

Approved February 14, 1989
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:13 a.m./~~XX~~ on February 10, 1989 in room 423-S of the Capitol.

All members were present except: Senator Doyen (excused)
Senator Harder (excused)

Committee staff present: Raney Gilliland, Legislative Research Department
Lynne Holt, Legislative Research Department
Jill Wolters, Revisor of Statutes Department

Conferees appearing before the committee: James Power, Division of Environment
Kansas Department of Health and
Environment
Margaret Ahrens, Kansas Chapter of Sierra Club
Terry Shistar, Pesticide Coordinator, Kansas
Chapter of the Sierra Club
Wilbur Leonard, Committee on Kansas Farm
Organizations
Charlene Stinard, Kansas Natural Resource Council
Warren Parker, Kansas Farm Bureau
Chris Wilson, Kansas Fertilizer and Chemical
Association
Bob Storey, Kansas Termite and Pest Control
Association
Vernon McKinzie, Legislative Chairman, Kansas
Termite and Pest Control
Association

Chairman Allen called the committee to order and called attention to SB 3 for continued hearing; he called on the following to testify:

James Power gave copies of his testimony to the committee (attachment 1) and expressed support for the amendments offered by Dale Lambley; he expressed support in working with the State Board of Agriculture to enforce the provisions of SB 3. Mr. Powers requested that in the bill the Board of Agriculture be given the authority to make rules for carrying out the provisions of SB 3.

Margaret Ahrens expressed support for SB 3 and then introduced Terry Shistar to testify. Terry Shistar provided copies of her testimony for the committee (attachment 2) and expressed support for the intent of SB 3.

Wilbur Leonard provided copies of his testimony (attachment 3) and expressed support of the 22 organizations he represents for SB 3 with the amendments offered by the Board of Agriculture.

Charlene Stinard gave the committee copies of her testimony (attachment 4) and expressed support for SB 3.

Warren Parker provided copies of his testimony in support of SB 3 (attachment 5) to the committee.

Chris Wilson testified in support of SB 3 and provided the committee with copies of her testimony (attachment 6). Ms. Wilson urged the committee to accept the Board of Agriculture's amendments and that the committee recommend SB 3 favorably for passage as amended.

Bob Storey encouraged support for SB 3 and introduced Vernon McKinzie to testify. Vernon McKinzie provided the committee with copies of his testimony (attachment 7). Mr. KcKinzie included with his testimony a copy of SB 3 with amendments that he urged the committee to accept.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
room 423-S, Statehouse, at 10:13 a.m./~~p.m.~~ on February 10, 1989

The Chairman declared the hearing closed for SB 3 and then he appointed a subcommittee to work with those who submitted amendments and with the committee revisor so that an agreeable amended SB 3 could be presented for committee action. The Chairman appointed Senator Sallee as Chairman and Senators Karr, Frahm and McClure as members of the committee. The Chairman requested a report be prepared as soon as possible and at least within 10 days.

The Chairman called for action on committee minutes.

Senator Francisco made a motion the committee minutes of February 9 be approved; seconded by Senator Sallee; motion carried.

The Chairman adjourned the committee at 10:55 a.m.

GUEST LIST

COMMITTEE: Senate Agriculture

DATE: February 10, 1989

NAME	ADDRESS	ORGANIZATION
Karl Muedener	Topoka	KDMIE
Jim Power	"	"
Alex Hawkins	Topoka	KSBA
Warren Parker	Manhattan	Kansas Farm Bureau
Dob Lambley	Topoka	KSBA
Vernon McKinnis	Emporia	Ks. Pest Control Assn
Bob Storey	Topoka	" "
Glean Garwood	Topoka	" "
Jaye Wolf	Lawrence	Ks. Audubon Council
Charlene Stinard	Topoka	Ks Natural Resource Council
Margaret Ahrens	Topoka	Ks Chapter Sierra Club
Terry Shistar	Lawrence	Ks. Chapter Sierra Club
Kenneth M. Wilke	Topoka	KSBA
John Peterson	Tyrus	Natl Hy Chem Assn
Jerry Dapp	Hatchinson	KFCA
Chris Wilson	Topoka	KFCA
Don Lindsey	OSAWATOMIE	UTCI
Mike Bohnhoff	Topoka	Div. of Budget
Paul E. Fleener	Manhattan	Kansas Farm Bureau
Wilbur Leonard	Topoka	Comm Ks. Farm Org
Ken Behr	Topoka	Natl Hy. Chem. Assoc.

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

Forbes Field
Topeka, Kansas 66620-0001
Phone (913) 296-1500

Mike Hayden, Governor

Stanley C. Grant, Ph.D., Secretary
Gary K. Hulett, Ph.D., Under Secretary

Testimony presented to
Senate Committee on Agriculture
by

The Kansas Department of Health and Environment
Senate Bill No. 3

The Kansas Department of Health & Environment is increasingly concerned with pesticides in the Kansas environment. Our concern is prompted both by potential impacts on aquatic life and also the impact on drinking water supplies. KDHE monitors the State's surface and ground waters, and public water supplies to help assess the extent of pesticides in our Kansas environment. Our concerns have generally revolved around the pesticides chlordane, alachlor and atrazine. Testimony on pesticides in the Kansas environment to last summer's Special Committee is attached.

