

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 15, 1990 in room 423-S of the Capitol.

All members were present except: Quorum was present.

Committee staff present:

Raney Gilliland, Legislative Research Department
Don Hayward, Revisor of Statutes
Pat Mah, Legislative Research Department
Lila McClafflin, Committee Secretary

Conferees appearing before the committee:

Byron Ulery, Farmway Co-op. Inc., Beloit
Darrel Schroeder, Farmer, Tipton, Ks.
Joe Lieber, Executive Vice President, Kansas Cooperative Council
Tom Tunnel, Kansas Fertilizer & Chemical Association
and Kansas Grain & Feed Association
Howard Tice, Kansas Association of Wheat Growers
Janet Renz, Service Station Owner, Rush Center, Ks.
Tom Whitaker, Governmental Relations Director, Kansas Motor Carriers
Association
Cynthia Kelly, Deputy General Counsel, Kansas Association of School
Boards
Jim Maag, Kansas Bankers Association
Larry Magill, Jr., Executive Vice President, Independent Insurance
Agents of Kansas

The Chairman announced the continuation of the hearing on SB 554 - the Kansas Storage Tank Act. He called on Joe Lieber, and Mr. Lieber introduced Byron Ulery and Darrel Schroeder.

Mr. Ulery presented written testimony supporting SB 554 (Attachment I).

Mr. Schroeder written testimony emphasizes the importance to the farmers of the service stations in the small town (Attachment II).

Mr. Lieber in his written testimony states they think it is unfair and maybe unconstitutional that the Cooperative Councils are not covered by the fund, otherwise they support SB 554 (Attachment III).

Tom Tunnel presented Chris Wilson's written testimony in support of SB 554 (Attachment IV).

Howard Tice gave written testimony in favor of SB 554 (Attachment V).

Nancy Kantola, representing the Committee of Farm Organizations, was unable to be present, because of the weather. Mr. Tice read her written testimony (Attachment VI).

Janet Renz's testimony reviews a cleanup situation on their property, and asked that the law be amended to allow the trust fund to pay third party claims (Attachment VII).

Tom Whitaker's written testimony asked the committee to support SB 554 (Attachment VIII).

Cynthia Kelly urged the passage of SB 554 (Attachment IX).

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources,
room 423-S, Statehouse, at 8:03 a.m./~~p.m.~~ on February 15, 1990

Jim Maag stated it is imperative that these amendments be enacted if banks are to continue to make loans to tank owners (Attachment X).

Larry Magill appeared in opposition to the bill. Included with his testimony is a balloon copy of SB 550 with suggested amendments (Attachment XI).

Information from Kansas Department of Health and Environment, Bureau of Environmental Remediation was given to the the committee secretary for distribution (Attachment XII).

A motion was made by Senator Hayden to adopt the minutes of the February 13 and 14, 1990 meetings. The motion was seconded by Senator Daniels. Motion carried.

The meeting adjourned at 9:01 a.m., next meeting will be, on February 20, 1990, at 8:00 a.m.

Date February 15, 1990

PLEASE PRINT

GUEST LIST

NAME	REPRESENTING
<i>Jim Miller</i> HOWARD W. TICE	KBA KAWG KS Co op Council
JOE LIOBEL	KASB
CINDY KELLY	Ks. Motor Car Dealers Assoc. La Crosse, Ks.
PAT BARNES	Ks. Insurance Dept.
JANET RENZ	THORNBROUGH + ASSOC / GULK TRAIL INC
RAY PATTON	4th Enrollment USD's
PAUL E. THORNBROUGH	COASTAL
LEN BARR	Ks. Dept. of Health + Env.
STEVE KEANEY	Ks Bankers Assn
GARY BLACKBURN	"
KATHY MYR	Ks Motor Carriers Assn
CHUCK STONES	KDHE
TOM WHITAKER	Governor's Office
RON HAMMERSCHMIDT	KOMHA
GARY HULETT	Home air co
BOB ANDERSON	Ks. Peace Officers Assn
EARL WAYNE	
CATHY PERRY	

TESTIMONY ON SB 554

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

FEBRUARY 15, 1990

PREPARED BY
BYRON ULERY
FARMWAY CO-OP, INC.
BELOIT, KANSAS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS BYRON ULERY AND I AM GENERAL MANAGER OF FARMWAY CO-OP, INC., A GRAIN MARKETING AND FARM SUPPLY COOPERATIVE SERVING APPROXIMATELY 4,400 MEMBERS. ALTHOUGH FARMWAY CO-OP'S GENERAL OFFICE IS LOCATED IN BELOIT, THE ORGANIZATION IS OWNED BY AND SERVES A MEMBERSHIP MADE UP OF TWELVE COMMUNITIES IN MITCHELL, LINCOLN AND SURROUNDING COUNTIES.

FARMWAY CO-OP IS DRIVEN BY THE RATHER DIRECT MISSION OF ENHANCING THE ECONOMIC WELL BEING OF ITS MEMBERS. THIS MISSION IS ACCOMPLISHED PRIMARILY THROUGH MARKETING, MEMBERS GRAIN AND BY PROVIDING FEED, FERTILIZER, CHEMICALS, FARM SUPPLY AND PETROLEUM PRODUCTS AND SERVICES.

FARMWAY CO-OP PURCHASES MOST OF ITS PRODUCTS FROM FARMLAND INDUSTRIES, A KANSAS CITY BASED REGIONAL, FARM SUPPLY COOPERATIVE. HOWEVER, PLEASE REMEMBER FARMWAY CO-OP IS AN INDEPENDENT COMPANY, OWNED AND CONTROLLED BY THE 4,400 MEMBERS IT SERVES IN NORTH CENTRAL KANSAS.

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FARMWAY CO-OP HAS HISTORICALLY MAINTAINED A POLICY OF COMPLIANCE WITH STATE AND FEDERAL REGULATIONS AND LAWS. WE HAVE NO QUARREL WITH ANY OF THE UNDERGROUND STORAGE TANK REGULATIONS. OBVIOUSLY, THE CONTAMINATION OF OUR WATER SUPPLY AND ITS IMPACT ON OUR FAMILIES IS UNACCEPTABLE.

LIKEWISE, WE AGREE WITH THE BASIC PREMISE OF THE PETROLEUM STORAGE TANK RELEASE TRUST FUND PROVISIONS OF S.B. 554.

