Approved February 15, 1990
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources.

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

8:02 a.m./~~p.m.~~ on February 14, 1990 in room 423-S of the Capitol.

All members were present except: All members present

Committee staff present:
Raney Gilliland, Legislative Research Department
Don Hayward, Revisor of Statutes
Pat Mah, Legislative Research Department
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:
David Traster, General Counsel, Kansas Department Health & Environment
Charles Nicolay, Kansas Oil Marketers Association
Chuck Johnson, Johnson Elevators, Mentor, Ks.

The Chairman opened the hearing on SB 554 - amending the Kansas storage tank act; providing for the administration and disbursement of moneys from the petroleum storage tank release trust fund.

David Traster, KDH&E, stated they had some concerns with the bill as drafted and they would have some amendments to present to the committee next week. The agencies concerns and recommendations are included in his written tesetimony (Attachment I).

Ron Hammerschmidt, Director of Environmental Remediation, KDHE and Gary Blackburn, KDHE both responded to questions. Mr. Blackburn was asked to review the fiscal impact and report back to the committee.

Charles Nicolay, Kansas Oil Marketers Association, presented written testimony in support of SB 554 (Attachment II).

Senator Frahm asked Mr. Nicolay to provide information regarding the cost large corporations had experienced to the present time bring their UST's into compliance. Mr. Nicolay said he would provided the information they had on file.

Chuck Johnson, Johnson Elevators, stated they have 6 locations in Ellsworth and Saline Co. They had UST's on three locations, they had decided to get out of the petroleum business, and in the process of removing the tanks they discovered contamination. This contamination probably happened many many years ago, and will cost between 40 and 50 thousand to cleanup. He encouraged the support of S.B. 554 to protect the people while they are getting into compliance.

The meeting adjourned at 9:00 a.m. The next meeting will be at 8:00 a.m., on February 15, 1990.

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.

1990 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 14, 1990

PLEASE PRINT GUEST LIST

NAME	REPRESENTING
Bill Fuller	Kansas Farm Bureau
Charles Hinkley	Ks Oil Marketers Assn
Cathy Holeman	City of Wichita
Ken Bahr	USD's
Tom Tunnell	Kansas Fert & Chem Assn
Chuck Johnson	Johnson's Elev. Inc.
Chris Wilson	KS Grain & Feed Ass'n
HOWARD W. TICE	Ks. Ass'n. of Wheat Growers
Gary Knoche	Ks Dept. Health & Env.
Gary Blackburn	Ks Dept. of Health & Env.
Ron Hammerschmidt	Ks. Dept. Health & Env.
George Leigley	Leigley Oil Co.
Edna Walthers	Walthers Oil Co.
Marjorie Walthers	Walthers Oil Co
Dennis Anderson	Ks Oil Marketers Assn.
Joe Liebsa	Ks Coop Council
Janet Renz	La Crosse, Ks.
Dan Bailey	KS. Oil Mktrs. Assn.
Tom Whitaker	Ks Motor Carriers Assn

1990 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 14, 1990

PLEASE PRINT GUEST LIST

NAME		REPRESENTING
Paul E. Thornbrugh	Thornbrugh + assoc	Quik Trip Corp, Tulsa Okla
[illegible]	Topeka	KBA
Roland E. Smith	Wichita	WIBA
Kathy Taylor	Topeka	KBA
Gary Hulett	Topeka	Governor's Office
LARRY MAGILL	"	IIAK
STEVE KEARNEY	"	COASTAL
Lori Callahan	Topeka	Am. Insurance Assn.
Bill Brysm	Topeka	KCC
Nancy Pantola	Topeka	CKFO
[illegible]	Tyro	Berk Burnett

State of Kansas
Mike Hayden, Governor

Department of Health and Environment
Office of the Secretary

Stanley C. Grant, Ph.D., Secretary

Landon State Office Bldg., Topeka, KS 66612-1290

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Testimony Presented to
Senate Committee on Energy and Natural Resources

by

Kansas Department of Health and Environment
Senate Bill 554

Introduction

My name is David M. Traster, the Assistant Secretary and General Counsel for the Kansas Department of Health and Environment. I am here this morning to testify on Senate Bill 554 which amends the Storage Tank Act passed by the 1989 Legislature.

