Approved February 15, 1989
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources.

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

8:05 a.m./p.m. on February 8, 1989 in room 423-S of the Capitol.

All members were present except: quorum was present.

Committee staff present:
Don Hayward, Revisor
Raney Gilliland, Research
Lila McClaflin, Committee secretary

Conferees appearing before the committee:
John Koepke, Kansas Association of School Boards
Cleo Murphy, Kansas Department of Revenue
Charles A. Stone, Kansas Bankers Association
Donald Schnacke, Kansas Independent Oil and Gas Association
Charles Nicolay, Kansas Oil Marketers Association
Lou Schneider, Topeka Pump Co., Inc.
Douglas R. Hinkle, Kansas Water Well Association
Francis Cox, Executive Director, Kansas Water Well Association
Wilbur Leonard, Committee of Kansas Farm Organizations
Charlene Stinard, Kansas Natural Resource Council, Kansas Chapter of the Sierra Club, Kansas Wildlife Federation, Kansas League of Women Voters and Kansas Audubon Council
James A. Power, Director, Environment/Water Protection
Karl Mueldener, Director, Bureau of Water Protection

List of others present is on file.

The hearing on S.B. 122 was continued. The chairman called on John Koepke.

Mr. Koepke presented written testimony supporting S.B. 122 (Attachment I

Cleo Murphy presented written testimony supporting S.B. 122 (Attachment II

Charles A. Stone presented written testimony supporting S.B. 122 (Attachment III).

Testimony was distributed from Front Royal Group, Inc., McLean, Virginia (Attachment IV).

Donald Schnacke suggested if S.B. 122 and S.B. 94 were to be combined he would like to propose some amendments to S.B. 94 (Attachment V).

Charles Nicolay introduced Lou Schneider from Topeka Pump Co., Inc.

Mr. Schneider responded to questions regarding the cost of installation of tanks and the cost of retrofitting tanks.

The hearing on S.B.122 was closed.

Chairman Doyen opened the hearing on S.B. 121. He called on Douglas Hinkle.

Mr. Hinkle presented written testimony supporting S.B. 121 (Attachment VI).

Francis Cox presented written testimony supporting S.B. 121 (Attachment VII).

Wilbur Leonard stated with a few amendments his organizations would support S.B. 121 (Attachment VIII).

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources,

room 423-S, Statehouse, at 8:05 a.m./~~p.m.~~ on February 8, 19__.

Karl Mueldener briefed the committee on S.B.121. His written testimony is (Attachment IX).

Charlene Stinard stated with minor amendments, which she submitted in written form, they would support S.B. 121 (Attachment X).

Chairman Doyen asked the organizations to get-together and work out amendments that were agreeable to all parties concerned.

The hearing was closed on S.B. 121.

The hearing was opened on S.B. 120.

James Power briefed the committee on S.B. 120 (Attachment XI).

Mr. Power and Mr. Mueldener responded to questions.

Chairman Doyen asked Charlene Stinard if she would be willing to present her testimony at the next meeting of the committee. She stated she would.

Senator Sallee requested the introduction of a proposal to direct the Secretary of State to convey certain land in Atchison county to certain persons. A motion was made by Senator Martin to introduce the legislation. The motion was seconded by Senator Lee. Motion carried.

Also, Senator Sallee requested introduction of an act concerning the sale of land in abandoned river channels. A motion was made by Senator Daniels to introduced the proposal. The motion was seconded by Senator Thiessen. Motion carried.

The minutes of January 31, February 1 and February 7 were approved.

The meeting adjourned at 9:02. The next meeting will be February 14, 1989.

Senate Bill 120
19 Session
February 9, 1989

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

Dear Senate Doyen:

SUBJECT: Fiscal Note for SB 120 by Committee on Energy and Natural Resources

In accordance with KSA 75-3715a, the following fiscal note concerning SB 120 is respectfully submitted to your committee.

SB 120, as introduced, amends KSA 65-167 and 65-170e relating to penalties for the unlawful discharge of sewage under the state water pollution discharge permit system. The act changes the penalty for not filing a report on a discharge above a permitted level into a sewage system or the waters of the state from $1,000 per day to a fine of "not less than $1,000 and not more than $10,000" per day for each day of the offense. The act also includes provisions for the intervention of any person affected or with an interest in a civil or administrative action brought under KSA 65-170d and its amendments.

This bill has an indeterminate fiscal impact. The increase in fines which can be levied against polluters and costs incurred in legal actions by allowing the intervention of citizens in department administrative and civil proceedings are impossible to quantify at this time. The department is not requesting any additional funds to implement this bill, nor were any recommended in the FY 1990 Governor's Report on the Budget.