The Environmental Protection Agency is now establishing new drinking water standards for atrazine which are an order of magnitude smaller than previous guidelines. Acceptable levels of risk in determining drinking water standards have become very strict in recent years. Also, some evidence continues to come forward raising concerns over the respective environmental impacts of atrazine and other pesticides. Stricter standards, coupled with our increasing awareness of pesticides in our State's water, create a need for new methods to control pesticides in our environment. The concept proposed in S.B. 3 provides such a tool. There is an added benefit to the concept in being "preventative", recognizing it is much cheaper to avoid pollution than clean it up.

The Bill appears aimed at groundwater and we suggest it be expanded to cover surface water supplies and aquatic life. By expanding the list of factors in Section 2, this can be easily accomplished.

In Section 4, (b) and (n), we suggest rinsates and washwaters be added to the items needing proper disposal. We have responded to problems at facilities related to contaminated runoff as a result of vehicle and tank washing.

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attachment 1

The term "district" implies a form of government similar to benefit districts, groundwater management districts, conservation districts, etc. We recognize that the term describes a concept, but several questions remain involving implementation. How will creation of a district be triggered, how can other agencies petition for forming a district, will formation be communicated to the public, how will it be monitored, and enforced?

Again, we are supportive of the concept, and are anxious to see pesticides used productively while avoiding negative impacts on State waters. We believe the concept of S.B. 3 is a step forward, but suggest considerable resources will be needed to effectively implement the concept. The Kansas Department of Health and Environment is willing to be involved with developing an effective program.

Testimony presented by: James A. Power
Director
Division of Environment
February 8, 1989

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

Forbes Field

Topeka, Kansas 66620-0001

Phone (913) 296-1500

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*

Gary K. Hulett, Ph.D., *Under Secretary*

Testimony Presented to

Special Committee on Agriculture and Livestock

by

The Kansas Department of Health and Environment

KDHE's Bureau of Water Protection maintains a surface water quality monitoring program composed of 110 stream stations, and monitoring of major reservoirs. Types of monitoring include biological, radiological, and chemical monitoring, including pesticides. About five years ago, we noted a more consistent pattern of pesticide detection in the east, particularly northeast Kansas. Three pesticides were the most obvious-- atrazine, alachlor and chlordane. We began more specific sampling to better define the situation. Limited studies on Tuttle Creek and the Kansas River basin have been completed. A study by the U.S.G.S., funded by KDHE, is now underway.

KDHE's efforts were prompted by two concerns: public health, i.e. impact on water supplies; and, secondly, general environmental issues, more specifically impacts on aquatic life.

Chlordane has been a pesticide of concern to KDHE because of detection in fish tissue at concentrations exceeding FDA action levels. Chlordane is not detected in our routine water monitoring but is found in fish tissue. The fish tissue levels exceeding FDA guidelines prompted issuing health advisories in '86 and '87. The advisories consist of news releases and

posting of fishing areas. Advice is provided on limits to the amount of fish to be eaten. Advisories were issued for the Arkansas and Little Arkansas at Wichita and Arkansas City, the Kansas River from Lawrence to Eudora, and later the Kansas River at Kansas City. Only the Kansas City area advisory remains in effect since fish tissue levels are now below FDA guidelines. Between 1980 and 1985, 129 tissue analyses were collected from 45 sites. Approximately 50% of the whole body analyses contained detectable levels of chlordane. The mean of detected values was 0.28 mg/kg. The mean of all samples analyzed was 0.14 mg/kg. The FDA action level is 0.6 mg/kg for whole body samples. Our sampling clearly indicated urban areas as the contributor of chlordane to the environment. However, the source of the discharge has never been found. Again, chlordane is not found in routine pesticide analyses of surface water. We anticipate the issue of chlordane in surface waters will diminish since EPA has taken steps to restrict use and production.

Atrazine is the most frequently detected pesticide in surface waters, appearing about 25% of the time. The general range is between 1 and 10 ug/l. Atrazine appears to be most prevalent in northeastern Kansas waters.

In 1985, from April to October, samples were collected in northeast Kansas, including Tuttle Creek and tributaries. The results are shown in Figure 3. The top value is the concentration in ug/l when detected. The bottom number shows the times detected versus number of samples taken. Tuttle Creek appears to dampen the concentrations of pesticides while increasing their persistence. For instance, during this study, Tuttle's discharges were sampled eight times with atrazine detected each time and averaging 7.9 ug/l. KDHE's sampling since 1975 has detected atrazine in Tuttle's releases 25 times in 31 samples, averaging 6 ug/l when detected.

As expected, the highest concentrations of atrazine were found during or after rains. The highest concentration detected was 23 ug/l in May of 1985 in the Black Vermillion River.

The concern over atrazine has changed since KDHE initiated these studies. Five years ago, the accepted drinking water guideline for atrazine was 150 ug/l. Kansas adopted a conservative value of 25 ug/l based on EPA draft health advisories. EPA will soon be proposing a public drinking water standard of 2 ug/l for atrazine. This proposed standard is much lower than the values existing when we started examining this situation. Obviously, these strict standards will heighten concern over pesticides in our water supplies. We anticipate drinking water plants will require modifications to consistently meet the proposed standards. We also foresee a reduction and modification in the use of pesticides in certain watersheds. The Blue River basin will be particularly challenging as our northern neighbor, Nebraska, is a major contributor to the problem.