WE ARE CONCERNED WITH THE CURRENT LACK OF THIRD PARTY LIABILITY PROVISIONS. THE THIRD PARTY PROVISION OF S.B. 554 BRINGS THE KANSAS FUND INTO COMPLIANCE WITH EPA REQUIREMENTS.

ANOTHER AREA OF CONCERN TO ALL MARKETERS AND ENVIRONMENTALLY CONCERNED CITIZENS IS THE CURRENT LACK OF A RETROACTIVE CLEANUP DATE. THIS WOULD ENCOURAGE MANY ABANDONED AND CLOSING FACILITIES TO BE CLEANED UP THROUGH THE USE OF THE STATE FUND. SINCE CLEANING UP AND KEEPING THE ENVIRONMENT CLEAN ARE PRIMARY PURPOSES OF THE LEGISLATION, THIS CHANGE WOULD SEEM NECESSARY. IF IT IS NOT INCLUDED, THE STATE WILL PROBABLY WIND UP ABSORBING CLEANUP COSTS AS OWNERS OF MANY CLOSED OR ABANDONED SITES WOULD LIKELY SEEK RELIEF THROUGH BANKRUPTCY.

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THE MOST CRITICAL PROBLEM WE HAVE WITH CURRENT UST LEGISLATION IS THE TANGIBLE NET WORTH OF \$10 MILLION WHICH EXEMPTS THE BELOIT, DODGE CITY AND GARDEN CITY COOPERATIVES. THESE COMPANIES ARE EXEMPTED BECAUSE OF THE HIGH DOLLAR ASSETS NEEDED TO BE IN THE GRAIN HANDLING BUSINESS. FEED AND FERTILIZER OPERATIONS ARE ALSO LARGE CONTRIBUTORS TO THE NET WORTH OF THESE COOPERATIVES.

IT HARDLY SEEMS FAIR TO ASK OUR ORGANIZATION TO CONTRIBUTE \$50,000.00 PER YEAR TO A CLEANUP FUND WHICH WE ARE INELIGIBLE TO USE.

FARMWAY CO-OP WAS ORGANIZED IN 1911 BY THE FARMERS IN MITCHELL COUNTY. SINCE THAT TIME, THEY HAVE BEEN JOINED BY AGRICULTURAL PRODUCERS IN LINCOLN AND SURROUNDING COUNTIES. THESE PEOPLE HAVE BUILT A MARKETING AND SUPPLY ORGANIZATION WITH A NET WORTH IN EXCESS OF \$16.5 MILLION. THE PETROLEUM ASSETS MAKE UP 3.26% OF THE TOTAL ASSETS OF FARMWAY CO-OP. DURING THE 1989 FISCAL YEAR, THE PETROLEUM DEPARTMENT CONTRIBUTED 6% TO THE BOTTOM LINE. THE RISK OF A MILLION DOLLAR CLEANUP IS HARDLY COMMENSURATE WITH THE OPPORTUNITIES IN THIS CASE.

A NEIGHBORING COOPERATIVE IS CURRENTLY DEALING WITH A SPILL WHICH COULD JEOPARDIZE THE ASSETS OF THE ENTIRE ORGANIZATION.

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IN SEPTEMBER 1989, WE CONTACTED KANSAS FARMERS SERVICE ASSOCIATION, OUR INSURANCE CARRIER, ABOUT THE POSSIBILITY OF OBTAINING POLLUTION INSURANCE COVERAGE. OUR AGENT, REX BLOOD, SAID "AT THE CURRENT TIME, THERE ARE ONLY EIGHT COMPANIES THAT ARE OFFERING ANY TYPE OF TANK INSURANCE. THEY ARE NOT INTERESTED IN THE RURAL MARKETS. THEIR COST WOULD BE IN THE RANGE OF \$150,000.00 ENGINEERING FEE AND ANNUAL PREMIUMS OF \$200,000.00 FOR FARMWAY CO-OP. HOWEVER, NONE OF THE CARRIERS WOULD PROBABLY BE AVAILABLE UNTIL URBAN MARKETS ARE INSURED. IN ALL OF THE FARMLAND STATES WHERE STATE FUNDS HAVE BEEN SET UP, THESE FUNDS ARE QUALIFYING COOPERATIVES. KANSAS FARMERS SERVICE WILL NOT BE OFFERING ANY TANK OR POLLUTION COVERAGE AND IT IS PROBABLY NOT AVAILABLE AT ANY PRICE TO FARMWAY CO-OP."

IN DECEMBER 1989, WE SUBMITTED APPLICATION TO AGRICULTURAL EXCESS AND SURPLUS INSURANCE COMPANY OF CINCINNATI, OHIO FOR AN UNDERGROUND STORAGE TANK POLLUTION LIABILITY POLICY. THIS COMPANY REFERRED US TO AN EXCLUSIVE TERRITORIAL AGENT AND THE SITUATION REMAINS UNRESOLVED.

OUR BOARD OF DIRECTORS HAS A FEELING OF COMMITMENT TO OUR SMALLER, RURAL COMMUNITIES TO OFFER NEEDED SERVICES RELATED TO FUEL, TIRES AND ACCESSORY SERVICES. WE CURRENTLY OFFER SUCH SERVICES AT 7 LOCATIONS. THIS PAST FISCAL YEAR, 72% OF OUR PETROLEUM DEPARTMENT NET EARNINGS WERE GENERATED AT ONE OF THOSE LOCATIONS.

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WE HAVE THREE OPERATIONS WHOSE FUTURE IS NOT CLEAR. THEY ARE IN COMMUNITIES WHERE NO OTHER FUEL SERVICE IS AVAILABLE. THEY AVERAGE 15 MILES DISTANCE FROM THE NEXT RETAIL FACILITY. IF FARMWAY CO-OP IS EXEMPTED FROM PROTECTION UNDER THE STATE FUND, IT IS CERTAIN THAT THESE OPERATIONS WILL NEED TO BE CLOSED. IN ADDITION, TWO OTHER SITES WOULD HAVE TO BE EXAMINED VERY CLOSELY. FARMWAY CO-OP'S MARKETING PLAN WOULD PROBABLY MOVE TOWARD AN ALMOST EXCLUSIVELY BULK TRUCK OPERATION HEADQUARTERING OUT OF TWO OR THREE LOCATIONS. IF WE ARE BURDENED WITH AN ADDITIONAL \$50,000.00 EXPENSE AND DENIED ACCESS TO THE CLEANUP FUND, WE SEE LITTLE CHOICE, BUT TO EXIT THESE HIGH RISK OPERATIONS.