Michael F. O'Keefe
Director of the Budget

MFO:KW:sm

cc: Laura Epler
Dept. of Health & Environment

5282

1989 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 8, 1989

PLEASE PRINT GUEST LIST

NAME	REPRESENTING
Joe Lieber	Ks Co-op Council
ED SCHAUB	COASTAL CORP
JOHN KOEPKE	KASB
Don Schnacke	KIOGA
Ken Bahr	KCMB
Willm Lenard	Comm Ks. Farm Org.
Carla Worthington	Washburn Student social worker
Deb Frederick	Washburn Student Social worker
Tom Day	KCC
James Power	KDHE
Karl Mueldener	KDHE
Ron Hammerschmidt	KDHE
Dennis Murphey	KDHE
Debbie McCaskill	KOOC
Tony Leatherman	KCCI
Bill Fuller	Kansas Farm Bureau
DAVID CORLISS	LEAGUE of MUNICIPALITIES
Kathy Duncan	league of Women Voters Ks.
Leland E. Rolfs	DWR-KSBA
Doug Henkle	KWWA

1989 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 8, 1989

PLEASE PRINT GUEST LIST

NAME	REPRESENTING
Kathy Taylor	Kans. Bankers Assn.
Chuck Stones	"
Mary Ethup	D.O.B

KANSAS ASSOCIATION OF SCHOOL BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

TESTIMONY ON S.B. 122
before the
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
by
PATRICIA E. BAKER
ASSOCIATE EXECUTIVE DIRECTOR/GENERAL COUNSEL
KANSAS ASSOCIATION OF SCHOOL BOARDS

February 7, 1989

Mr. Chairman, members of the committee, I appreciate the opportunity to appear before you in support of Senate Bill 122. The Federal Solid Waste Disposal Act requires public school districts, as well as other bodies, to take certain measures with regard to underground storage tanks. Persons have control of such tanks must, among other requirements, present evidence of "financial responsibility". 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" as well as to protect the natural resources of the State of Kansas.

We ask for your favorable consideration of Senate Bill 122.

SE&NR
Attachment I
2/8/89

KANSAS DEPARTMENT OF REVENUE
Division of Taxation
Robert B. Docking State Office Building
Topeka, Kansas 66625-0001

MEMORANDUM

TO: THE HONORABLE ROSS O. DOYEN, CHAIRMAN
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

FROM: JOHN R. LUTTJOHANN
DIRECTOR OF TAXATION

RE: SENATE BILL 122

DATE: FEBRUARY 7, 1989

Thank you for the opportunity to appear today on Senate Bill 122.

The provisions of this bill would establish a petroleum tank release trust fund which would be funded by an assurance fee of $.01 per gallon on all petroleum products manufactured or imported into Kansas. This fee is to be paid by the manufacturer, importer, or distributor first selling, offering for sale, using or delivering petroleum products within Kansas and is to be collected by the Department of Revenue along with the oil inspection fee provided in K.S.A. 55-426.

The bill would have a modest administrative impact on the Department of Revenue due to the fact that the fee would be collected from only about 50 licensees who currently file monthly reports with the Department.

We would, however, suggest that the effective date of the provision be July 1, 1989 in order to allow sufficient time for revision of forms and notification of affected taxpayers. This would also insure that the effective date would be on the first day of a calendar month.

I would be happy to respond to any questions which you may have.

SE&NR
2/8/89
Attachment II

PROPOSED AMENDMENT TO SB 122

TO: Senate Committee on Energy and Natural Resources

FROM: Charles Stones, Kansas Bankers Association

Mr. Chairman, Members of the Committee, thank you for the opportunity to present the following amendment to SB 122:

ON PAGE 5, line 172, by inserting the following after the word, "in":

"interest-bearing time deposits in any commercial bank or trust company located in Kansas. Such deposits shall be secured as stipulated in K.S.A. 75-4218. If the board determines that it is impossible to deposit such moneys in such time deposits at a rate equal to or greater than the average yield before taxes received on ninety-one day United States treasury bills as determined by the federal reserve banks, as fiscal agents of the United States, at its most recent public offering of such bills prior to the inception of such deposit contract, such moneys shall be invested in"

ON PAGE 5, by striking all of line 174 after the word "or"; by striking all of line 175, and all of line 176 and in line 177 before the word "in" last appears.

The only change effected in this amendment is to make sure the funds stay in Kansas, so long as banks are willing to pay the 91 day Treasury bill rate, or higher; and to provide security for such deposits in the same manner as is utilized for all other state deposits.

If no banks are willing to pay such rate, then other forms of out-of-state investment may be utilized.

Mr. Chairman, Members of the Committee, the KBA respectfully urges your favorable consideration of the above amendment.

Charles A. Stones

SE&NR
2/8/89
attachment III

ground storage tank trust fund cleanup costs, as required by the resource conservation and recovery act, 42 U.S.C. § 6991b(h)(7)(B); and

(4) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of this act.

