1% per month, or fraction thereof, from such due date until paid.  
223 In addition thereto, there is hereby imposed upon all amounts of  
224 such fees remaining due and unpaid after such due date a penalty  
225 in the amount of 5% thereof. Such penalty shall be added to and  
226 collected as a part of such fees by the secretary of revenue.

227 (e) The secretary of revenue is hereby authorized to adopt such  
228 rules and regulations as may be necessary to carry out the respon-  
229 sibilities of the secretary of revenue under this section.

230 Sec. 18. (a) Whenever the secretary has reason to believe that  
231 there is or has been a release into the environment from a petroleum  
232 storage tank, and has reason to believe that such release poses a  
233 danger to human health or the environment, the secretary shall  
234 obtain corrective action for such release from the owner or operator,  
235 or both, or from any past owner or operator who has contributed  
236 to such release. Such corrective action shall be performed in ac-  
237 cordance with a plan approved by the secretary. Upon approval of  
238 such plan, the owner or operator shall obtain and submit to the  
239 secretary at least three bids from persons qualified to perform the  
240 corrective action except that, the secretary may waive this require-  
241 ment upon a showing that the owner or operator has made a good  
242 faith effort but has not been able to obtain three bids from qualified  
243 bidders.

244 (b) If the owner or operator is unable or unwilling to perform  
245 corrective action as provided for in subsection (a) or no owner or  
246 operator can be found, the secretary may undertake appropriate  
247 corrective action utilizing funds from the petroleum storage tank  
248 release trust fund. Costs incurred by the secretary in taking a cor-  
249 rective action, including administrative and legal expenses, are re-  
250 coverable from the responsible party and may be recovered in a civil  
251 action in district court brought by the secretary. Corrective action  
252 costs recovered under this section shall be deposited in the petro-  
253 leum storage tank release trust fund. Corrective action taken by the  
254 secretary under this subsection need not be completed in order to  
255 seek recovery of corrective action costs, and an action to recover  
256 such costs may be commenced at any stage of a corrective action.

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

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

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

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

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

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

277 (5) the owner or operator shall effectuate corrective action ac-  
278 cording to a plan approved by the secretary pursuant to subsection  
279 (a);

280 (6) the liability of the state and the petroleum storage tank release  
281 trust fund shall not exceed \$1,000,000, less the appropriate de-  
282 ductible amount, for any release from a petroleum storage tank; and

283 (7) such other provisions as are deemed appropriate by the sec-  
284 retary to ensure adequate protection of human health and the  
285 environment.

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

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

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

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

294 (4) removal of contaminated soils;

- 295 (5) soil treatment and disposal;  
296 (6) environmental monitoring;  
297 (7) maintenance of corrective action equipment;  
298 (8) restoration of a private or public potable water supply, where  
299 possible, or replacement thereof, if necessary; and  
300 (9) other costs identified by the secretary as necessary for proper  
301 investigation, corrective action planning and corrective action activ-  
302 ities to meet the requirements of this act.

303 Sec. 19. (a) An owner or operator of a petroleum storage tank,  
304 other than the United States government or any of its agencies or  
305 the owner or operator of any above ground storage tank specified  
306 in subsection (g) or (j) of section 3, who is in substantial compliance,  
307 as provided in subsections (c) and (d), and who undertakes corrective  
308 action, either through personnel of the owner or operator or through  
309 response action contractors or subcontractors, is entitled to reim-  
310 bursement of reasonable corrective action costs from the fund, sub-  
311 ject to the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

369 release trust fund;

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

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

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

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

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

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

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

389 (3) the owner or operator has complied with any applicable fi-  
390 nancial responsibility requirements imposed by the storage tank act  
391 and the rules and regulations adopted thereunder; and

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

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

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

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

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

406 the secretary in accordance with the applicable laws of the state  
407 and any rules and regulations adopted thereunder.

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

414 Sec. 20. Notwithstanding any other provision of this act, an  
415 owner or operator of a petroleum storage tank who has undertaken  
416 corrective action prior to the effective date of this act pursuant to  
417 a corrective action plan approved by the secretary on or after January  
418 1, 1989, shall be eligible for reimbursement from the fund for costs  
419 incurred in conjunction with such corrective action performed sub-  
420 sequent to plan approval by the secretary.