Presented by: Karl W. Muedener
Director, Bureau of Water Protection

Date: September 1-2, 1988

KANSAS CHAPTER OF THE SIERRA CLUB
Testimony on Senate Bill 3
Terry Shistar, Pesticide Coordinator
8 February 1989

I have been asked to give some comments on behalf of the Kansas Chapter of the Sierra Club on Senate Bill 3. The Kansas Sierra Club now has about 2200 members throughout Kansas. The Sierra Club's pest management policy focusses on maintaining public health and environmental quality through an integrated management strategy that may involve the wise use of the least environmentally damaging pesticide when necessary.

General Comments

In general, we support the intent and language of this bill. Although it doesn't address all the concerns we have with the Kansas Pesticide Law, it does provide a mechanism for more intensive environmental protection, and it addresses in a reasonable way some issues that have arisen from time to time. I have a few specific comments and suggestions.

New Section 1

Section 1 addresses a difficulty that has been raised here before--many people have found that they get satisfactory control of a pest at application rates substantially below the minimum labelled rate. The reason this is true is that FIFRA Section 3(c)(4)(D) allows EPA to waive efficacy data, and the agency does not, in fact, consider efficacy data for uses other than public health uses (such as disease vector control). This gives pesticide manufacturers the freedom to set application rates as high as the market will bear. (It also makes some of us wonder how EPA can weigh the risks against the benefits when they don't know the benefits.)

We endorse the bill's solution to the problem. It does not have the potential for adverse environmental, public health, and consumer impacts of a blanket "less than labelled rate" permission or the adoption of the language of Section 2(ee) of FIFRA, but it does allow lower rates to be used when such use can be justified.

Section 2

We support the concept of chemical use districts or managment districts, but would like to see more complete procedures adopted, including procedures for initiating districts, notifying the public, public comment, modifications, monitoring, and enforcement. We would also like to see the purpose made more flexible than the

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attachment 2

alternatives of permitting or prohibiting pesticide use--it should include the possibility of plans for changing pesticide use patterns (including application method, timing, and additional precautions) to prevent environmental damage. I would also like to suggest that those affected by the plan be involved as early as possible in the process of its creation.

Section 3

We support the requirement that those advertising pest control services be licensed, but believe it is inappropriate to license as pesticide applicators those who only conduct inspections for wood destroying organisms. While it may be the case that those who conduct inspections are generally or even almost always applicators, we should be encouraging the role of the independent inspector or consultant--one who does not gain by recommending a pesticide application.

Section 5

Part (b), which is stricken in the bill, should be retained, but with the provision "Except as provided for in section 1," as in Section 4. This would keep the provision requiring compliance with the label in general, which has been an important enforcement tool.

Other possibilities for changes in the Kansas Pesticide Law:

- Require training and certification of sales persons, dealers, and consultants.
- Require training and certification of grounds keepers, maintenance personnel, custodians, and others who apply pesticides to public places such as schools, other institutions, apartment houses, and businesses.
- Mandate a statewide educational effort aimed at household users.
- Strengthen the private applicator certification program by providing regular training programs and more frequent renewals.

Comments on Section 2(ee) of FIFRA:

Section 2(ee) of FIFRA allows application:

- (1) at less than labelled rate,
- (2) against pests not specified on the label,
- (3) using a method not specified on the label, and
- (4) mixing with a fertilizer not specified on the label.

In Kansas, the Kansas Pesticide Law's prohibition of use contrary to the label supercedes FIFRA Section 2(ee). Except for the lower than labelled rate, this works well because companies that want to provide for meeting local needs for uses that are not on the federal label may apply for a special local needs registration, as permitted by FIFRA Section 24(c). The special local needs program is specifically intended to allow for special conditions at the local or regional levels. In order to meet the criteria for a special local needs registration, the need must be special--there must be no other registered pesticide that is sufficiently available to satisfy the need--and it must be local--the conditions creating the need must be limited to the state or region. The chemical must also meet other requirements--such as tolerances for the crops where it will be applied.

In the past two years, there have been no pesticides in Kansas that have met those conditions for Section 2(ee) needs. This indicates that there is not a need in Kansas to allow these uses.

On the other hand, there are reasons not to allow the blanket permission of Section 2(ee):

- (1) A blanket less-than-labelled rate permission poses a difficulty in consumer protection when commercial applicators apply lower rates that do not work. It also poses additional hazards to the environment if it results in additional applications.
- (2) The use against pests not specified on the label also poses additional environmental hazards if the application does not work. Both private applicators and those who hire commercial applicators may suffer if the product does not work against the new pest.
- (3) The use by a method not specified on the label may produce unanticipated results due to inadequate instructions. Kansas was probably spared some groundwater problems because the state did not allow use in chemigation systems without appropriate labelling.
- (4) Mixing with a fertilizer that is not on the label may result in unanticipated chemical reactions.

The Kansas system works well for the farmer, if not always for the chemical manufacturer. By examining the data on how well the pesticide works, the Board of Agriculture

SIERRA CLUB ADDENDUM

can prevent farmers from spending money on less effective, and thus more costly pest control. This bill, as currently drafted, allows more flexibility in application rates without jeopardizing the protection of the users and the environment.

I would also like to suggest that another measure one might take would be to express to Congress the need for EPA to give careful consideration to the efficacy data--data on how well a pesticide works and how much is required in making registration decisions. EPA says that they count on the free market to regulate pesticide efficacy, but this just means that farmers and other users may lose money in the process.

