

Approved February 8, 1989  
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Ross Doyen at  
Chairperson

8:03 a.m./p.m. on February 1, 1989 in room 422-S of the Capitol.

All members were present except: quorum was present.

Committee staff present:

Don Hayward, Revisor  
Raney Gilliland, Research  
Laura Howard, Research  
Lila McClaflyn, Committee Secretary

Conferees appearing before the committee:

Dennis Murphey, Department of Health and Environment  
Charles Nicolay, Kansas Oil Marketers Association  
Ross Martin, Kansas Petroleum Council  
David Corliss, League of Kansas Municipalities

List of others present is on file.

Chairman Doyen called on Dennis Murphey.

Mr. Murphey walked through S.B. 94 section by section and responded to questions.

The hearing on S.B. 94 was continued.

Charles Nicolay presented written testimony supporting S.B. 94 (Attachment I). He responded to several questions.

Ross Martin presented written testimony in support of S.B. 94 (Attachment II).

David Corliss proposed amendments to S.B. 94 (Attachment III).

Bill Fuller expressed concern with some provisions of the bill. (Attachment IV)

Meeting adjourned at 8:58 a.m. The next meeting will be February 7, 1989.

1989 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 1, 1989

PLEASE PRINT

GUEST LIST

NAME	REPRESENTING
Ken Bahr	NACA
Rebecca Rice	Amoco
Gary K. Gullett	KDHE
Kathy Allen Duncan	League of Women Voters Ks.
Dennis Murphay	KDHE
DAN R. MCGEE	CENTEL ELECTRIC
Robert A. Anderson	Mid Cont Oil & Gas
Don Stevens	Texaco
Debbie McCaskill	KDOC
Ross Martini	KPC
Ed Schaub	Waste Mgmt
MIKE BEAM	Ks. LUSTK. Assn.
WALKER HENDRIX	Hendrix Law Office's (Pres. EKOGA)
Chuck Linn	KDHE
BOB ANDERSON	KODIA
Charles Nicolay	Ks Oil Marketers Assn
Margaret Ahrens	Ks Chapter Sierra Club
Charlene Stenara	Ks Natural Resource Council
Terry Leatherman	Ks Chamber of Commerce & Industry
Kathy Taylor	Kans Bankers Assn.
Chuck Stokes	"
Lee Juller	Kansas Farm Bureau

1989 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 1, 1989

PLEASE PRINT GUEST LIST

NAME

REPRESENTING

Bev Bradley

DAVE CORLISS

JEFF SONNICH

TOM DAY

Jim Jurnell

LARRY MAGILL

Anne Smith

KS Assoc of Counties  
LEAGUE OF MUNICIPALITIES

KLSI

KCC

Kansas Fertilizer & Chemical Co.

INDEP. INS. AGENTS OF KS.

Helm & Abant - Mesa

The Honorable Ross Doyen, Chairperson  
Committee on Energy and Natural Resources  
Senate Chamber  
Third Floor, Statehouse

Dear Senator Doyen:

SUBJECT: Fiscal Note for SB 94 by Committee on Energy and Natural Resources

In accordance with KSA 75-3715a, the following fiscal note concerning SB 94 is respectfully submitted to your committee.

Subject act, as introduced, establishes a storage tank regulatory program to be administered by the Department of Health and Environment. The act defines terms; provides for exclusions from the act; and includes a requirement for notification by owners to the Department of the tank's existence. The duties and functions of the secretary are defined regarding the adoption of rules and regulations for the establishment of performance standards for underground and above ground storage tanks, repair of in-ground tanks, maintaining equipment leak disclosure releases; financial responsibility and the retirement and closure of tanks, tank tightness testing methods and site selection and cleanup criteria. Rules will also be adopted which schedule tank retrofit or retirement.