IT IS OUR HOPE THAT CURRENT LEGISLATION CAN BE ALTERED IN ORDER TO ALLOW INDUSTRY FUNDS TO BE UTILIZED TO PROVIDE A BUSINESS CLIMATE CONDUCIVE TO KEEPING SOME OF THESE OPERATIONS OPEN AND ALLOWING THOUSANDS OF RURAL KANSANS FUEL AND RELATED SERVICES IN THEIR COMMUNITY.

WE SUPPORT S.B. 554.

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TESTIMONY ON SB 554

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

FEBRUARY 15, 1990

PREPARED BY
DARREL SCHROEDER
FARMER
TIPTON, KANSAS

MY NAME IS DARREL SCHROEDER. I FARM IN PARTNERSHIP WITH MY BROTHER AND LIVE 2 MILES NORTHWEST OF TIPTON. I AM A DIRECTOR ON THE MITCHELL WATER DISTRICT, THEREFORE, I SEE BOTH SIDES OF THE CLEAN WATER ISSUE. I USE THE FUELING, LUBRICANT AND MERCHANDISE SALES, SHOP SERVICE AND TIRE AND BATTERY SALES AND SERVICE OFFERED AT THE TIPTON FARMWAY CO-OP SERVICE STATION. I FEEL THESE SERVICES ARE VERY IMPORTANT TO THE PROFITABILITY OF MY FARMING OPERATION, AND BECAUSE THIS STATION IS THE ONLY SUCH OPERATION IN TIPTON, I BELIEVE IT IS VERY IMPORTANT TO THE SURVIVAL OF OUR SMALL RURAL COMMUNITY.

TIPTON HAS A POPULATION OF 321. WE HAVE A SMALL GRADE SCHOOL AND HIGH SCHOOL. A SMALL MACHINERY MANUFACTURING PLANT AND A METAL BUILDING CONSTRUCTION COMPANY ARE THE MAJOR NON FARM BUSINESSES. WE HAVE ONE CAFE AND ONE SMALL GROCERY STORE, AND A SMALL HARDWARE STORE. THESE SERVICE BUSINESSES AND THE COOP SERVICE STATION ARE OFTEN THE ONLY SOURCE OF THE PARTICULAR TYPE OF SERVICE OR PRODUCTS THEY OFFER. THEIR SERVICES, ALTHOUGH NEEDED MAINLY SURVIVE ON

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THE LOW VOLUME BUSINESS ACTIVITY AVAILABLE IN OUR SMALL COMMUNITY.

RECENTLY, IN AN EFFORT TO COMPLY WITH UST REGULATIONS, OUR COOP REMOVED AN UNDERGROUND STORAGE TANK WHICH HAD NOT BEEN IN USE FOR THE PAST 5 OR 6 YEARS. CONTAMINATED SOIL HAS BEEN FOUND AROUND THIS TANK. THE COOP IS CURRENTLY BEGINNING CLEANUP PROCEDURES. THE TOTAL EXTENT OF THE CONTAMINATION AND EVEN COMPLETE DETERMINATION OF THE SOURCE OR SOURCES, OR THE TIME PERIOD OF CONTAMINATION HAVE YET TO BE DETERMINED.

OVER THE PAST THERE HAVE BEEN AT LEAST 6 SERVICE STATIONS COME AND GO IN OUR COMMUNITY AND THE DEPTH OF THE CLEANUP EXPENSE COULD POTENTIALLY BE TREMENDOUS.

CURRENT LEGISLATION DOES NOT PROVIDE FOR THIRD PARTY LIABILITY PROTECTION, A RETROACTIVE CLEANUP DATE, AND THE 10 MILLION DOLLAR NET WORTH EXEMPTION EXEMPTS OUR COOPERATIVE FROM PARTICIPATING IN THE PROPOSED CLEANUP FUND WHICH WILL BE FUNDED THROUGH THE PETROLEUM INDUSTRY. IT WILL ALSO EXEMPT ANYONE WHO MAY OWN A BUSINESS ON A SITE WHICH MAY HAVE BEEN AN OLD SERVICE STATION. THE RESULTS WILL BE MANY BANKRUPT BUSINESSES, SLOWER CLEANUP OF OUR ENVIRONMENT, A SERIOUSLY INJURED RURAL COMMUNITY, AND MORE CLEANUP EXPENSE FOR THE STATE.

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THE NEAREST COMMUNITIES TO TIPTON WHICH OFFER PETROLEUM SERVICES WHICH I NEED ARE AT: HUNTER WHICH HAS ONE SERVICE STATION, FARMWAY'S, AND A POPULATION OF ABOUT 135. HUNTER IS 11 MILES TO THE SOUTHEAST. CAWKER IS LOCATED 16 MILES TO THE NORTHEAST AND HAS TWO SERVICE STATIONS. DOWNS IS 16 MILES TO THE NORTHWEST AND HAS 4 SERVICE STATIONS. ALL OTHER TOWNS ARE AT LEAST 32 MILES AWAY.

AS A FATHER AND A FARMER I WANT A CLEAN ENVIRONMENT AND A HEALTHY RURAL COMMUNITY. I SUPPORT THE NEED FOR THE UST CLEANUP LEGISLATION. IF FEEL CURRENT LEGISLATION IS EFFECTIVELY ADDRESSING THE CLEANUP ISSUE. HOWEVER, IT IS NOT ADDRESSING THE THREE KEY ISSUES OF THIRD PARTY LIABILITY, RETROACTIVE CLEANUP ISSUES, AND COOPERATIVE NET WORTH EXEMPTION. THE CHANGES PROPOSED IN SB 554 RESOLVE THESE ISSUES IN A MANNER THAT IS ACCEPTABLE TO ME AS A FATHER, FARMER AND A TAXPAYER.

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Testimony on SB 554
Senate Committee on Energy and Natural Resources
February 15, 1990

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

The Council supports SB 554 in its entirety but we would like to address our remarks to the areas that affect our members directly.

The current law states that if a firm has \$10 million net assets they are self-insured so they cannot use the Cleanup Fund, even though they are paying into it.

We feel this is unfair, if not unconstitutional.