Bill Review

Senate Bill 554 has provisions that raise four distinct areas of concern:

1) Third party liability coverage.

2) Retroactive application of the Petroleum Storage Tank Release Trust Fund.

3) Elimination of the current prohibition against the use of the Trust Fund by underground petroleum storage tank owners or operators capable of meeting the federal self-insurance criteria.

4) Addition to the Secretary of Health and Environment's authority to adopt rules and regulations.

Third Party Liability

The major change to the Storage Tank Act contained in SB 554 is the payment of third party liability coverage to the charges to be paid by the Petroleum Storage Tank Release Trust Fund. Current federal regulations require underground petroleum storage tank owners and operators to have $1 million of coverage for corrective action and third party liability. This coverage is now required for owners and operators with 100 tanks or more and a net worth of more than $20 million. On April 26, 1990, marketers with 13 tanks or more

Attachment I
E&NR
2/14/90

Charles Konigsberg, Jr., M.D., M.P.H., Director of Health (913) 296-1343

James Power, P.E., Director of Environment (913) 296-1535

Lorne Phillips, Ph.D., Director of Information Systems (913) 296-1415

Roger Carlson, Ph.D., Director of the Kansas Health and Environmental Laboratory (913) 296-1619

will fall under this requirement. Beginning on October 26, 1990, all underground storage tank owners, including local units of government, will fall under the requirements for corrective action and liability insurance coverage.

The Trust Fund to be established on April 1 of this year is designed to provide the required corrective action coverage for underground petroleum storage tank owners and operators. These owners and operators are not provided with any liability coverage under the existing provisions of the Storage Tank Act. They must rely on either self-insurance or purchase of liability coverage from private insurance companies for the required $1 million or $2 million coverage depending upon the number of tanks. This insurance may not be available for many owners and operators.

In the event that third party liability coverage is added to the costs for the Trust Fund, the estimated fiscal impact is $5 million in claims, 12 additional staff and annual operational costs of approximately $600,000.

Allowance of Self-Insurers Use of the Trust Fund

Senate Bill 554 also contains an amendment which eliminates the current prohibition against use of the fund by underground petroleum storage tank owners or operators with sufficient assets to meet the criteria for self-insurance. An owner or operator whose net worth exceeds $10 million qualifies as a self insurer. The obvious impact of the current prohibition is to keep large firms of all types including oil marketers and cooperatives from accessing the fund for corrective action.

If self-insurers are allowed to access the fund and if the retroactive portions of SB 554 are enacted, the additional anticipated costs are $4 million in claims, 4 additional positions and approximately $250,000 in operational costs. There has been quite a lot of activity by this class of owner operators. The fund could receive and be obligated to pay very high costs for remedial action far beyond what the Department may have authorized.

Retroactive Eligibility

Since the effective date of the Federal regulations on Underground Storage Tanks, there has been an emphasis on the inspection and testing of USTs and identification of environmental problems associated with these tanks. The Department has identified a large number of problem sites across the state. Currently remediation is underway or needed at approximately 350 sites. Under the provisions of the Storage Tank Act, none of the costs associated with this remediation are eligible for Trust Fund expenditure. These costs are substantial. In some cases the cleanup costs will result in the bankruptcy of the owner or operator.

If retroactive coverage is allowed using the dates in SB 554, the approximate cost of claims will be $3 million or more with the addition of 4 positions and annual operational costs of approximately $160,000. This figure will be greatly increased if self-insurers are allowed to access the fund.

Tracking of Deductible

There is also a proposed addition to the authority of the Secretary to adopt rules and regulations. The Storage Tank act currently gives the Secretary broad authority in this area. In particular the Secretary can adopt rules and regulations related to financial responsibility. In addition, the owner or operator must submit evidence of deductible payment when applying for reimbursement from the fund. The Department questions whether this is necessary to meet federal program delegation requirements.

The cost of tracking the ability of all underground petroleum storage tank owners and operators to pay the deductibles will require 4 additional positions and approximately $155,000.

Agency Recommendations

1) The Department of Health and Environment has consistently supported the enactment of retroactive trust fund coverage for corrective action. We believe that parties who have discovered problems while working to meet their regulatory responsibilities should not be penalized. We do not believe that persons who have failed to meet the regulatory requirements should be rewarded. Therefore, the Department recommends that the Secretary have the option to pay for corrective actions performed in the past by tank owners and operators who have worked with the department to meet the regulatory deadlines and other criteria. The Secretary should have the option to deny payment to any non-cooperative owner or operators, or those who are not in compliance with regulatory requirements.