Committee of . . .

Kansas Farm Organizations

Wilbur G. Leonard
Legislative Agent
109 West 9th Street
Suite 304
Topeka, Kansas 66612
(913) 234-9016

TESTIMONY IN SUPPORT OF SENATE BILL NO. 3

BEFORE THE SENATE COMMITTEE ON AGRICULTURE

February 8, 1989

Mr. Chairman and Members of the Committee:

I am Wilbur Leonard, appearing for the Committee of Kansas Farm Organizations. We appreciate this opportunity to add the support of our 22 member organizations to the passage of Senate Bill No. 3.

We believe that persons who offer pest control services through any media source or who conduct wood destroying organism inspections should be required to obtain a proper pesticide business license.

Enforcement would be strengthened by making it unlawful to "use, store, dispose of pesticide material or containers without regard to public health or environmental damage; or fail to maintain and provide a copy of pesticide product labels and material safety data sheets to customers when so requested."

Further, the use of less than label quantities of a pesticide if such reduced concentration is approved by the secretary of the state board of agriculture and the applicator's customer is notified of the reduced application should have the net effect of introducing smaller quantities of pesticides into the environment generally.

We're also in accord with the creation of pesticide management areas, which would permit, restrict or ban the use of certain pesticides within such areas. The procedure for the establishment of these areas provides input from various interested parties and for appropriate appeal procedures.

We believe this measure represents responsible action by both the chemical industry and the farming community. In summary, we support the provisions of Senate Bill No. 3, with the addition of the proposed amendments relative to the establishment of pesticide management areas.

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MEMBERS OF THE COMMITTEE OF KANSAS FARM ORGANIZATIONS

ASSOCIATED MILK PRODUCERS

KANSAS AGRI-WOMEN

KANSAS ASSOCIATION OF SOIL CONSERVATION DISTRICTS

KANSAS ASSOCIATION OF WHEAT GROWERS

KANSAS COOPERATIVE COUNCIL

KANSAS CORN GROWERS ASSOCIATION

KANSAS ELECTRIC COOPERATIVES

KANSAS ETHANOL ASSOCIATION

KANSAS FARM BUREAU

KANSAS FERTILIZER & CHEMICAL INSTITUTE, INC.

KANSAS GRAIN & FEED DEALERS ASSOCIATION

KANSAS LIVESTOCK ASSOCIATION

KANSAS MEAT PROCESSORS ASSOCIATION

KANSAS PORK PRODUCERS COUNCIL

KANSAS RURAL WATER ASSOCIATION

KANSAS SEED DEALERS ASSOCIATION

KANSAS SOYBEAN ASSOCIATION

KANSAS STATE GRANGE

MID-AMERICA DAIRYMEN

KANSAS VETERINARY MEDICAL ASSOCIATION

KANSAS WATER WELL ASSOCIATION

WESTERN RETAIL IMPLEMENT AND HARDWARE ASSOCIATION

Kansas Natural Resource Council

Testimony before the Senate Agriculture Committee
SB 3: concerning the pesticide use law

Charlene A. Stinard, Kansas Natural Resource Council

February 8, 1989

My name is Charlene Stinard, and I represent the Kansas Natural Resource Council, a private, non-profit organization whose members promote sustainable natural resource policies for Kansas.

We applaud the Interim Study Committee's recognition of the importance of groundwater protection in recommending SB 3 to the Legislature.

While SB 3 is primarily a response to forthcoming Environmental Protection Agency requirements, it is also a positive step toward improved natural resource protection in Kansas. The plan to identify areas where the use of pesticides might cause environmental damage or health problems promotes the best resource management practices for Kansas agriculture. Toxic chemicals ought to be applied judiciously, with an eye toward environmental and health concerns, as well as optimal crop production. For farmers wanting -- and now by law, needing -- to reduce their pesticides input, the state ought to commit resources to develop alternative agricultural practices, those less chemically dependent, and to provide education and guidance to farmers.

Some important questions emerge in the consideration of "pesticide management areas":


What constitutes a "serious threat" to health and environment? What kind of threat is "imminent?"

Why is KS Geological Survey -- or some other agency with hydrogeology expertise -- not included in the technical advisory committee structure?

How will the short-term economic needs for continued pesticide use be balanced with long-term environmental and health needs?

Who is responsible for enforcement? Does the program depend on voluntary compliance?

How do we identify violations? Will there be monitoring and testing programs?



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attachment 4*

SB 3's provisions can provide further impetus in the move toward more sustainable agricultural research. The bill calls for pesticide management plans in areas of particular vulnerability. It is reasonable to prohibit or restrict dangerous products, on which many farmers are dependent. It would be better if we could provide environmentally sound alternatives to replace those products.

The questions we raise are intended to expand the discussion of this new management tool, not to provide excuses for defeating the bill. We are committed to sustaining farming as a way of life in Kansas; we also recognize that the future of agriculture depends on preserving and protecting our natural resources.

This bill opens the way toward better agricultural practices. We urge your consideration of these issues in the light of environmental protection as well as compliance to federal mandates.



PUBLIC POLICY STATEMENT

Senate Agriculture Committee

RE: S.B. 3 - Bill relating to the Pesticide Law

February 8, 1989
Topeka, Kansas

Presented by:
Warren A. Parker, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and Members of the Committee.