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

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

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

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

Sec. 6. Except as otherwise provided in this act, an owner or operator of a petroleum storage tank, or both, shall be liable for all costs of corrective action taken in response to a release or a substantial threat of a release from such petroleum storage tank. Eligibility to participate in the petroleum storage tank release trust fund

"interest-bearing time deposits in any commercial bank or trust company located in Kansas. Such deposits shall be secured as stipulated in K. S. A. 75-4218. If the board determines that it is impossible to deposit such moneys in such time deposits at a rate equal to or greater than the average yield before taxes received on ninety-one day United States treasury bills as determined by the federal reserve banks, as fiscal agents of the United States, at its most recent public offering of such bills prior to the inception of such deposit contract, such moneys shall be invested in"

FRONT ROYAL GROUP

Front Royal Group, Inc. • 7900 Westpark Drive, A 300 • McLean, Virginia 22102 • Telephone 703.893.0900 • Telefax 703.847.0440

6 February, 1989

Senator Don Sallee
Energy and Natural Resources Committee
Kansas Senate
State Capitol
Topeka, Kansas 66612-1586

Dear Senator Sallee:

It has been brought to our attention that the State of Kansas is considering the creation of a state-sponsored financial assurance fund for owners and operators of underground storage tanks (USTs). We would like to use this opportunity to share some observations with you on this type of approach to assisting owners and operators in satisfying the EPA's financial responsibility requirements.

First, let us give you a little background on our companies. Front Royal Group, Inc. has recently formed in Virginia and is in the final stages of capitalizing two new insurance carriers. Our application for licensing is pending before the Virginia Bureau of Insurance. The principal business of the Front Royal Group companies will be the underwriting of pollution liability insurance, including a program for petroleum underground storage tank owners and operators. Once licensed in Virginia, the Front Royal Surplus Lines Insurance Company intends to market its products in Kansas through a licensed surplus lines broker. The insurance provided by the Front Royal Group companies will fully satisfy the financial responsibility requirements put forth by the EPA.

We are concerned that SB 122, as proposed, could run a high risk of future insolvency. The fund would incur high administrative costs because it would be involved in virtually all cleanups in the state. And, as the fund would provide full coverage for cleanup costs in excess of the deductible, it would be subject to both a high frequency and an increased severity of claims. The losses under such broad and non-discriminatory coverage would most likely be substantial. It may be prudent, therefore, to consider ways of reducing the liabilities incurred by the fund. This takes on increasing urgency when one considers that the $5 million cap on the fund would almost certainly be inadequate to fully cover the fund's statutory liabilities.

We are also apprehensive about the effects SB 122 would have on the development of a pollution liability insurance market in Kansas. By providing for all cleanup costs, the fund renders the state an unattractive market for private insurers. Moreover, owners and operators may have great difficulty meeting the EPA's financial responsibility requirements as it is unlikely that insurers would

SE&NR
2/8/89
attachment IV

seek to write third-party liability coverage without having control over the cleanup. Insurers would likely be leery of such an arrangement because the efficiency and timeliness of a cleanup directly impact the likelihood and severity of third-party claims. And, in the very real event that the fund was unable to provide for its cleanup liabilities, the third-party liability exposure of private insurers would be dramatically increased. Hence, the proposed fund coverage in SB 122 could discourage insurers from writing third-party UST policies in Kansas.

Clearly there is a need for some form of state-sponsored financial assurance program. Given existing conditions, not all tank owners and operators are considered "insurable risks" by the private market. Further, there is not enough capacity currently in the tank insurance market to cover those tank owners that do meet insurance underwriting criteria. It is our belief, however, that there can and should be a role for the private insurance market in Kansas's UST assurance program. The attached summary gives our comments on the state UST assurance program proposed in SB 122.

It was our hope that we would be able to discuss this matter with the committee in person. However, due to the short notice we will be unable to do so at this time. We hope that you will schedule additional hearings on this important matter, and would be pleased to assist you in the development of your UST program. Thank you for your consideration of our comments.

Sincerely yours,

FRONT ROYAL GROUP, INC.

Myra Anderson

Myra Anderson
Assistant Vice President

Enclosures
:WP

STATE ASSURANCE FUNDS FOR OWNERS AND OPERATORS OF USTS:

A FRONT ROYAL GROUP PERSPECTIVE

Submitted as testimony to the
Senate Committee on Energy and Natural Resources
of the State of Kansas

A dilemma facing all UST owners and operators is the availability, or lack thereof, of pollution liability insurance. One method of addressing the shortage of pollution liability insurance for USTs is to establish a state UST assurance fund, as in SB 122. The problem with this approach is that it does nothing to improve the insurability of USTs. Thus, though SB 122 and similar proposals may provide owners and operators with a temporary means of demonstrating financial responsibility, they do not improve the quality or condition of the tank population. Unless an effort is made to assist owners and operators in upgrading or replacing their tanks, state UST assurance programs will be confronted with an increasing number of cleanup claims as older systems fail and improper management practices continue.

Many have assumed that the greatest burden on owners and operators is the lack of availability of insurance. Though the need for insurance is more immediate, the EPA's upgrading requirements will prove to be equally as burdensome. Costs associated with upgrading are significantly higher than annual insurance premiums and it is likely that these requirements will present a greater financial hardship to owners and operators than do the EPA's financial responsibility requirements. We would encourage you to consider expanding the proposed UST program to include an immediate program to assist small business tank owners in upgrading their facilities to meet federal and state requirements for tank construction, leak detection and overfill protection.