We know that clean up of spills and leaks has the potential to cost several million dollars. Is it fair to ask a company to take 10 or 20 percent of their assets for cleanup when there is a fund for that purpose?

What if these firms are not in the petroleum business or what if their petroleum assets are a small percentage of their assets? Three of our Council members are in this category:

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	<u>Net Assets</u>	<u>Petroleum Assets</u>
Farmway Co-op, Beloit	\$14,919,782 91.36%	\$1,410,977 8.64%
Dodge City Co-op	13,281,473 89.99%	1,366,327 10.01%
Garden City Co-op	16,024,108 85.1%	2,387,592 14.9%

These cooperatives are in the grain business and the farm supply business, which includes petroleum sales, but you can see that petroleum is not a large part of their operation. As a matter of fact, many cooperatives are only in the petroleum business to provide a service for their member/owners.

I'm sure that these cooperatives are not the only businesses that fall into this category. Think of all the different types of businesses that would have underground storage for various reasons, who have net assets of over \$10 million, so they could not qualify for the fund.

It seems that we're telling the firms that have been successful and that have increased their assets that we're going to punish them for that success.

You may say that these firms can afford cleanup insurance. That is one of the reasons why we have the Cleanup Fund. There is no insurance available in most cases, and if you find it, your premium might run as high as \$15-20,000 per year. Remember, these are firms that are already paying into the Fund.

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If small firms such as the cooperatives cannot use the Fund they will not be able to expose themselves to the risk of a cleanup, so they will probably close down the marginal stations. The net result of this would be that people in small communities and their surrounding areas will be forced to drive 30 to 40 miles for gas.

For example:

In Farmway Co-op's trade area, 6 communities have only one service station and no convenience stores. If those 6 closed, how far would people have to drive for gas? Seven stations or convenience stores have already closed in the last 3 years.

In Dodge City's trade area, 3 communities have only one station. One of these communities, Haston, does have a convenience store. There has been 3 closings in the last 3 years.

Garden City has one community that has one station and no convenience store. This particular location has had their tanks pressure tested and been found free of leaks, but the tanks are too old to qualify for private insurance.

Mr. Chairman and members of the Committee, most firms that have a net worth of \$10 million will have to close down their marginal stations and possibly get out of the petroleum business altogether. It would probably mean that more and more people would decide to install their own storage tank.

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I'm sure this isn't what the legislature had in mind when it passed the Storage Tank Bill last session.

As stated earlier, we support all the provisions of SB554, but we wanted to emphasize the provisions that affect us most directly.

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

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STATEMENT OF THE KANSAS FERTILIZER AND CHEMICAL ASSOCIATION
AND THE KANSAS GRAIN AND FEED ASSOCIATION
TO THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
SENATOR ROSS DOYEN, CHAIRMAN
REGARDING S.B. 554
FEBRUARY 14, 1990

Mr. Chairman and Members of the Committee, I am Chris Wilson, Director of Governmental Relations of the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). KGFA's more than 1300 members constitute the state's grain handling, storage and processing industry. KFCA's over 500 members are involved in the agricultural chemical industry.

We appreciate the opportunity to comment today in support of S.B. 554, amending the Kansas storage tank act. This bill would provide some very much needed changes to the act passed last year. One of the amendments needed is to enable those with detected contamination after January 1, 1989, access to the trust fund. If this change is not made, those who complied with the law during 1989, by testing or removing their tanks, and who in the process of compliance discovered contamination, will be penalized. One of our members who would be in this situation of not having access to the trust fund because he complied with the law, is Chuck Johnson of Johnson's Elevators at Mentor. Chuck will give you firsthand information about his experience and the financial impact of the current law on his business.

Another change needed is in making all owners or operators of storage tanks eligible for accessing the trust fund. Without

Attachment AIV
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this amendment, firms which have net worths of \$10,000,000, will pay into the fund but not be eligible to access it. Several grain firms, have net worths of that amount, but their assets are in grain elevators and facilities. Clean-up expenses can have a very detrimental effect on those companies, despite their net worths. More importantly, it's simply fair to not exclude firms paying into the fund from accessing it.

We urge your support for S.B. 554. Mr. Chairman, I would be happy to respond to any questions.

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Kansas Association Of Wheat Growers

"ONE STRONG VOICE FOR WHEAT"

TESTIMONY

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Chairman: Senator Ross Doyen

SB-554

Mr. Chairman and members of the committee, I am Howard Tice, Executive Director of the Kansas Association of Wheat Growers. On behalf of our members, I appreciate this opportunity to testify today in favor of Senate Bill 554.

I believe the wording of the resolution passed at our annual convention, December 11, 1989, expresses our position quite clearly. It reads as follows:

The 1989 Kansas Legislature passed a bill (SB 398) in response to EPA regulations for Leaking Underground Storage Tanks. The bill established a trust fund for cleanup of environmental damage, to be financed by a 1 cent per gallon tax, collected by all petroleum marketers.

The KAWG recognizes the potential for environmental damage from leaking underground storage tanks, and applauds the Kansas Legislature for taking steps to protect our water supply.

However, the bill had some shortcomings which still need to be addressed. First, the bill excludes, from the trust fund, businesses with a tangible net worth of \$10 million or more. Three Kansas cooperatives, headquartered in Beloit, Dodge City and Garden City, have assets exceeding the tangible net worth limit, and are exempt from using the trust fund, even though the petroleum assets of these cooperatives make up a very small part of their total operation. In addition, private insurance is not available at this time.

Other problems include the lack of third party liability provisions, which exempts the Kansas law from meeting EPA requirements, and the lack of a retroactive cleanup date which would encourage many abandoned and closing facilities to be cleaned up, using the trust fund, instead of becoming the responsibility of the state.

RESOLUTION: The KAWG will work for amendments to KSA 65-34,100 - KSA 65-34,125 to:

1. either exempt agricultural cooperatives or apply the tangible net worth clause to petroleum assets only,
2. establish a retroactive cleanup date of January 1, 1989 and
3. establish third party liability provisions which would be in compliance with EPA requirements.

SB 554 meets these requests, and so we support it. Some of our members may agree that it goes too far with the self-insurance language. In that light, we would not oppose an amendment to focus the criteria on assets directly associated with petroleum sales. This would allow the cooperatives and similar enterprises, such as the Collingwood elevators who also sell fuel, to be included in the trust fund, without opening it to those giant corporations who have adequate funds to pay for their cleanup efforts.