I am Warren Parker, Assistant Director of Public Affairs for Kansas Farm Bureau. I appreciate this opportunity to make some briefs remarks on S.B. 3.

As we discussed in testimony before this Committee on S.B. 2, the Chemigation Bill, the agriculture industry considers protection of the public health, safety and welfare paramount. We also believe it is sensible to keep control of pesticide use in Kansas within the State of Kansas as much as possible.

This state, as you know, has a widely diverse make-up relating to precipitation, soil type, and the other factors listed in S.B. 3. It is then important that the management district provisions of S.B. 3 are in place, administered by the State Board of Agriculture, to avoid a statewide ban on a pesticide the Federal Environmental Protection Agency may determine could be a problem in some areas, but in fact, can be safely applied to many others. This is a reasonable and safe approach to the issue,

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attachment 5*

which considers both the public health, safety and welfare, as well as options for a producer to **safely** grow the best possible crop.

No one enjoys regulations on their industry, but the welfare of this state is important. We believe taking steps to police ourselves, instead of the federal government doing it for us, will be much more beneficial to all concerned, and assure the quality of life we enjoy in Kansas.

That concludes my testimony Mr. Chairman. Thank you for your time. I would be glad to attempt to answer any questions.



KANSAS FERTILIZER AND CHEMICAL ASSOCIATION, INC.

816 S.W. Tyler St. P.O. Box 1517 A/C 913-234-0463 Topeka, Kansas 66601-1517

STATEMENT OF THE
KANSAS FERTILIZER AND CHEMICAL ASSOCIATION
TO THE
SENATE AGRICULTURE COMMITTEE
SENATOR JIM ALLEN, CHAIRMAN
REGARDING SB 3
FEBRUARY 8, 1989

Mr. Chairman and Members of the Committee, I am Chris Wilson, Director of Governmental Relations of the Kansas Fertilizer and Chemical Association (KFCA). KFCA is the voluntary trade and professional association of the Kansas agricultural chemical industry, including retailers and representatives of distributor, manufacturer and industry service firms. We appreciate the opportunity to comment today in support of S.B. 3.

We would specifically like to address those sections of the bill which provide for the establishment of Pesticide Management Areas (PMA's) and the application of pesticides at less than label rates.

In regard to the PMA's, we believe it is necessary for the state to establish the authority for such areas and Pesticide Management Plans (PMP's) for those areas to be created. This is the model for pesticide management which is being pursued by the Environmental Protection Agency (EPA). EPA has begun this process with aldicarb, the first pesticide to be put under special review by EPA for groundwater effects. EPA's determination on aldicarb requires ten states with "high vulnerability" areas (where groundwater contamination by aldicarb is most probable) to design and implement EPA-approved management plans. In areas of "medium vulnerability" where likelihood of contamination is uncertain, the manufacturer must monitor the groundwater and submit the data to EPA. Use in states of "low vulnerability" areas is not restricted. For aldicarb, Kansas is in the medium tier of states and does not have to have a management plan. However, it is quite possible that, as EPA reviews other suspected chemicals for their probability of reaching groundwater, that Kansas will be required to develop and implement management plans for one or more chemicals.

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attachment 6*

We strongly support the amendments to S.B. 3 being offered by the State Board of Agriculture. Their approach is very well thought out and is a sound, fair method for establishing PMA's and PMP's.

Regarding the allowance of application of less than label rate, we support this practice which is permitted under Sec. 2 (ee) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). This change would adopt that portion of FIFRA 2 (ee) in Kansas. We believe it makes good sense to apply chemicals at a lower rate than specified on the label under conditions in which it is known that the chemical will be effective at that lower rate. A member of our Association and our Groundwater Committee, Al Czajkowski of Monsanto, will address the 2 (ee) provision in further detail.

Senators, this bill is a major groundwater protection initiative. Giving the Board of Agriculture the authority to establish Pesticide Management Areas and Plans will insure that Kansans take the steps necessary to prevent groundwater non-point source contamination by pesticides. We urge you to adopt the Board's suggested amendments and recommend S.B. 3 favorable for passage.

I will attempt to respond to any questions you may have.

#

Comments on Senate Bill 3

Re: Proposal 2

To Senate Committee on Agriculture

from

Vernon McKinzie, Legislative Chairman

Kansas Termite & Pest Control Association

January 27, 1989

Mr. Chairman and members of the Committee: My name is Vernon McKinzie, I am a pest control businessman from Emporia. I am chairman of the Kansas Termite & Pest Control Association legislative committee. Thank you for the opportunity to offer comments and suggest changes to Senate Bill 3.

I want to express the gratitude of our state association to the interim committee, the staff persons who were involved, the Board of Agriculture and Secretary Sam Brownback for endorsing the concept of applying pesticides at less than labelled rates. A federal law provision has allowed less than label rates for many years, but the present Kansas law prohibits such uses. Since the adoption of the Federal Insecticide, Fungicide and Rodenticide act in the 1970's it has been interpreted by the courts that the "label is the law" and any deviation from labelled instructions could result in fines or imprisonment. Any user of pesticides in the state of Kansas would be subject to penalty now if they chose to use a product at less than label rate. We believe the decision to allow less than label rate in Kansas is a good one for our industry, and is also environmentally sound.

Because of the technicalities of the language necessary to allow such a practice, we are vitally concerned that the language be precise. Therefore, we have suggested language which we believe will be more workable for the commercial applicator and more enforceable by the regulatory agency.