Fees for tank registration, permits, plan approvals and inspections will be established. These fees will not exceed the cost of properly administering the program; and all fees will be deposited in the State General Fund. The act also requires that licenses will be issued for underground storage tank contractors and installers. The fees will not exceed the amount of revenue required for program administration. Rules and regulations for tanks exempted from the provisions of the act will be adopted. Such tanks will be required to be registered, but no registration fee will be charged.

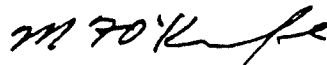
Permits for all tanks constructed, owned or operated will be required after the effective date of the act. Evidence of financial responsibility must be provided by each owner or operator of an underground storage tank. The rights and financial liabilities of guarantors of financial responsibility are defined. Written examinations of underground storage tank installers and contractors will be administered, and their work inspected on-site annually. Rights of inspection by the secretary or his designee are defined, as are civil penalties for the defined violations of the act. Both administrative and civil remedies may be sought by the department for violation of the act.

This bill, as introduced, would require additional staff for the Department of Health and Environment (one environmental engineer or environmental geologist and two environmental technologists). Salary and fringe benefits have been estimated by the department at a total cost of \$79,136. Contractual services and commodities are estimated to be \$11,038 annually. One time capital outlay for office equipment would be \$1,545. Expenditures in the first fiscal year would total \$91,719.

Senator Ross Doyen  
February 8, 1989  
Page Two

The statute mandates that various fees be assessed underground storage tank owners, operators, installers and contractors. These fees are to cover but not to exceed the cost of administering the program and are to be deposited in the State General Fund. A recommendation for funding for this program was not included in the FY 1990 Governor's Report on the Budget. If the statute were enacted any expenditures which would result would be from the State General Fund and would be in addition to the amount included in the Budget Report.

There is no fiscal impact on the Kansas Fire Marshal which also has some responsibility for underground storage tanks.



Michael F. O'Keefe  
Director of the Budget

MFO:KW:sr  
cc:Laura Epler, Department of Health and Environment

5235



# KANSAS OIL MARKETERS ASSOCIATION

## MEMORANDUM



TO: Senate Committee on Energy and Natural Resources  
FROM: Kansas Oil Marketers Association  
DATE: February 1, 1989  
RE: 1989 Senate Bill No. 94

Chairman Doyen and Members of the Committee, I am Charles Nicolay, Executive Director of the Kansas Oil Marketers Association (KOMA), which is a statewide association of petroleum distributors and which represents the interests of hundreds of other underground storage tank owners and operators who market petroleum products. I am appearing today to express KOMA's support for 1989 Senate Bill No. 94.

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

SB 94 is intended to provide such enabling legislation in Kansas, authorizing the Kansas Department of Health and Environment (KDHE) to administer and enforce the federal regulations. It would, in effect, establish as state law the substantive provisions of the federal rules and regulations. Thus, considering the fact that the federal act and the

EPA's rules and regulations are now in force and effect in Kansas, the only real issue presented by SB 94 is who will administer and enforce these regulations--the EPA or KDHE?

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

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

However, we would note that, to have an acceptable regulatory framework, i.e., one which not only addresses the federal requirements, but also takes into account the owners and operators of underground storage tanks, the Committee needs to consider the financial responsibility requirements imposed by the federal law. The Committee should determine how best the owners and operators of underground storage tanks in Kansas may comply with those requirements. For such purpose, we

2/1/89

1-2

would urge the Committee to include within its deliberations of this issue the companion bill establishing the petroleum storage tank release trust fund, which the Committee authorized to be introduced on Tuesday.

Thank you for the opportunity to participate in these proceedings. Our association stands ready to provide whatever assistance the Committee deems appropriate to its consideration of SB 94.

2/1/89  
1-3



Testimony re: Senate Bill 94

For the Senate Energy and Natural Resources Committee  
By the Kansas Petroleum Council  
February 1, 1989

Thank you Mr. Chairman for the opportunity to comment on SB 94, an act relating to the regulation of storage tanks. My name is Ross Martin. I am executive director of the Kansas Petroleum Council.