*attachment V
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2/15/90*

COMMITTEE OF ... KANSAS FARM ORGANIZATIONS

Nancy E. Kantola
Legislative Agent
3604 Skyline Parkway
Topeka, KS 66614
(913) 273-5340

STATEMENT OF POSITION OF THE
COMMITTEE OF KANSAS FARM ORGANIZATIONS

RE: S.B. 554

Senate Committee on Energy and Natural Resources

February 14, 1990

Mr. Chairman, Members of the Committee: I am Nancy Kantola, Legislative Agent for the Committee of Kansas Farm Organizations. The Committee, or CKFO, is comprised of 22 of the major farm organizations and agribusiness associations in the State. Our membership list is attached.

The members unanimously support Senate Bill 554 to amend the Kansas storage tank act. They support it for environmental reasons and to allow funds for the businesses which contribute to the trust fund. Many businesses have a net worth which currently excludes their participation, even though the petroleum part of the business has less assets and income than another business which is exclusively petroleum products and services....and does qualify to participate in the fund.

They also feel that third party participation is important if the goal to clean up abandoned underground tanks is to be met.

We urge your support of the amendments as described in SB 554.

Respectfully submitted,

Nancy Kantola
Legislative Agent

*Attachment VI
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MEMBERSHIP LIST
COMMITTEE OF KANSAS FARM ORGANIZATIONS
1990

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 AND CHEMICAL ASSOCIATION
KANSAS GRAIN AND FEED DEALERS ASSOCIATION
KANSAS LIVESTOCK ASSOCIATION
KANSAS MEAT PROCESSORS ASSOCIATION
KANSAS MILK PRODUCERS ASSOCIATION
KANSAS PORK PRODUCERS COUNCIL
KANSAS RURAL WATER DISTRICTS ASSOCIATION
KANSAS SEED DEALERS ASSOCIATION
KANSAS SOYBEAN ASSOCIATION
KANSAS STATE GRANGE
KANSAS VETERINARY MEDICAL ASSOCIATION
KANSAS WATER WELL ASSOCIATION
MID AMERICA DAIRYMEN, INC.
WESTERN RETAIL IMPLEMENT AND HARDWARE ASSOCIATION

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February 13, 1990

Senator Ross Doyen
Chairperson
Committee on Energy & Natural Resources
State Capitol
Topeka, Kansas

Thank you for allowing me to appear before your committee.

We own a small gas service station in Rush Center, Kansas, population of 250. This station was started in 1928, and we purchased the station in 1985.

In the summer of 1989, we started to replace our underground storage tanks with above-ground storage. It was then we first learned of contamination on the property.

We immediately hired a consultant to clean-up the site. We acted promptly because we did not want to run the risk of contaminating a municipal water supply nearby.

Our consultants indicate the contamination probably occurred long before we became the owners of the property.

We hope Senate Bill 554 becomes law to allow us some reimbursement for the expenses we incur in the clean-up, now estimated at \$75,000.00 to \$100,000.00.

It seems unfair to penalize us simply because our problem was discovered before April 1, 1990. It also seems unfair that we will be contributing to the trust fund to clean-up other stations, but these funds cannot be used to help us.

We have a very small operation, and it will take us years to pay for this clean-up.

It is also important that present law be amended to allow the trust fund to pay 3rd party claims in compliance with the requirement of federal statutes.

Respectfully,

Ray Renz
Ray Renz.

Janet S. Renz
Janet S. Renz.

Attachment VII
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2/15/90

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

Presented to the Senate Energy and Natural
Resources Committee; Sen. Ross Doyen,
Chairman; Statehouse, Topeka, Wednesday,
February 14, 1990.

Concerning S.B. 554 and the
Kansas Storage Tank Act.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Tom Whitaker, Governmental Relations Director of the Kansas Motor Carriers Association with offices in Topeka. I appear here this morning representing our 1,525 member-firms and the highway transportation industry to express our support for Senate Bill 554.

The Kansas Storage Tank Act, adopted during the 1989 session of the Legislature, provided statutory authority to the Kansas Department of Health and Environment to implement the Environmental Protection Agency's regulations governing the installation and operation of underground storage tanks.

Additionally, the petroleum storage tank release trust fund was created to assist tank owners in meeting stringent financial responsibility requirements. The revenue for the fund will be generated by increasing the tax on motor fuel one cent per gallon on April 1, 1990. The increase in the fuel tax will remain in effect until the fund reaches \$5,000,000. All petroleum fuel users will

attachment VIII
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pay this increase in motor fuel taxes but, under current statutes, not all will have access to the release fund.

The Kansas Motor Carriers Association supports the elimination of the \$10,000,000 net asset cap governing those who may access the release fund as provided in S.B. 554.

Senate Bill 554 also provides for third party liability coverage for tank owners. This additional coverage is necessary to bring the Kansas petroleum storage tank release trust fund into compliance with EPA and assure tank owners that the coverage provided by the trust fund will meet EPA requirements for financial responsibility.

The Kansas Motor Carriers Association supports the protection of our state's ground water from leaking underground storage tanks. We believe that the amendments to the Kansas Storage Tank Act will have a positive effect on efforts to protect Kansas ground water. We ask your support of Senate Bill 554.

We thank you for the opportunity to appear before you this morning. We would be pleased to respond to any questions you may have.

####

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

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

TESTIMONY ON SENATE BILL 554
BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

by

Cynthia Lutz Kelly, Deputy General Counsel
Kansas Association of School Boards

February 14-15, 1990

Mr. Chairman, members of the committee, thank you for the opportunity to appear before you today on behalf of our member school districts, to speak in support of Senate Bill 554. In addition U.S.D. Nos. 229 and 512 have requested that I also speak on their behalf.

The amendments to the Kansas Storage Tank Act contained in Senate Bill 554 will allow the trust fund to meet the federal financial responsibility requirements, and provide school district tank owners with the necessary coverage to meet the federal requirements. School districts, like independent tank owners, must comply with these federal requirements, and secure coverage for third party injury.

The amendments to the Act contained in Sections 2, 3, and 5 are necessary if the trust fund is to serve its intended purpose. Further, we agree that those who have commenced clean-up activities should not be denied participation in the fund simply because they have acted in a prudent manner by commencing clean-up activities immediately.