2) KDHE is not here to lobby for passage of the balance of this bill. We recognize that insurance is difficult if not impossible to obtain for many tank owners. Without third party liability coverage from some source, a tank owner is not in "substantial compliance" as defined in the act and cannot access the fund for cleanup costs without declaring bankruptcy. This problem must be addressed either by the Legislature, the industry of the insurance industry. If this bill is favorably considered by this Committee, KDHE has several recommendations:

A. Coverage should be extended only to owners and operators of underground petroleum storage tanks. Owners of aboveground tanks are currently exempt from both federal and state regulation.

B. The eligibility criteria for liability coverage should be identical to that for corrective action. This eligibility should include separate deductibles for corrective action and third party liability.

C. The Secretary must be able to participate in all third party liability actions involving the fund. Current language in SB 554 allows the owner or operator to submit a claim after a judgement is reached. This provision allows no oversight by the Secretary in the legal process prior to a judgement.

3) The Department disagrees with the addition of regulatory authorities contained on lines 14 - 17 on page 2 of SB 554. We recommend this language be stricken.

4) The Department recognizes the difficulty faced by some underground petroleum storage tank owners or operators who have only a minor involvement in petroleum marketing but have net worth exceeding $10 million. There should be some consideration given to addressing this problem. The blanket removal of the prohibition against self-insurers accessing the fund will create a tremendous burden on the fund. This impact will be compounded by the enactment of retroactive coverage for all parties. A possible alternative is to consider only assets related to petroleum marketing in determining net worth for self-insurance.

The enactment of any or all provisions contained in SB 554 will result in major financial impact depending upon the provisions adopted. We vigorously oppose passage of this bill if adequate resources and staff are not available to administer these new provisions.

Testimony Presented By:

David M. Traster
Assistant Secretary and
General Counsel

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STATEMENT

OF THE

KANSAS OIL MARKETERS ASSOCIATION

BEFORE THE

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

FEBRUARY 14, 1990

SENATE BILL 554

Attachment II
E&NR
2/14/90

Mr. Chairman and Members of the Committee:

My name is Charles Nicolay. As executive director of the Kansas Oil Marketers Association, I appreciate the opportunity to be here today in support of Senate Bill 554 and the amendments therein.

The issue of underground storage tanks is an issue that, I can say with reasonable assurance, ranks as the number one business concern of not only our members, but many other tank owners throughout Kansas and across the nation.

Tank owners realize that protecting our nation's groundwater and minimizing the danger of explosions resulting from leaking petroleum products is a responsibility to be taken seriously, and they are more than willing to put their resources toward that effort, but therein lies the crux of the storage tank issue - financial resources.

For not only has the Environmental Protection Agency mandated stringent technical standards on upgrading of tank systems, standards that require large outlays of resources in order to be in compliance, but EPA has, at the same time, promulgated financial responsibility requirements that far exceed the resources of most tank owners: $1,000,000 per occurrence for all tank owners who store product for resale; $2,000,000 aggregate for tank owners with 101 or more tanks.

It is our strong belief, than when added together, the costs of upgrading and obtaining so-called pollution insurance is more than most tank owners can shoulder.

Our belief was confirmed last fall when we conducted a series of informative meetings across the state to encourage all Kansas tank owners to be in full compliance with the UST regulations.

With the assistance of officials of the Kansas Department of Health and Environment - the implementing agency in Kansas for the EPA regulations - we crisscrossed the state to address both the technical standards and the financial responsibility requirements.

We were pleased to learn from these meetings that there is widespread effort to comply with the technical regulations, even though doing so represents a formidable financial investment to the tank owner. We also learned - and it was no surprise to us - that the financial portion - the insurance requirements - represent the biggest obstacle to full compliance.

It was this same knowledge shared by the 1989 Legislature that resulted in the passage of Senate Bill 398, a bill containing the Kansas petroleum storage tank trust fund act. This act, similar to legislation now enacted in 38 other states, is designed to make the tank owner responsible for a reasonable portion of the costs of leak clean-up, while at the same time providing the tank owner with evidence of financial responsibility required by EPA.