Our members are the major oil companies doing business in Kansas. Some drill for oil and gas, some refine crude oil to make petroleum products, and some also sell gasoline at the retail level. We are interested in this bill because it applies to our petroleum storage tanks.

As Senator Daniels knows, our national organization -the American Petroleum Institute- was involved in the development of this type of legislation at the federal level. She will remember the API offered input on technical specifications when NCSL was discussing a model law.

We appreciate the work KDHE has done in shaping this important legislation. For the most part, the Department appears to have considered many of the problems associated with the federally-mandated program. It is a program that will have a dramatic impact on the marketing sector of our industry, particularly the smaller operators.

Our member companies have been working on the storage tank problem for several years. In fact, most of the major companies began addressing the environmental problems associated with tanks prior to 1984 when RCRA was enacted. Since passage of the federal law, we have been steadily removing older tanks and replacing them with ones which meet required standards. Compliance has been very costly, but we are generally in agreement with federal intent.

*SE & NR  
2/1/89  
attachment II*

Having preliminarily examined SB 94, we see it as workable approach to state regulation of storage tanks. We note the bill is consistent with exemptions in federal law and that --with the exception of above ground tanks-- it appears to follow the federal lead.

The question of above ground tank regulation is still to be resolved by the Congress. Several bills were introduced in Washington last year and the subject is not yet settled. Secretary Grant has alluded to the need to provide the Department with additional authority. His testimony yesterday suggested a "loophole" might result, if above ground tanks were not covered. We --on the other hand-- believe these tanks should remain at least temporarily exempt until federal legislation is completed. If there is some compelling reason to do otherwise, we feel the Department should be asked to elaborate.

We do have some questions about certain provisions in the bill:

The first concerns language on page 3, at line 85. The definition of "storage tank" causes us some concern. We think it should be worded to reflect the bill's intent that smaller containers such as 55 gallon barrels not be included. Barrels of this small size are often kept on-site at refineries. In some cases they might contain substances covered by the bill. Is it the Department's feeling the bill must also apply to them?

Another question arises over language inserted at line 353, on page 10. We question whether minor modifications such as the replacement or installation of a valve or a manhole cover must be subject to permit or other written approval. What does the word "modify" intend?

Our last question relates to language at line 243, on page 7. Why should exempt tanks be subject to registration? Does the federal government require this? Does registration of an exempt tank relate to the bill establishing the petroleum storage tank trust fund?

These are all of the questions we have on the bill, at least at this time. For the most part, the Department seems to have done a credible job of addressing some of the problems in this federally-mandated program. We do take the position that SB 94 should be carefully aligned with federal law, and not go beyond those requirements. It is apparent many small marketers in rural areas will have a very difficult time handling the cost of the proposed state laws. We hope the Committee will give full consideration to any means of softening the impact of this new state program.

Thank you again for allowing time for my comments.



**League  
of Kansas  
Municipalities**

**Municipal  
Legislative  
Testimony**

*An Instrumentality of Its Member Kansas Cities. 112 West Seventh Street, Topeka, Kansas 66603 Area 913-354-9565*

**TO:** Senate Energy and Natural Resources Committee  
**FROM:** David Corliss  
**DATE:** January 31, 1989  
**RE:** SB 94 - Storage Tank Act

The League of Kansas Municipalities generally supports efforts of state agencies to administer federal programs or regulations. As with many environmental issues, SB 94 is of interest to Kansas cities as a member of the regulated community and as a provider of municipal services dependent upon a clean environment. Many Kansas cities have petroleum storage tanks which are used for fueling the vehicles of such municipal functions as fire, police, emergency services or public works. Kansas cities will watch with interest the development of the storage tank rules and regulations authorized by this act. The League is also very interested in the financial responsibility requirements under SB 94, and the possibility of a state-administered trust fund to meet these requirements.