We therefore urge you to recommend Senate Bill 554 favorably for passage.

attachment IX
E4NR
2/15/90

U.S.D. 200 Tribune	Has removed its underground storage tanks and discovered ground contamination; testing on the extent of contamination continues; no estimates on cost of clean-up
U.S.D. 305 Salina	Removed six tanks; slight contamination at three of the six sights; cost of clean-up was approximately \$7000.00
U.S.D. 351 Macksville	Removed all of its underground storage tanks; no contamination found
U.S.D. 410 Hillsboro	Removed a tank; contamination present; clean-up has not yet begun; no cost estimate
U.S.D. 313 Buhler	Clean-up of contamination with soil ventilating system begun in September, 1989; cost to date is approximately \$32,000

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E4NR



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 15, 1990

TO: Senate Committee on Energy and Natural Resources
RE: **SB 554** - Amendments to the Kansas Storage Tank Act

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of **SB 554**. As an industry, the banks of Kansas are concerned that Kansas communities, especially rural communities, will lose valuable fuel services that have been provided for decades without the passage of this legislation. The federal requirement that tank owners must show evidence of "financial responsibility" to the level of \$1 million as insurance against potential pollution is one which most tank owners in Kansas simply will not be able to meet. In addition, we are obviously concerned about the financial consequences should a banker be forced to take contaminated property through foreclosure or a similar process.

Since little, if any, insurance coverage is available to tank owners, they must look to the trust fund to meet the financial responsibility requirements. It is important, therefore, to bring our state law into complete compliance with the federal requirements since tank owners cannot access the trust fund unless the EPA standards are met. Such denial of access will greatly hamper the flow of credit to owners of property that might be subject to contamination. The risk that a bank would bear the liability of a clean-up without access to the trust fund is one that few, if any, can afford to take or that bank regulators would allow. It is imperative that these amendments be enacted if banks are to continue to make loans to tank owners throughout the state.

Your favorable consideration of **SB 554** would be greatly appreciated.


James S. Maag
Senior Vice President

Testimony on SB 554
Before the Senate Energy and Natural Resources Committee
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas
February 15, 1990

Thank you, Mr. Chairman, and members of the committee for the opportunity to appear today in opposition to the amendment contained in SB 554 that would include all third-party pollution liability coverage under the Kansas clean up fund.

Before stating our reasons to oppose this amendment, we would like to make two points. First, we acknowledge that there is a very limited voluntary market for third-party liability coverage on underground storage tanks. What markets there are exercise fairly tough underwriting requirements and the premiums are relatively costly. According to one of our members, the premiums are averaging \$700-800 per tank.

Attached are two lists of known or "suspected" markets for this coverage. Unfortunately, the EPIC (Environmental Protection Insurance Company Risk Retention Group) announced in January that they would be ceasing operations. According to their president, George F. Hillier, "The market simply has not developed. It's not a case of financial problems; it's not a case of anybody pulling out". He goes on to state that while increased competition for environmental impairment liability accounts contributed to EPIC's demise, it was mainly due to lack of interest from buyers. Mr. Hillier maintained, "To quote 100 risks and to write one, that's just not a good result. How long can you continue to pour money into something with little, if any, expectation of a return?"

We have also obtained information that the Petromark (Petroleum Marketers Mutual Insurance Company) risk retention group announced they

attachment XI
E&NR
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were suspending operations February 8, 1990.

The two principal markets this seems to leave in Kansas are AIG through their subsidiary, National Union Fire Insurance Company, and Great American through its subsidiary, Agricultural Excess and Surplus Company. I did not include the Federated, since they reportedly have raised their deductible to a minimum of \$25,000 and their cost per tank to around \$7,000.

I am also attaching a copy of an October 31, 1989, memo the Kansas Insurance Department wrote the Special Committee on Energy and Natural Resources. This lists the markets they knew about, minimum deductibles, minimum premiums and whether the policies complied with EPA requirements. You should note that the Laramie Insurance Company listed by the Department has since been placed into receivership.

A more positive development is indicated by the February 2, 1990, memo from our National association outlining on page 2 under item #4 ISO's plans to develop a UST liability form along with proposed insuring considerations which will lead to underwriting requirements. The Insurance Services Office is an all-industry rating organization that develops forms and rates for use by other companies. Unfortunately, the fact that they develop a form and rates does not mean any companies will choose to offer the coverage.

Finally, we contacted the Home Insurance Company to see if they had any interest in a program our association might offer through our members. They indicated in December that they were not interested because of the cost of adequately underwriting the coverage for the premiums involved and because they felt the market was already saturated. In regard to this last comment, you need to keep in mind that this is a somewhat limited

field compared to all firms who need general liability insurance, for example. Therefore, it can get saturated to the point where no carrier can write an adequate spread of risk somewhat easier.

The bottom line is that it is a very limited market and a fairly costly coverage.

Our second point is that we want to offer an alternative. Attached to our testimony is a balloon copy of SB 550 introduced at the request of the Insurance Department. We will explain our proposal later in our testimony.

However, if the legislature does not adopt our proposal in some form, then we would not oppose third-party liability being included in the fund. We acknowledge that any time there is a mandatory coverage requirement by government, then government must provide some safety net to those who are entitled to coverage but unable to obtain it.

We oppose including all third-party liability for pollution from underground storage tanks in the Kansas UST fund for the following reasons:

1. We are generally opposed to the state becoming an insurer and taking over private enterprise.
2. We are genuinely concerned about the potential liabilities the state is assuming. We are convinced that once you establish a guaranteed deep pocket through mandatory liability insurance and a state fund providing that coverage, you will see a tremendous increase in the number of claims, suits and awards. Keep in mind that up until now a very low percentage of businesses with UST's have carried any form of insurance for pollution, making recovery against most of them in a suit unlikely.

Secondly, we would suggest that all the state funds offering third-party liability coverage are relatively new, making their claims experience questionable at best. This type of liability insurance has what is known as a "long tail" on claims development. By that, we mean that an incident giving rise to a claim may happen today, but the party injured by the incident may not know about it

for years. Once they realize they have been "injured", that is when the claim is actually made. Thus, if you establish a fund today, you are creating potential liabilities for the state, almost with no limit on time. For example, when we constructed our new association building at 8th and Topeka, the contractor discovered gas fumes in two of the piers drilled to support the building. As a result, we incurred over \$9,000 in engineering fees and added construction costs to put a vapor barrier and vapor ventilation system under the slab of the building in case the problem should ever get worse. If there had been a state fund, could we have sued the fund?