It is evident from the five year sunset on SB 122 that the state of Kansas does not wish to establish a permanent, state-sponsored assurance mechanism. This being so, it is vital that you create a program that will encourage insurers to compliment, and eventually supplant the state fund. An integral part of this process will be the creation of a program to assist owners and operators in upgrading or replacing their USTs. Such a program would improve the quality of the UST universe, contribute to a more stable insurance market for a larger number of tank owners and operators, and enhance the prospects of a safer environment for all citizens of Kansas.

One factor that led to the decline in the availability of pollution liability insurance for USTs was lack of adequate loss control in the form of sound underwriting and claims administration practices. We fear that states which implement financial assurance programs without addressing the problems faced by insurers in the past will risk fund insolvency.

Some of the questions we have about the state UST assurance fund proposed in SB 122 are:

1. What will happen in the event there are not adequate funds to pay claims? Will the fund be able to replenish itself, and what will be the lag time in doing so? Will the state be fully insulated from the fund's liabilities given the the implied contract?

2. Will the fund be in a position to respond quickly to cleanup claims so as to minimize losses? Will it pay on behalf of eligible owners and operators or will it strictly reimburse them? What other steps will the fund take to minimize costs?

3. Does the state agency given the responsibility of managing the program have the necessary resources and expertise? Is the state willing to provide the additional funding that will be necessary to administer an insurance program of this magnitude?

4. Is it the goal of the state to implement a permanent program to provide for the insurance needs of owners and operators of USTs? Or, is it more desirable to create a program which would induce insurers to write in the state and, thereby, allow the state to eventually extricate itself from the business of insurance?

5. Does the proposed fund coordinate its coverage with that of private insurers? Is it likely that private insurers will be willing to cover the third-party liabilities of owners or operators who participate in the fund?

6. Is the state's current tank population insurable, or will it need to be upgraded before it meets underwriting criteria? How will owners and operators pay for such improvements if they are needed?

Having thus addressed some of the problems confronting the state UST assurance program established in SB 122, we would like to present our perspective on the proper role for a state program. Essentially, there are three classes of UST owners and operators for purposes of financial responsibility:

Class I: Those tank owners/operators who can either obtain insurance or self-insure.

Class II: Those tank owners/operators who cannot qualify for insurance because of tank age, construction, location, or other underwriting criteria.

Class III: Those tank owners/operators with tanks that are currently leaking.

There is no reason to include Class I in a state assurance fund.

Class II owners and operators would benefit from a state-sponsored insurance program, financed by a risk-based premium, which included upgrade requirements and incentives (perhaps a tax credit). Class

II owners and operators would eventually graduate into Class I as they undertook the necessary upgrading procedures. Thus, the role of the state assurance fund would be to act as a catalyst for upgrading while simultaneously providing a temporary source of insurance for marginally acceptable risks.

The fund would raise revenues by charging a premium determined according to the individual characteristics of each risk assumed. We believe that this would be a sounder approach to ensuring the availability of funds to pay claims under the program. Furthermore, it would also serve as an additional incentive for class II owners and operators to upgrade their systems and seek coverage in the private insurance market. The net effect of such a program would be to reduce the overall liability of the state fund, enhance the development of the private UST insurance market, promote environmentally conscious management of USTs, and improve the prospects for a safer and less polluted Kansas for all citizens.

Class III owners and operators are of most immediate concern to a regulator, but cannot be adequately addressed by a private or state insurance program. As insurance can serve only as a means to provide for future losses, and not existing conditions, no state insurance program can include such tanks without unduly penalizing other UST owners and operators. In this regard, SB 122 cannot be considered a true insurance program as it allows owners or operators of sites with existing conditions to participate in its coverage. Further, including Class III in a state insurance program, as does SB 122, serves as yet another disincentive to proactive and environmentally conscious management of USTs. Thus, it is our belief that a state insurance fund should not be structured so as to include tanks that are already leaking.

A possible solution to this dilemma is a revolving trust fund which would provide the state with a pool of money to conduct cleanups of abandoned sites or sites at which an owner or operator is unable or unwilling to pay. Such a program would serve not as an insurance mechanism, but rather as an emergency cleanup fund to safeguard Kansas's environment.

We believe that insurance carriers should be encouraged to play a role in a financial assurance program in Kansas. The problems associated with pollution liability insurance in the past have proven to be formidable for even the largest insurance companies. It is not unreasonable to expect that the same difficulties will confront a state UST assurance program. Indeed, the problems for the fund proposed in SB 122 will undoubtedly be exacerbated by its inclusion of all USTs as acceptable risks. Thus, in order to avoid the risk of future fund insolvency, we would ask that you amend SB 122 and carefully consider: the extent of liability to be incurred; the availability of private insurance to compliment the fund's coverage; the insurability of the state's tank population given existing tank conditions; and the means by which the fund will provide for its claims.

We would ask that you reconsider the fund proposed in SB 122, and would be delighted to work with Kansas legislators in crafting a more viable assurance mechanism.