You will note in Section 1, we are suggesting the less than label rate meet a statutory requirement by referring to Section 5(b), rather than require the secretary to issue a new regulation for every proposed use.

Some additional refinements we believe will enhance this bill are in Section 3(1). We have incorporated advertising, as well as the performance of services for control of pests. It is our contention that this is a better place to refer to advertising and performance of services. We believe this language will include not only those persons who perform wood infesting insect reports for real estate transactions but also those persons who may consider themselves a consultant. Consultants and inspectors are not currently covered by any part of the law unless they make pesticide applications to the property of another.

-more-

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attachment 7*

There are a number of successful pest control programs in place which do not depend on the application of pesticides. The use of traps, building designs, air management, heat control and other physical control measures are examples. Currently those people are not regulated or controlled by the law.

If you adopt our proposed language for Section 3(1), then Section 3 (3) and (4) can be deleted.

In section 4 we are referencing the exceptions for pesticide use at less than label rate to both Section 1 and Section 5(b). We are simply saying that in order to avoid penalty or violation for making an application at less than label rate, the fact that less than label rate was used must be disclosed. We do need to point out, if disclosure in advance is required as is stated in the proposed Senate Bill 3 draft, we may suddenly begin to see blanket advance disclosure statements appearing which will be of little value to the consumer. If disclosure occurs before settlement of the statement of services is presented, I believe that would be sensible. Our industry could live with that. Our problem is that many times we are unable to know we will apply a pesticide at less than label rate until the work has begun. Sometimes soil consistency will vary drastically and the pesticides will not penetrate the soil at the required label rate without hazard to the environment. We do not object to disclosing the facts in such cases, but we do not have the prediction capabilities to disclose the situation in advance.

In the original bill draft on page 8, line 287, it requires pesticides to be designated for less than label rates. We believe this will place an unreasonable and unnecessary burden on the secretary's staff. If disclosure is required as we have suggested, that should be adequate.

I will be available to answer any questions you may have. Thank you again for this opportunity.

PROPOSED BILL NO. 3

By Special Committee on Agriculture and Livestock

Re: Proposal No. 2

AN ACT concerning agriculture; relating to pesticides; amending K.S.A. 2-2453, 2-2454 and 2-2455 and K.S.A. 1988 Supp. 2-2440 and 2-2467a and repealing the existing sections.

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

New Section 1. Any person required to be licensed, registered or certified under this act may make a pesticide recommendation or use for less than in accordance with the directions for use on the label registered under the Kansas agricultural chemical act or by the environmental protection agency, or both, if such less than label rate application meets the requirements under Section 5(b) of this act.

New Section 2. The state board of agriculture is hereby authorized to develop chemical use districts or management districts. These districts shall be developed by including, but not limiting to, the following factors:

- (a) Rainfall;
- (b) topography;
- (c) soil type; and
- (d) depth of the water table.

These districts shall be designated as permitted or prohibited for use of certain types of pesticides.

Section 3. K.S.A. 1988 Supp. 2-2440 is hereby amended to read as follows: 2-2440. (a) Subject to the provisions of subsection (d), it is unlawful for any pesticide business which has not been issued a pesticide business license to:

(1) Engage in the business of advertising, offering for sale, selling, performing services for the control of pests on the property of another, or applying pesticides to the property of another within this state; or

(2) apply any pesticide or perform any pest control services on or at the premises of another person under any commission, division of receipts or subcontracting arrangement with a licensed pesticide business.

Nothing in this subsection shall be construed to require the licensing of any person applying restricted use pesticides to the property of another as a certified private applicator or under the supervision of a certified private applicator.

(b) Application for a pesticide business license or renewal shall be made in writing to the secretary on a designated form obtained from the secretary's office and shall be accompanied by an application fee per category in which the licensee applies, and an additional fee for each uncertified individual employed by the applicant to apply pesticides. The application fee per category and the additional fee for each such uncertified employee shall be fixed by rules and regulations adopted by the state board of agriculture except that such fees shall not exceed an application fee of \$100 per category in which the licensee

applies and an additional fee of \$10 for each uncertified individual employed by the applicant to apply pesticides. The application fee per category and the additional fee for each uncertified employee in effect on the day preceding the effective date of this act shall continue in effect until the state board of agriculture adopts rules and regulations fixing a different fee therefor under this subsection. Any uncertified individual employed for a period of more than 10 days in a 30-day period or for 5 consecutive days by a licensee to apply pesticides subsequent to such application shall be reported to the secretary within 30 days of such employee's hiring and the fee shall be paid at that time. Each application shall include the following:

(1) The business name of the person applying for such license or renewal;

(2) if the applicant is an individual, receiver, trustee, representative, agent, firm, partnership, association, corporation or other organized group of persons, whether or not incorporated, the full name of each owner of the firm or partnership or the names of the officers of the association, corporation or group;

(3) the principal business address of the applicant in the state and elsewhere; and

(4) any other information the secretary, by rules and regulations, deems necessary for the administration of this act.

(c) The secretary may issue a pesticide business license to apply pesticides in categories for which an applicant has applied

if the applicant files the bond or insurance required under K.S.A. 2-2448 and amendments thereto, satisfies the requirements of subsection (b), and pays the required fees. Such license shall expire at the end of the calendar year for which it is issued unless it has been revoked or suspended prior thereto. If a license is not issued as applied for, the secretary shall inform the applicant in writing of the reasons therefor.