Third, we feel the potential liabilities are tremendous and not unlike the Health Care Stabilization Fund has experienced in the medical malpractice area. As the Kansas Department of Health and Environment pointed out in their testimony, no clean up will ever remove all contamination from an area. Aren't the land owners then entitled to some damages in every contamination instance?

Finally, we would like to point out that carriers would not be abandoning this market and going bankrupt if it were a "no risk" proposition as you have heard the proponents indicate. We have been told by one domestic Kansas insurance company that they tried for months to obtain reinsurance without success. The insurance industry knows enough to be extremely concerned about the risks involved in pollution liability. Should the state substitute its judgement for an industry that depends on writing insurance for its existence? Insurance companies are in business to write insurance; they do not walk away from a market like pollution liability without good reason.

3. We are concerned that once the state has established a fund for third-party liability, it will find it very difficult, if not impossible, to extricate itself from that fund. Again, we would point to the example of the Health Care Stabilization Fund and the long tail we anticipate.
4. We feel that unlike the clean up exposure, which in many cases has occurred over a long period of time, the insured (tank owner/operator) should not receive free coverage for future third-party liability exposures. We do not feel that this is a "societal problem" but a normal business expense to carry liability insurance just like malpractice, auto insurance or workers' compensation. When the state decided to mandate that everybody driving an automobile must have insurance, they did not pass a tax to pay for the auto liability coverage.

We would also point out that health care providers have paid every cent into the Health Care Stabilization Fund since it was established. At no time were any tax dollars

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used to subsidize the fund, and, in fact, consumers in many cases are paying the tax that will fund the underground storage tank fund in Kansas.

Finally, we feel it is particularly inappropriate to provide free coverage to big oil companies.

5. We are concerned that it will take years for the Kansas Department of Health and Environment to develop the expertise in handling third-party claims and basically operating an insurance company. In the meantime, we are concerned about their ability to handle the claims and manage the operation to minimize payouts. Again, we feel that the Kansas Insurance Department's experience with the Health Care Stabilization Fund provides ample proof of this problem.
6. Once the state eliminates the voluntary market for pollution liability in Kansas, we are concerned that it will not instantly reappear should the state decide to get out of the pollution liability insurance business. Markets for difficult liability lines of insurance do not develop overnight. It would be very difficult for our association or anyone else to come before the legislature in the future, if you establish coverage under the fund for all third-party liability, and tell this legislature that a voluntary market will be there to take care of all tank owners and operators on a given day when the state fund terminates.

Our proposal contained in the "balloon" copy of SB 550 would establish an assigned risk plan with the following features:

1. The plan would take all applicants who have met EPA's technical requirements. Since EPA's technical requirements are phased in over a number of years depending on the age of the tank, this will guarantee coverage for everyone initially unless they fail to meet the EPA's requirements.
2. Charge a premium for the insurance provided. This can either be the full actuarial cost or a subsidized rate. In our proposal, we offered three options, but there are others.
3. Fund any excess liability over premiums collected from the clean up fund as the legislature has done with the Health Care Provider Insurance Availability Act (primary medical malpractice). The HCPIA has covered its excess losses over the years by transfers from the Health Care Stabilization Fund.
4. Use a servicing carrier which would provide the needed expertise to efficiently operate the insurance company.

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2/15

The servicing carrier would issue policies, manage, defend and pay claims, collect premiums and monitor compliance with the EPA's technical requirements.

We admit that even with our proposal, if the legislature decides to subsidize the rate for the "mom and pop" gasoline stations, the voluntary market in Kansas would probably dry up. The only time we can anticipate a voluntary market being used would be for the very large tank owners who can possibly get a "quantity" discount price.

We appreciate the committee's time today to listen to our ideas. We urge you to not create another state insurance fund that you may soon regret and instead adopt our proposal. We would be happy to provide additional information or answer questions.

Appendix 5B — Companies Offering Pollution Liability Insurance for Underground Storage Tanks

One of the principal ways to meet EPA's financial responsibility requirements is to obtain insurance. Several options are available. Owners of underground tanks that are part of a small facility may be able to secure insurance from their existing carriers. The following list of companies (arranged alphabetically) may represent alternatives for larger UST facilities.

[Editor's Note: Thompson Publishing Group does not endorse these firms. They are included for reader information. UST owners and operators should consult appropriate counsel or professional advice pertinent to their needs.]

Agricultural Excess & Surplus Company (AESIC)

AESIC offers a claims-made policy specifically designed to meet EPA requirements in all states except Delaware, Maine, New Hampshire, Rhode Island and Vermont.

Contact:
Mike Ryan
AESIC
515 Main Street
Cincinnati, OH 45202
(513) 723-2722

American International Group (AIG)

AIG offers both a general insurance program and pollution liability insurance.

Contact:
John H. Sullivan, President or
Bill Cavalieri, Sales Director
Sullivan Risk Management Group
Waltham, MA
(617) 893-3500
or
John Armore, President — Technical Insurance Division
American International Group
New York, NY
(212) 770-7000

Anglo-American Insurance Company and Walbrook Insurance Company, Ltd.

Offers pollution liability insurance; currently writes in all states except Rhode Island and Massachusetts.

Contact:

James Group Service, Inc.
230 West Monroe Street
Suite 950
Chicago, IL 60606
(800) 621-5081
(312) 701-2724
(312) 236-0220
Douglas J. Pallay, President
Alvin J. Pallay, Vice President & Sales Manager
James Stewart, Vice President, Property & Casualty
Terri Czizik, Manager/Association Service Property & Casualty

Evanston Insurance Company*

Currently writes pollution insurance for petroleum tanks only in Illinois, Indiana and Wisconsin; intends to expand. Does not insure petroleum marketers; specializes in policies for small cities and townships and other governmental entities.

Contact:

Shand Morahan & Company, Inc.
Shand Morahan Plaza
Evanston, IL 60201
(312) 866-2800
Chuck North, Assistant Vice President —Special Risk

Environmental Impairment Purchasing Group, Inc.*

Pollution liability insurance written through Presidential Fire & Casualty. Not available in all states.