Today, you are considering Senate Bill 554, legislation which, if enacted, would amend the storage tank trust fund act in four important areas. I would like to expand on each of these amendments.

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EFFECTIVE DATE OF THE TRUST FUND

First, SB 554 would change the effective date of the trust fund act to its original date of January 1, 1989. What would this accomplish?

To illustrate, let's look at three hypothetical tank owners and their situations:

Tank owner A has, on his own initiative, begun his upgrading plan according to EPA standards prior to the effective date of the Kansas trust fund act (April 1, 1990) and has assumed responsibility for making sure that his property was not contaminated. However, pollution from many years ago, perhaps prior to his ownership of the property, is found. This tank owner, although acting responsibly and in good faith, cannot participate in the fund. He is, in essence, penalized by the present effective date.

Tank owner B is the owner of tanks which are 25 years-old or older. He was required to conduct a tightness test of his system and install leak detection by December of last year. Although EPA has mandated this stage of technical compliance (well in advance of the April 1, 1990 effective date of the Kansas act), if contamination is found, the tank owner will receive no help from the trust fund since the pollution was found prior to April 1. Again, the trust fund appears to be working against the intent of the UST regulations.

Tank owner C represents the "worst case" scenario. His financial condition allows him no choice but to file bankruptcy because pollution from releases on his property has been discovered in advance of the April 1, 1990 effective date. Since his bankruptcy prevents him from paying even the deductible amount required by every tank owner in order to qualify for the trust fund, the state incurs full costs of clean-up anyway. In this situation, everyone loses: the tank owner loses his livelihood, the state pays the full cost of clean-up, and a community loses another business, and in some cases, that business might be the only service station for miles around.

To illustrate the plight of one tank owner in Kansas, I would like to quote a portion of a letter I received just several weeks ago. It is from a service station lessor:

"No one thought a little product spill 10, 20, 30 years ago was bad. No one was in violation of any laws. Now with EPA rules and laws we find ourselves in violation by uncovering the results of our ignorant past and we are unable to take care of the contamination clean up costs by ourselves.

I have owned this property 40 years and leased it for 30 years as a service station. I am presently age 66 and my plans were to sell the property and retire. Being caught up in the new EPA rules with old contamination is physically, emotionally, and financially devastating. This property with contamination is worthless. I can't borrow on it, can't sell it, can't get money to clean it up. I have property taxes (doubled in the last year), insurance costs, clean up costs. At the present there is virtually no way to pay these clean up costs."

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Tank owners, like those described in the examples above and in the letter from the station lessor, would qualify if the original effective date of the trust fund (January 1, 1989) were reinstated. They should be allowed to make application for reimbursement from the fund for their clean-up expenses. Senate Bill 554 corrects the problems created by the April 1 effective date. If the original effective date of January 1, 1989 had become law last year, we can assume that the process of removing or upgrading old tank systems would be much further along than it presently is.

THIRD PARTY BODILY INJURY AND PROPERTY DAMAGE

Another major concern shared by all Kansas tank owners, such as hospitals, school districts, fire departments, cities, counties, airports, contractors...to name a few, is the lack of third party coverage for bodily injury and property damage. As the trust fund act now stands, it would cover only costs relating directly to clean-up. If the contamination were to leave the leak site and migrate to another site where property damage occurred, the trust fund would not pay damages to the injured party.

Third party coverage is probably the easiest of 554's amendments to justify - EPA requires it. For the Kansas trust fund to serve as the vehicle for meeting the financial responsibility requirements imposed by EPA, the Agency requires that third party be implicit in the act.

But there are some considerations that speak favorably for third party coverage. According to insurance industry statistics from the largest provider of pollution liability insurance in the nation, less than one percent of UST release claims involve third party bodily injury or property damage. (See Attachment).

Add to this, the fact that the problem of leaking petroleum tanks is a finite problem with an end in sight: the EPA deadlines for technical compliance, as well as today's remarkable advancements in tank and piping technology, work together to guarantee a sunsetting of third party litigation concerns.