(d) The following persons shall be exempted from the licensing requirements of this act:

(1) State or federal personnel using pesticides or pest control services while engaged in pesticide use research;

(2) veterinarians or physicians using pesticides as a part of their professional services; and

(3) any person or such person's employee who applies pesticides on or at premises owned, leased or operated by such person.

(e) Subject to the provisions of subsection (d), it is unlawful for any governmental agency which has not been issued a government agency registration to apply pesticides within this state. Application for government agency registration shall be made in writing to the secretary on a designated form obtained from the secretary's office and shall be accompanied by a fee fixed by rules and regulations adopted by the state board of agriculture, except that such fee shall not exceed \$35. The governmental agency registration fee in effect on the day preceding the effective date of this act shall continue in effect

until the state board of agriculture adopts rules and regulations fixing a different fee therefor under this subsection. No fee shall be required of any township located within a county which has previously applied for and received government agency registration. Each application for registration shall contain information including, but not limited to:

- (1) The name of the government agency;
- (2) the mailing address of the applicant;
- (3) the name and mailing address of the person who heads such agency and who is authorized to receive correspondence and legal papers. Such person shall be (A) the mayor or city manager for municipalities, (B) the chairperson of the board of county commissioners for counties, (C) the township trustee for townships or (D) any person designated by any other governmental agency; and

- (4) any other information the secretary, by rules and regulations, deems necessary for the administration of this act.

(f) If the secretary finds the application to be sufficient, the secretary shall issue a government agency registration. The government agency is not required to furnish a surety bond under this act. Such government agency registration shall expire at the end of the calendar year for which it is issued unless it has been revoked or suspended prior thereto. If a registration is not issued as applied for, the secretary shall inform the applicant in writing of the reasons therefor.

(g) A pesticide business license or government agency registration may be renewed by meeting the same requirements as for a new license or registration. Neither the pesticide business license nor the government agency registration shall be transferable, except that, in the event of the disability, incapacity or death of the owner, manager or legal agent of a pesticide business licensee, a permit may be issued by the secretary to permit the operation of such business until the expiration period of the license in effect at the time of such disability, incapacity or death if the applicant therefor can show that the policies and services of such business will continue substantially as before, with due regard to protection of the public and the environment.

(h) No pesticide business license may be issued to any person until such person is or has in such person's employ one or more individuals who are certified commercial applicators in each of the categories for which the license application is made.

Section 4. K.S.A. 2-2453 is hereby amended to read as follows: 2-2453. It shall be unlawful for any person to: (a) Except as provided for in Section 1 and Section 5(b), use pesticides in a manner which is inconsistent with such pesticide's label or labeling;

(b) discard or store any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or waterways and wildlife therein; or

(c) fail to comply with any other provision of this act or any rule or regulation adopted pursuant thereto.

Section 5. K.S.A. 2-2454 is hereby amended to read as follows: 2-2454. It shall be unlawful for any person required to be licensed, registered or certified under the provisions of this act to: (a) Make false or fraudulent claims through any media, misrepresenting the effect of material or methods to be utilized;

(b) make a pesticide recommendation or use not in accordance with the directions for use shown on the label registered under the Kansas agricultural chemical act and/or by the environmental protection agency, provided that any person required to be licensed, registered or certified under this act may make a pesticide recommendation or use for less than in accordance with the directions for use on the label registered under this act or by the environmental protection agency or both if such less than label rate recommendation or use is fully disclosed;

(c) knowingly use ineffective or improper methods or materials;

(d) knowingly operate faulty, unsafe or, if registration is required, unregistered equipment, or operate any equipment in a negligent manner;

(e) refuse or neglect to keep and maintain records required by this act, or refuse or neglect to make records available when and as required by this act;

- (f) make false or fraudulent records, invoices or reports;
- (g) use fraud or misrepresentation in making an application for or renewal of a license, registration, permit or certificate;
- (h) refuse or neglect to comply with any limitations or restrictions on or in a duly issued license, registration, permit or certificate;
- (i) aid, abet or conspire with any person to evade any of the provisions of this act, or allow a license, registration, permit or certificate to be used by an unlicensed or uncertified person;
- (j) impersonate any state, county or city inspector or official, as acting in their official capacity;
- (k) make any misrepresentation or defraud any member of the public;
- (l) permit a pesticide business license or contract forms to be used by any unlicensed person who is not a salaried or commissioned employee or representative of such licensee, for use in applying pesticides under any commission or subcontracting arrangement;
- (m) use any method or material without regard to public health, safety or welfare;
- (n) engage in or advertise to provide pest control services or apply pesticides without benefit of proper licenses, certification or registration;
- (o) use, store, dispose of pesticide material or containers without regard to public health or environmental damage; or

(p) fail to maintain and provide a copy of pesticide product labels and material safety data sheets to customers when so requested.

Section 6. K.S.A. 2-2455 is hereby amended to read as follows:

2-2455. (a) Each pesticide business shall present to each customer for whom such business performs a pest control service, a written statement of services or contract setting forth the following information:

(1) Business name and address of the pesticide business licensee;

(2) name and address of the customer;

(3) pest or pests to be controlled, which may be stated in general terms:

(4) pesticide to be used including the kind and quantity;

(5) the date and location of the application of the pesticide;

(6) the expiration date of all guarantees, if any are given;

(7) the name of the authorized officer or representative of the pesticide business licensee who performed or supervised performance of said services;

(8) the wind direction and velocity, when applicable; and

(9) that the application was less than label rate, when applicable.