421 Sec. 21. (a) Nothing in this act shall establish or create any li-  
422 ability or responsibility on the part of the board, the secretary, the  
423 department or its agents or employees, or the state of Kansas to  
424 pay any corrective action costs from any source other than the fund  
425 created by this act. In no event shall the fund be liable for the  
426 payment of corrective action costs incurred in response to any one  
427 release from a petroleum storage tank in an amount in excess of  
428 \$1,000,000, less the applicable deductible amount of the owner or  
429 operator of such tank.

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

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

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

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 pipelines that convey gas from a gas main to the outside wall of residential premises which are individually metered and directly served by such utility or corporation and is hereby granted the necessary access rights to carry out such responsibility.

H Energy and NR  
3-23-89  
Attachment II

HOUSE BILL No. 2456

By Committee on Energy and Natural Resources

2-20

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28

AN ACT relating to natural gas; concerning investigation of certain accidents.

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

Section 1. Personnel of the state corporation commission pipeline safety program are hereby authorized to:

(a) Be onsite and conduct an investigation as to the cause or origin of any accident or fire suspected to have been caused by natural gas; and

(b) ~~receive or~~ take possession of any and all property which constitutes evidence of the cause or origin of any such accident or fire pursuant to their investigation.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

[require the serving utility to removed from service]

[and the utility is authorized to take possession of and retain such property. Said property shall be and remain available to state corporation commission personnel in any continuing investigation of any accident.]

H Energy and NR  
3-23-89  
Attachment 12



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  
3-23-89  
Attachment 13

SENATE BILL No. 121

By Committee on Energy and Natural Resources

1-31

17 AN ACT ~~supplementing the Kansas groundwater exploration and~~ amending and  
 18 ~~protection act; providing authority for the department of health~~ secretary  
 19 ~~and environment to issue corrective orders and civil penalties for~~  
 20 ~~violations of such act.~~ ; amending K.S.A. 82a-1203 and repealing the existing section

21 *Be it enacted by the Legislature of the State of Kansas:* Insert next page

22 ~~Section 1 (a) Any water well contractor or landowner person~~ New Sec. 2

23 who violates any provision of the Kansas groundwater exploration  
 24 and protection act, any rules and regulations adopted thereunder or  
 25 any order issued by the secretary thereunder shall incur in addition  
 26 to other penalties provided by law, a civil penalty not to exceed  
 27 \$5,000 for each violation. In the case of a continuing violation every  
 28 day such violation continues shall be deemed a separate violation.

29 (b) The secretary of the department of health and environment  
 30 or the director of the division of environment, if designated by the  
 31 secretary, upon a finding that a ~~water well contractor or landowner~~  
 32 ~~person~~ has violated any provision of the Kansas groundwater explo-  
 33 ration and protection act or any order issued thereunder, or any  
 34 rule and regulation adopted thereunder may: (1) Issue a written order  
 35 requiring that necessary ~~corrective remedial or preventive~~ action be  
 36 taken within a reasonable time period; or (2) assess a civil penalty  
 37 for each violation within the limits provided in this section which  
 38 shall constitute an actual and substantial economic deterrent to the  
 39 violation for which is assessed; or (3) both. The order shall specify  
 40 the provisions of the act or rules and regulations alleged to be  
 41 violated and the facts constituting each violation. Such order shall  
 42 include the right to a hearing. Any such order shall become final  
 43 unless, within 15 days after service of the order, the ~~water well~~  
 44 ~~contractor or landowner person~~ named therein shall request in

H Energy and NR  
 3-23-89  
 Attachment 14

Section 1. K.S.A. 82a-1203 is hereby amended to read as follows: 82a-1203. As used in this act, unless the context otherwise requires:

(a) "Construction of water wells" means all acts necessary to obtaining groundwater by any method for any use including, without limitation, the location of and excavation for the well.

(b) "Person" means any individual, association, firm, partnership, corporation or governmental entity.

(c) "Sand point" or "well point" means any driven well which is 25 feet or less in depth and is constructed by manually driving into the ground a drive point fitted to the lower end of tightly connected sections of pipe that are 2 inches or less in diameter.

(d) "Secretary" means the secretary of health and environment.