ONE-TIME AMNESTY PROVISION

The Kansas act requires tanks to be in substantial compliance with EPA technical standards. However, if a tank has been abandoned for more than a year, it is, for all intents and purposes, not considered to be in compliance. By allowing a one-time only amnesty provision, these abandoned tank sites would be covered by the trust fund if clean-up is necessary and if a corrective action plan outlining details for the clean-up is submitted to the Secretary of KDHE prior to July 1 of this year.

This provision would go a long way toward speeding up the process of removing old, potentially dangerous tanks from Kansas soil, and restoring the true value to the property.

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ELIGIBILITY OF THOSE ABLE TO SELF-INSURE UNDER EPA GUIDELINES

EPA's financial responsibility requirements allow a firm's assets as evidence that it can meet the costs of a potential release. The criterion is a tangible net worth of at least $10,000,000. The Kansas trust fund disallows access to the fund for clean-up costs experienced by companies who are able to meet this standard of self-insurance. Yet these same companies are paying the one-cent environmental assurance fee that funds the storage tank trust. What justification can there be for excluding a firm that is a major contributor to the fund from being able to benefit from the fund?

The act currently specifies large deductibles for larger companies, a measure that provides adequate protection from large corporations accessing the fund. Firms with 101 or more tanks have to satisfy a $60,000 deductible.

It is highly unlikely that firms able to meet the self-insurance requirements would ever tap the clean-up fund.

CONCLUSION

At present, it is unknown just how many stations will close nationwide as a result of the EPA underground storage tank regulations. We do know that several of them have already closed in Kansas. The real test, however, will come in April and October of this year, when all tanks owners have to prove financial responsibility.

Today, it is difficult to determine the economic impact on tank owners, local units of government, and the state of Kansas when considering what happens to the value of real estate where underground storage tanks are located, specifically sites where the owner does not have the financial resources to insure that the soil has no contamination.

The problem is greatly magnified by the inability of lending institutions to satisfy the needs of tank owners for upgrading systems. The tank owner is often caught in a Catch-22 situation.

After many, many months of researching all possible solutions, and finding that pollution liability insurance is less and less available, we view the trust fund approach to environmental contamination from leaking underground storage tanks as the best possible method of addressing a serious problem.

With the benefit of the four major amendments specified in Senate Bill 554, tank owners can direct their financial resources toward upgrading, contaminated sites can be cleaned up, small businesses can continue, the supply of fuel to small, rural communities can remain unimpeded, the value of real estate can be restored, and finally, Kansas can be proud of enacting a trust fund act that has the potential of being one of the most effective in the nation.

Mr. Chairman, we urge favorable consideration of Senate Bill 554.

Thank you for allowing me to briefly address these issues of importance to all Kansas tank owners. I would be pleased to try to answer any questions put forth by the members of the Committee.

FEDERATED INSURANCE
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January 31, 1990

CHARLES NICOLAY
EXECUTIVE DIRECTOR
KANSAS OIL MARKETERS ASSOCIATION
SUITE 804
MERCHANTS NATIONAL BANK
TOPEKA KS 66612

You requested information regarding our experience with third party liability claims resulting from underground storage tank leaks. First, it is important that we define where a third party liability claim begins and a cleanup or corrective action claim ends. Federated defines corrective action as removing contamination wherever it may be found. This means that even if the petroleum product has entered the groundwater or crossed the property line or created vapors in nearby buildings, removing those problems is corrective action. Third party liability claims are bodily injuries and expenses for property damage other than removing contamination. Examples of this are business interruption due to fumes in a building or damage resulting from explosions of petroleum fumes.

To date we have had very few third party liability claims. Currently, less than one percent of our claims reserves are for third party liability claims. One of the major reasons for this is that petroleum products can be tasted or smelled at very low concentrations. They can generally be detected even by a layman at concentrations much lower than those believed to affect human health. This is considerably different than many of the hazardous chemicals which are undetectable in the air or water.

You also requested information regarding the number of tanks we insured in Kansas. As of December 31, 1989, we had 92 Pollution Liability Policies in force in Kansas. This is down from 179 policies in force on December 31, 1988. Those policies currently cover 118 locations with bulk or retail tanks. On December 31, 1988, there were 206 locations with bulk or retail tanks covered by our policies.

I would appreciate your keeping me updated on the progress of the legislation to change the Kansas Fund. If we can be of any further assistance, please contact me at your convenience.

Jeanne Hankerson
Environmental Coordinator
kms