KIOGA

KANSAS INDEPENDENT OIL & GAS ASSOCIATION

105 SOUTH BROADWAY • SUITE 500 • WICHITA, KANSAS 67202 • (316) 263-7297

February 8, 1989

TO: Senate Committee on Energy & Natural Resources

RE: SB 94 - Tanks

We are familiar with the federal law relating to SB 94. We don't believe Section (P) starting on line 243 of SB 94, requiring registration of exempt tanks by the Department of Health and Environment, is required under federal law. The Department testified before your Committee it was desirable to have registration of exempt tanks in Kansas as a statistical base.

Oil field lease tanks related to oil and gas production and gathering operations are already under the jurisdiction of the state (KDH&E and KCC) and the federal government (EPA-SPCC plans).

We think Section (P), if it is to be included in SB 94, beginning on line 245 should be amended after the word "act" by striking the period and adding "except, however, registration of exempt tanks already under the jurisdiction of existing state or federal agencies will be considered registered under this Act."

Donald P. Schnacke

DPS:pp

SE&NR
2/8/89
attachment V

STATEMENT OF DOUGLAS R. HENKLE
PRESIDENT - KANSAS WATER WELL ASSOCIATION
AND
WATER WELL CONTRACTOR/PUMP INSTALLER FROM GARDEN CITY
BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON
SENATE BILL NUMBER 121

FEBRUARY 8, 1989

Chairman Doyen and Members of the Committee, I thank you for the opportunity to testify on Senate Bill No. 121. I am presently serving as president of the Kansas Water Well Association (KWWA) and the views I will present have the full support of the Board of Directors of that organization.

The purpose of the Kansas Ground Water Exploration and Protection Act, as stated in the act, is to provide for the exploration and protection of ground water through the licensing and regulation of water well contractors in Kansas [and] to protect the health and general welfare of the citizens of this state. It further states that in order to achieve these objectives, this act requires licensing of water well contractors [and] provides for the establishment of standards for well construction, reconstruction, treatment, and plugging. The board and general membership of KWWA support this act wholeheartedly.

Where we have trouble with it is in its enforcement. Prosecuting violators of the act is not high on the list of District Attorneys priorities. We readily admit that protecting Kansas ground water is not on the same plane as prosecuting murderers, rapists, and thieves, and understandably so. However, as the act now reads, the only means the Department of Health and Environment has to deal with individuals who violate the act are to file a class B misdemeanor or to apply to the district

SE+NR
2/8/89
attachment VI

Re: Senate Bill No. 121

I am Francis Cox from Clifton. I have spent my lifetime in the water well drilling and pump business. I am currently the executive director of the Kansas Water Well Association. I have close contact with most of the drillers in Kansas.

One of the most important goals of our Kansas Water Well Association is the protection of our ground water. The Kansas Groundwater Exploration and Protection Act contains the "Rules and Regulations" for constructing, reconstruction and servicing all water wells in Kansas. These requirements are very good. They need to be updated periodically to reflect new knowledge gained from experiences. The corrective measures and civil penalties section of the Act need to be changed to be more effective and efficient. We the drillers and pump installers are required to follow these laws. Not all drillers and pump installers do. We have educational seminars frequently to educate our people of the latest and best methods of construction and servicing water wells and pumps. Not all contractors attend, but we try.

Anyone in violation of the "Rules and Regulations" should be required to correct the violations or be penalized. Recently a driller had been drilling without a Kansas drilling license, not following the proper requirements, and advertising as a licensed driller. With the present corrective process, it took two years to get anything done. Our state personal has more to do than spend a lot of time to correct one violator. With the passage of SB #121, corrective measures and /or civil penalties could be made in a short time and they can go ahead with their other duties. There are similar cases when the K.D.H.E. was unable to bring the violator to court because the county district attorneys weren't interested. This is not fair to the contractor doing the job right as well as sometimes being a threat to the ground water protection.

If a contractor is penalized for violations or required to go back and correct the violations, word soon gets around. If contractors hear of fines being imposed on other contractors, they will study the laws and try harder to do it right. With the present enforcement structure, the drillers and pump installers don't have much to worry about being fined for violations, because it takes too long to bring it to trial.

I along with the Kansas Water Well Association would like to recommend the passage of SB #121. We feel this would help toward the protection of our ground water.

Francis Cox

SE+NR
2/8/89
attachment VII

court for enforcement. These measures are slow and, in many cases, too severe for the violation. As a result, the Kansas Ground Water Exploration and Protection Act is not easily enforced, so most violators go unpunished. This puts those of us who follow the state regulations at a price disadvantage due to the cost of the materials required to meet current regulations.

A Second, more serious, problem caused by the lack of enforcement of the act is ground water pollution. Water well owners and contractors alike, are interested in saving money and often times that savings comes at the expense of our states clean ground water. It is always cheaper, in the short run, to leave out the 20' surface seal when a contractor is completing a well, or to just throw a board and a cement block over an abandoned water well and walk away.