(e) "Water well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed, when the intended use of such excavation is for the location, diversion, artificial recharge, or acquisition of groundwater.

(f) "Water well contractor" or "contractor" means any individual, firm, partnership, association or corporation who shall construct, reconstruct or treat person who constructs, reconstructs or treats a water well. The term shall not include:

(1) An individual while in the act of constructing a water well on land which is owned by ~~him or her~~ such individual and is used by ~~him or her~~ such individual for farming, ranching, or agricultural purposes at ~~his or her~~ such individual's place of abode, but only when the well is constructed in compliance with prescribed minimum well standards and the requirement of well logs as provided in this act; or

(2) an individual who performs labor or services for a licensed water well contractor at ~~his or her~~ such contractor's direction and under ~~his or her~~ such contractor's supervision.

~~(d) "Secretary" means the secretary of health and environment.~~

45 writing a hearing by the secretary. If a hearing is requested, the  
46 secretary shall notify the alleged violator or violators of the date,  
47 place and time of the hearing.

48 (c) No civil penalty shall be imposed under this section except  
49 after notification by issuance and service of the written order and  
50 hearing, if a hearing is requested, in accordance with the provision  
51 of the Kansas administrative procedure act.

52 (d) Any ~~water well contractor or landowner~~ person aggrieved  
53 by an order of the secretary made under this section may appeal  
54 such order to the district court in the manner provided by the act  
55 for judicial review and civil enforcement of agency actions.

56 (e) Any penalty recovered pursuant to the provisions of this sec-  
57 tion shall be remitted to the state treasurer, deposited in the state  
58 treasury and credited to the state general fund.

59 (f) Nothing in this act shall be construed to abridge, limit or  
60 otherwise impair the right of any person to damages or other relief  
61 on account of injury to persons or property and to maintain any  
62 action or other appropriate proceeding therefor.

63 ~~(g) As used in this section, "person" means any individual, firm,~~  
64 ~~partnership, corporation or other association of persons.~~

New Sec. 3

65 ~~Sec. 2.~~ (a) Notwithstanding the existence or pursuit of any other  
66 remedy, the secretary may maintain, in the manner provided by the  
67 act for judicial review and civil enforcement of agency actions, an  
68 action in the name of the state of Kansas for injunction or other  
69 process against any ~~water well contractor or landowner~~ person to  
70 restrain or prevent any violation of the provisions of the Kansas  
71 groundwater exploration and protection act or of any rules and reg-  
72 ulations adopted thereunder.

73 (b) In any civil action brought pursuant to this section in which  
74 a temporary restraining order, preliminary injunction or permanent  
75 injunction is sought, it shall ~~not be necessary to allege or prove~~  
76 ~~at any stage of the proceeding that irreparable damage will~~  
77 ~~occur should the temporary restraining order, preliminary in-~~  
78 ~~junction or permanent injunction not be issued or that the~~  
79 ~~remedy at law is inadequate, and the temporary restraining~~  
80 ~~order, preliminary injunction or permanent injunction shall is-~~  
81 ~~sue without such allegations and without such proof be sufficien.~~

82 to show that a violation of the provisions of this act or the rules  
 83 and regulations adopted thereunder has occurred or is imminent. It  
 84 shall not be necessary to allege or prove at any stage of the pro-  
 85 ceeding that irreparable damage will occur should the temporary  
 86 restraining order, preliminary injunction or permanent injunction  
 87 not be issued or that the remedy at law is inadequate.

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88 ~~(c) As used in this section, "person" means any individual, firm,~~  
 89 ~~partnership, corporation or other association of persons.~~

90 Sec. 3 This act shall take effect and be in force from and after  
 91 its publication in the statute book. 7

New Sec. 4. (a) The provisions of sections 2 and 3 shall not apply with respect to any sand point or well point which was installed before July 1, 1989, or the reconstruction, replacement or treatment thereof, and which has not been abandoned, except that a temporary restraining order, preliminary injunction or permanent injunction may be obtained pursuant to section 3 if a health hazard is shown to exist or to be imminent.

New Sec. 5. Sections 2, 3 and 4 shall be part of and supplemental to the Kansas groundwater exploration and protection act.

Sec. 6. K.S.A. 82a-1203 is hereby repealed.

7-1