The use of storage tanks is also of interest to Kansas cities in their roles as public water suppliers. Obviously, leaking underground storage tanks are a threat to present and future supplies of water. City officials are also concerned that storage tanks not be a fire threat in their communities, and that state regulation of tanks not interfere with local authority concerning zoning decisions. Additionally, the League is concerned that rural Kansas communities have access to the petroleum products (e.g. the small town gas station) that could be considered essential to the continued viability of many smaller Kansas cities.

The League respectfully submits the following proposed amendments to SB 94 for consideration by the committee:

**Proposed Amendments to SB 94**

Add a new section: "Nothing in this act shall be construed to limit the exercise of powers by cities, counties and townships regarding the location of storage tanks and the visual compatibility of aboveground storage tanks with surrounding property."

Add to the definition of "own" at line 50: "Such term shall not include the ownership of a storage tank or the regulated substance in a storage tank which is obtained by a city or county as the result of a tax foreclosure or eminent domain proceeding."

Amend Sec. 12 to read:

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

*SE & NR  
2/1/89*

*Attachment III*

*President: Douglas S. Wright, Mayor, Topeka \* Vice President: Irene B. French, Mayor, Merriam \* Past President: Carl Dean Holmes, Mayor, Plains  
 \* Directors: Margo Boulanger, Mayor, Sedan \* Nancy R. Denning, Commissioner, Manhattan \* Ed Eiert, Mayor, Overland Park \* Greg Ferris, Councilmember, Wichita \* Frances J. Garcia, Commissioner, Hutchinson \* William J. Goering, City Clerk/Administrator, McPherson \* Jesse Jackson, Commissioner, Chanute \* Richard U. Nienstedt, City Manager, Concordia \* David E. Retter, City Attorney, Concordia \* Judy M. Sargent, City Manager, Russell \* Joseph E. Steineger, Mayor, Kansas City \* Bonnie Talley, Commissioner, Garden City \* Executive Director: E.A. Mosher*



# PUBLIC POLICY STATEMENT

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

**RE: S.B. 94 -- regulation of storage tanks**

February 1, 1989  
Topeka, Kansas

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

Chairman Doyen and Members of the Committee:

My name is Bill Fuller. I am representing the farm and ranch members of the 105 county Farm Bureaus in Kansas.

We must express some concern on S.B. 94. We do this with some mixed feelings. First, our members have a strong desire to protect the quality of our groundwater. This was most recently demonstrated by the development of the Farm Bureau SAFE WATER PROGRAM that includes nitrate screening, water testing and Safe Water Clinics. A part of that program included the development, printing and distribution of 25,000 copies of a "Self-Help POLLUTION CHECKLIST" which included a point on underground fuel tanks in the section "Check Your Farm Potential To Pollute Groundwater and Your Drinking Water Supply" (see pages 3-4 of attached copy).

Section 3 of the bill exempts certain tanks from this regulation. Included are small farm tanks which is consistent with federal regulations:

*SF+NR  
2/1/89  
Attachment IV*

Lines 129-130

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

In a later section of the bill these exempt tanks are required to "register."

Lines 243-246

(p) Adopt rules and regulations requiring the registration with the department of any class of storage tank otherwise exempted from regulation by this act. Such registration shall not require the payment of any registration fee.

We understand this section is necessary to qualify owners of small tanks for the trust fund that will be considered in S.B. 122. Therefore, we would hold final judgment on this concern until we know the final content and outcome of that proposal.

We are also concerned about the financial obligation and loss of small fuel suppliers in rural Kansas because of these proposed comprehensive regulations. It has been suggested if the state of Kansas does not authorize KDHE to provide this regulation, EPA will do it for us. Farm Bureau has adopted policy which states:

**"We believe any state standards adopted in Kansas should be no more stringent than federal standards approved by the U.S. Congress or adopted by a federal agency."**

Therefore we encourage this Committee to closely scrutinize S.B. 94 to prevent regulations beyond those required in federal law.

Thank you for this opportunity to express our concerns. We will attempt to respond to any questions you may have.