At times these violations are not committed by water well contractors or land owners but by pump installers or plumbers who are installing pumping equipment after the licensed contractor has properly completed the well according regulations. Therefore, we would like to request Senate Bill 121 be amended to include the definition for "person" to mean any individual, firm, partnership, corporation, or other association of individuals and that "Water well contractor or landowner" be struck in lines 21, 30, 50, and 65 and add "person" after "any" in lines 21, 30, 50, and 65.

I see our clean ground water being threatened across the state and it greatly concerns me. I have a son who is interested in the water well drilling business and I hope there will be clean ground water for his use and livelihood when he comes of age.

I thank you for your consideration and I would be happy to answer any questions.

Commi ɜe 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 SB NO. 121

BEFORE THE SENATE COMMITTEE ON ENERGY

AND NATURAL RESOURCES

February 8, 1989

Chairman Doyen and Members of the Committee:

I am Wilbur Leonard, appearing on behalf of the Committee of Kansas Farm Organizations. We appreciate this opportunity to voice our support, generally, for Senate Bill No. 121.

As we understand this bill,its principal thrust is to fill a void in the enforcement of the Kansas groundwater exploration and protection act. The 22 organizations which make up the Committee of Kansas Farm Organizations firmly believe that agriculture not only has a stake in the quality of water in rural areas and throughout the state, but also has an obligation to work toward the elimination of contamination of the water supply. Toward that end we support the efforts of the secretary of health and environment in seeking authority to assess civil penalties and to otherwise enforce the Kansas groundwater exploration and protection act pursuant to the Kansas administrative procedures act.

We do, however, take exception to Section 2(b) of this bill, wherein it is required that a court issue a temporary restraining order, preliminary injunction or permanent injunction on demand, without a showing - or even an allegation - of irreparable damage or lack of adequate remedy at law. While we're not opposing injunctive relief when conditions warrant, we respectfully suggest that this subsection is unconscionable and its removal would not impair the effectiveness of the act.

We trust that, with the deletion of Section 2(b), you will recommend Senate Bill No. 121 favorably for passage.

Thank you for your consideration.

SE&NR
2/8/89
attachment VIII

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

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 Energy and Natural Resource Committee

by

The Kansas Department of Health and Environment

Senate Bill 121

The Kansas Groundwater Exploration and Protection Act, K.S.A. 82a-1201 et seq. applies to anyone who constructs, reconstructs, plugs or treats water wells in Kansas. The law's intent is basically protection of groundwater quality. This bill would authorize the State to enforce the act's provisions administratively, rather than only through the district court.

When individuals violate the Act the Department's actions are limited to license revocation or filing of civil enforcement actions or Class B misdemeanor charges in district court. These are our only actions regardless of how serious the violation may be. Because many district attorneys do not view most violations to be serious enough for civil or criminal prosecution in district court, the Department has difficulty getting civil criminal charges filed on individuals. In the few incidents where civil and criminal charges have been filed, the Department devoted a tremendous amount of time and manpower providing for investigation, documentation, the filing of legal documents with the court and providing for testimony when the action went to trial. In instances where a District Attorney does not choose to prosecute a case, the violator will go unpunished and the violation will remain uncorrected. As the water well industry realizes the State cannot actively enforce the Act, violations will increase. Much of the industry already believe violators have an unfair competitive advantage over water well contractors who strive to meet all the regulatory requirements. Because of this there appears to be an economic incentive to violate the Act.

With the passage of this bill the Department will have the authority to pursue violations, in what we believe is a logical manner by first attempting to gain compliance through administrative measures, then through civil measures and if all other attempts to gain compliance have failed, the Department could then proceed with criminal charges.

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This Bill will improve compliance with the Kansas Groundwater Exploration and Protection Act by streamlining the enforcement process and thus helping to achieve the purpose of the Act, which is to protect and preserve the groundwaters of the State through proper water well construction and abandonment procedures.

Testimony presented by: Karl W. Mueldener
Director, Bureau of Water Protection
February 8, 1989

Testimony before the Senate Energy and Natural Resources Committee
SB 121: supplementing the Kansas groundwater exploration and protection act

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 700 members promote sustainable natural resource policies for the state of Kansas. I appear today also on behalf of the Kansas Chapter of the Sierra Club, the Kansas Wildlife Federation, the Kansas League of Women Voters, and the Kansas Audubon Council, whose members share our concern to protect the state's groundwater resources from contamination.

SB 121 provides authority for the Department of Health and Environment to issue administrative orders and to impose civil penalties for violations of the groundwater exploration and protection act. We support this bill.