(b) Whenever the service is performed for the purpose of controlling termites, powder-post beetles, wood borers, wood-rot fungus or any other wood destroying pest, the following information shall be included in addition to that required under subsection (a):

(1) The conditions under which retreatments, if any are to be made;

(2) the approximate date or dates of inspections, for any to be made after the original application of the pesticide; and

(3) a diagram of the structure to be treated, showing the location of visible evidence of active and inactive infestations by any wood destroying pest or pests for which the treatment is proposed; where a partial or spot treatment is to be made, this diagram shall also show the area or areas of the structure which are to be treated.

(c) The required written statement of services or contract for services may be incorporated into any business form used by the pesticide business licensee. The written statement of services or contract shall be presented to the customer at a time established by rules and regulations promulgated by the secretary or board. Any pesticide business licensee using aerial methods of applying pesticides may present such information at any time prior to the time payment is accepted. The pesticide business licensee shall retain a copy of each written statement of services or contract in such licensee's files for a period of three years from the expiration date of any written statement of

services or contract. Each pesticide business licensee shall faithfully carry out the stipulations set forth in any written statement of services or contract prepared by such licensee or any of its representatives.

(d) Each pesticide business licensee shall make available to the secretary upon request, a copy of any written statement of services or contract, records of all pesticide applications during any specified period, records of all employees who performed any service involving, or in conjunction with, the application of pesticides and any other requested information pertinent to the administration of this act or any rule or regulation adopted hereunder by the board.

(e) The secretary shall require certified commercial applicators who are not employed by or otherwise acting for a business licensee to maintain records concerning applications of restricted use pesticides. The secretary shall specify by rules and regulations the information to be contained in such records, which shall be maintained for three years from the date of application of the pesticide concerned. Such records shall be open to inspection by the secretary or the secretary's authorized representative during normal business hours, and copies shall be furnished to the secretary or the secretary's authorized representative upon request.

Section 7. K.S.A. 1988 Supp. 2-2467a is hereby amended to read as follows: 2-2467a. The secretary is hereby authorized to promulgate and adopt rules and regulations for the administration

of this act and concerning the following matters which include but are not limited to:

(a) The designation of certain pesticides as restricted use pesticides as provided in K.S.A. 2-2439, and amendments thereto;

(b) the designation of categories for the issuance of pesticide business licenses as provided in K.S.A. 2-2444a, and amendments thereto;

(c) the designation of categories for the certification of applicators as provided in K.S.A. 2-2444a, and amendments thereto;

(d) the designation of training requirements for those persons applying for a pest control technician's registration as provided in K.S.A. 1987 Supp. 2-2440b;

(e) the registration and identification of equipment used in the commercial application of pesticides as provided in K.S.A. 2-2456, and amendments thereto;

(f) the storing and discarding of pesticides and pesticide containers;

(g) proper health and safety precautions;

(h) proof of financial responsibility including acceptable surety bond or liability insurance coverage; and

(i) furnishing of reports and information necessary for the secretary to carry out the provisions of this act.

Section 8. K.S.A. 2-2453, 2-2454 and 2-2455 and and K.S.A. 1988 Supp. 2-2440 and 2-2467a are hereby repealed.

Section 9. This act shall take effect and be in force from and after its publication in the statute book.

AMENDMENT TO K.S.A. 2-2448

2-2448. Surety bond or liability insurance required for pesticide business license. The secretary shall not issue a pesticide business license until the applicant has furnished proof of financial responsibility including a surety bond or a certificate of liability insurance as a condition precedent to such license being issued. The bond or certificate of liability insurance shall be executed by a corporate surety or insurance company authorized to do business in Kansas or by a licensed insurance agent operating under authority of K.S.A. 40-246b and shall state the effective date and the expiration date. Such liability insurance shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance pursuant to K.S.A. 40-216 except as authorized by K.S.A. 40-246b. The surety bond and certificate shall be executed on a form approved by the secretary. The applicant shall be named as the principal in the bond. Prior to January 1, 1983, the amount of the bond coverage shall be fixed by the secretary, but shall not be less than \$2,000 per year. On and after January 1, 1983, the amount of the bond coverage shall be fixed by the secretary, but shall not be less than \$6,000 per year. Such bond shall be to the state of Kansas and shall be conditioned upon compliance by the principal and by the principal's officers, agents, representatives and employees, with

the provisions of this act and acts amendatory thereof and supplemental thereto.

The liability insurance policy shall provide coverage (a) for not less than \$25,000 for bodily injury liability for each occurrence; and (b) for not less than \$5,000 for property damage liability for each occurrence. Pesticide application equipment, if required to be registered under K.S.A. 2-2456, shall be covered.

The secretary shall be notified in writing by the insurer at least 10 days prior to the effective date of any reduction or cancellation of liability insurance which was supplied as a prerequisite to licensing. Upon reduction or cancellation of the liability insurance, the secretary shall suspend such pesticide applicator's business license until the bond requirement or the insurance requirement is met by the licensee for the current license period.

It shall be unlawful for any licensed person to use the words "bond" or "bonded" in advertising or in publicizing such person's operations in connection with the application of pesticides unless such bond is a performance bond and that fact and the amount of such bond are specified.