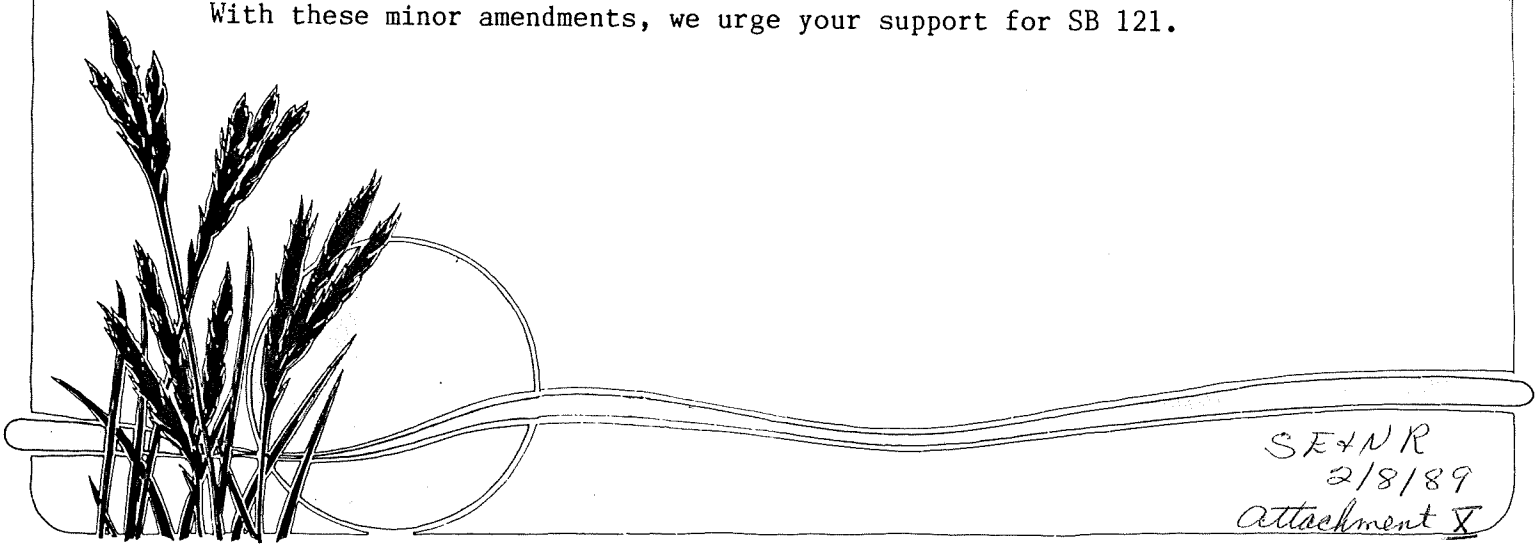
The institution of civil penalties can enhance enforcement of the act by 1) creating economic incentives to come into compliance, and 2) assuring that cleanup action will be taken by offending parties.

We would like to bring to your attention two matters of language in the bill which ought to be addressed.

In lines 21, 30, 42, 50, and 65, water well contractors and land owners are identified as subject to the bill's provisions. Our concern is that "land owner" ought to be a more inclusive term. For example, any "person" (although it may require statutory definition) would include tenants who might violate provisions of the act. We think the more inclusive term ought to be substituted.

The other question is raised in line 34. "Corrective action" may now be narrowly read to imply only cleanup action. The sentence ought to be clarified to include both remediation and measures to ensure the prevention of future contamination.

With these minor amendments, we urge your support for SB 121.



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Attachment X

STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT
Forbes Field
Topeka, Kansas 66620-0001
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Mike Hayden, *Governor*

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Testimony presented to

Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

Senate Bill 120

This bill would amend state statutes pertaining to enforcement of water pollution control statutes, namely K.S.A. 65-167 and 65-170e. The intent of the bill is to assure state statutes meet certain minimum requirements of the federal government for Kansas to continue administering the federal water pollution control program.

In 1972, the federal Clean Water Act was significantly amended, more or less in the form we know it today. After the 1972 amendments, the Kansas water pollution control program was accepted by EPA to administer the federal program for the issuance of wastewater discharge permits, and the general water pollution control program for Kansas. Amendments to the federal law were made on four different occasions since 1972. State statutes dealing with the water pollution control program have been only slightly modified as a result of the federal changes. In 1985, EPA performed an in-depth audit of the Kansas water pollution control program, including state regulations and statutes on which the Kansas program is based. The audit was performed by EPA's Region VII legal office. EPA presented KDHE a lengthy evaluation regarding the state water pollution control permit program. For several years the Department negotiated various issues raised by EPA, and most were resolved. Regulation changes to the wastewater permit program were also implemented to respond to program deficiencies. Statutory changes were also negotiated and ultimately a series of five questions were submitted to the Kansas Attorney General for an opinion concerning the adequacy of Kansas statutes.

The 1988 Legislative Session addressed this issue with House Bill 3027, with the bill dying in the Senate Agriculture Committee. Last year's bill

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became controversial because of language concerning private pond exemptions. This year's bill is much shorter and does not address the private farm pond exemption. In a letter dated August 15, 1988, Mr. Morris Kay, Regional Administrator in Kansas City, encouraged the State to seek the necessary statutory change in this session.

Section I of the bill amends K.S.A. 65-167 to increase the penalty provisions to be consistent with the federal statute. For willful and negligent discharge of sewage, this modification allows, upon conviction, a penalty of not less than $1,000 and not more than $10,000 per day. As a point of clarification this particular statute, since it requires conviction, would be used infrequently for enforcement of water pollution control statutes. The state generally relies on administrative orders and penalties for wastewater enforcement. In other words, this change does not limit the Department to a minimum of a $1,000 fine for any violation of water pollution control standards. Penalties or corrective orders may still be issued under other state statutes. This change pertains only to willful and negligent discharge and can be imposed only on conviction.

Section II of the bill amends 65-170e to address public participation in enforcement activities. Federal regulations (40 CFR Part 123.27, "State Program Requirements") require provisions be made for public participation in enforcement activities. The Department has allowed intervention in certain civil and administrative actions but state law does not address this issue. Section II of this bill would allow "any person having an interest which is or may be affected" the right to intervene in civil actions brought by the Secretary. As a matter of routine, public participation would occur during an appeal of an order by the Secretary of Health and Enviroment. If an order of the Secretary is appealed, a hearing is scheduled and the affected parties can state their case at that time. As the law stands now, any affected parties involvement in these actions is simply not addressed.

Section I of this bill will have no impact on normal agency activities. Section II, public intervention, will result in additional work and coordination with our civil enforcement actions. We do not request any additional funds to implement this bill.

We urge your consideration and passage of this bill.

Presented by:

James A. Power/Karl W. Mueldener
Directors, Environment/Water Protection
February 8, 1989

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

OFFICE OF
THE REGIONAL ADMINISTRA

Mr. John Simpson
Attorney at Law
4330 Shawnee Mission Parkway, Suite 132
Fairway, Kansas 66205

Re: Kansas' Legal Authority to Administer the NPDES Program

Dear Mr. Simpson:

Thank you for your letter of June 29, 1988, stating your concern that the Kansas Legislature failed to enact legislation needed to support administration of the state's NPDES program. We have appreciated your long standing involvement with this matter, and have attempted to keep you informed of progress in bringing Kansas' legal authority completely in line with federal requirements.

A brief review of the history of those efforts may be useful. Because federal regulatory requirements have changed since the enactment of the Federal Water Pollution Control Act (now the Clean Water Act) in 1972, and the subsequent approval of the Kansas NPDES program in 1974, the EPA Regional Office, in 1985, initiated a review of the legal basis for the Kansas NPDES program. We did so by preparing and forwarding to the state and to EPA headquarters an analysis of Kansas statutes and regulations, as well as of the standard terms and conditions included in issued permits. In the months that followed, our staff worked closely with the staff of the Kansas Department of Health and Environment (KDHE) to develop needed revisions to the state's regulations, and to secure opinions of the Attorney General confirming, to the extent possible, that Kansas' statutory authority remained sufficient to underwrite the state's program. Toward the end of 1986, numerous changes were made in both the regulations and the standard conditions, in an effort to conform them to federal law.

In early 1987, EPA headquarters supplied additional comments on the legal sufficiency of the Kansas program, and they were included in our discussions, as well. Two lengthy opinions of the Kansas Attorney General were issued, on September 1, 1987, and on October 26, 1987, resolving many of our concerns about the statutory support for the program. It appeared, however, that certain matters would definitely require attention from the legislature.

House Bill 3027 was introduced into the 1988 legislative session. As subsequently amended, it would have done the following: updated the references to federal law to enable certain federal regulations to be adopted by reference; increased the criminal penalty for discharging without filing required reports; and established the right of citizen participation in state enforcement actions. The bill failed to pass out of the conference committee. In view of the failure of the legislature to enact the bill, your letter asks that we recommend to the Administrator that the Kansas NPDES program be withdrawn.

As your letter points out, withdrawal of the program would be a severe penalty. While I understand your frustration with this lengthy process, I believe that my primary consideration should be the environmental implications of program withdrawal. Transfer of a state program to the EPA would unavoidably create disruption, both in terms of program administration and in the lives of the involved personnel. That should be avoided if possible, particularly if there is a likelihood that the program would be retransferred to the state shortly thereafter. As you also point out, the needed statutory changes are not controversial. Therefore, the adoption of the required changes, enabling a withdrawn program to be retransferred to the state, could well occur as early as the next legislative session. Because we expect that the state would participate fully in the hearing process prior to the Administrator's decision concerning the adequacy of the program, that decision might not even occur until after the legislature has had another opportunity to amend the statutes. In addition, the Act provides a 90 day period after a determination that the program is inadequate for the state to take corrective action and avoid actual withdrawal of its program.

For the above reasons, I have decided not to recommend program withdrawal to the Administrator at this time. My staff will continue to work closely with KDHE to see that the needed changes are finally adopted during the next session of the Kansas Legislature. I am confident that the state will not miss another opportunity to provide the necessary statutory support for this essential water pollution control program.

Again, thank you for your interest and concern. We will continue to keep you advised of developments.

Sincerely yours,

Morris Kay
Regional Administrator

cc: Dr. Stanley Grant, Secretary
Kansas Department of Health
and Environment