Contact:

EIPG
P.O. Box 584
Hillsboro, WI 54634-0584
(608) 489-3221
Ed Hardy or Wendy Muller

* Revised November 1989

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Environmental Protection Insurance Company (EPIC)

EPIC writes UST insurance policies in all 50 states.

Contact:

Charles LaBarge, President
Mike DePaemelaere
Berkeley Risk Retention Group Managers
3010 LBJ Freeway, Suite 504
Dallas, Texas 75234
(214) 243-8284

Federated Mutual Insurance Company

Federated writes UST insurance in all states except:

Alaska, Connecticut, Delaware, District of Columbia, Hawaii, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York and Rhode Island.

Contact:

Bob Rinaldi
(800) 533-0472

Front Royal Group

Will offer policies only in Virginia at first; plans to operate as surplus lines carrier in many states and eventually become national.

Contact:

Myra Anderson
John Gibson
Front Royal Group
7900 Westpark Drive, #A-300
McLean, VA 22102
(703) 893-0900

Oilman's Insurance Plan

Division of the Oil Marketers of America Risk Management Group

(Reinsured by Fireman's Fund)

Oilman's Insurance writes in the following states:

California, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Maine, Maryland, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Vermont, Washington, and West Virginia.

Contact:

Jane Jachimczyk, Sr. Vice President
Oilman's Insurance
350 5th Avenue, Suite 6505
New York, NY 20018
(212) 629-4290

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Petroleum Marketers Mutual Insurance Company (Petromark)

Petromark writes UST insurance in all 50 states.

Contact:

Max Clay
The Planning Corporation
11347 Sunset Hills Road
Reston, VA 22090
(703) 481-0200

[The next page is Appendix 5, Page 51]

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RESPONSE REQUESTED!

February 2, 1990

TO: State Technical Liaison Group
FROM: Matthew A. Cantoni, Jr., CPCU, CLU
RE: Insurance Services Office (ISO) Matters

4. UNDERGROUND STORAGE TANKS

An Underground Storage Tanks (UST) insurance program is currently being developed by ISO. It is intended that the program will include a separate Coverage Part specifically designed to cover owners or operators of petroleum underground storage tanks. The UST Coverage Part will be designed to meet the needs of insureds satisfying the financial responsibility requirements imposed on them by Federal Environmental Protection Agency (EPA) regulations. Coverage will be for liability arising out of the release, escape or leakage of stored petroleum substance from an insured UST, and for corrective action required by a governmental authority. It will be a claims-made policy with an automatic six month tail.

ISO's current schedule contemplates review of the proposed program by appropriate insurer committees during March 1990, and submission of filings to regulation for an October 1, 1990 effective or distribution date.

Enclosed is a list of Insuring Considerations provided to me by ISO staff. The categories listed will be the basis for collecting data. IIAA is asked to review this list and to offer any recommendations for additional categories or recommended changes in the proposed ones. The final list of categories will evolve into the classification system that will be used. Please send your comments or recommendations to me and I will pass them on to the proper ISO staff person.

Underground Storage Tanks
Insuring Considerations

Construction:

- Tanks -- Fiberglass or synthetic
- Tanks -- Steel -- With corrosion protection, including fiberglass-coated
- Tanks -- Steel -- Without corrosion protection, including tar-coated
- Tanks -- N.O.C.

Age:

- New to 5 years old
- Over 5 years to 10 years old
- Over 10 years to 25 years old
- Over 25 years old

Contents:

- Gasoline -- All grades
- Oil (including kerosene, diesel and waste oil)
- Other

Protective Devices:

- Automatic Leak Detection only
- Automatic Overfill Protection only (not collection wells)
- Both Automatic Leak Detection and Automatic Overfill Protection Devices
- None

Pumping and Piping:

- Suction
- Pressure

EPA Service Station Deadlines Loom

CONTINUED FROM PAGE 1A

Many AIA member firms are reluctant to enter the field, Mr. Kimble said, because such underwriting terms as "sudden" and "occurrence" are difficult to pin down. Insurers have also typically feared long-tailed coverage extending years beyond subscribed policy periods, but the EPA calls for a one-year contract only with an additional six-month reporting period for belated claims.

Companies that use underground fuel tanks but do not market the product, such as taxi or trucking fleets, must carry insurance limits of \$500,000 an incident with a \$1 million aggregate if their monthly

fuel output is under 10,000 gallons. Those using more than 10,000 gallons need the same \$1 million, \$2 million coverage as larger petroleum marketers.

Some insurance companies, such as Travelers Co., offer the insurance on a selective basis. But Travelers doesn't want to discuss it publicly, a spokeswoman said.

Arthur Chartrand, associate counsel for the National Association of Insurance Commissioners, said about 12 carriers — regular insurance companies as well as alternative self-insurance pools known as risk retention and risk

purchase groups — offer the high-risk coverage.

The EPA's Linda Reidt Critchfield said the agency has a three-page list of carriers, with more policies coming in for approval.

Service station industry officials agree that spending \$35,000 to \$50,000 a station for technical upgrades — vapor recovery pump nozzles, fiberglass or fiberglass-coated tanks — is costly but worthwhile, said David Morehead, Petroleum Marketers of America vice president.

But he added, "Couple that with insurance and it's a real killer."

Max Clay of Petromark, a risk retention group that covers underground tanks, said annual premiums range upward from \$1,500 a station.

According to Ms. Critchfield of the EPA: "We realize it's a constrained market. (But) if they can't have both of them (technical upgrades and insurance) maybe they shouldn't be (in business). That's the law."

Some 35 state legislatures have thus far offered a partial answer to preserving some service stations by authorizing trust funds to reduce the financial cost of upgrades and insurance.

Mr. Clay of Petromark believes state trust funds will take away the incentive for insurers to enter such markets.

The Bay State Gasoline Retailers Association of Burlington, Mass., was able to offer a subsidiary of the Cincinnati-based Great American Insurance Co., to cover the risks of its 700 members.

Shell Oil Co., which self-insures its owned and operated stations, will not recommend an insurer to its franchisees, a spokesman said.

EPA-Approved Insurers

The U.S. Environmental Protection Agency lists the following companies as currently approved for offering underground tank pollution liability coverage.

- Agricultural Excess & Surplus Lines Co., Bellevue, Wash.
- AIG-Fred S. James, Harrisburg, Pa. *
- AIG-National Fire Universal Fire Insurance Co., New York
- AIG-Sullivan Risk Management Group, Waltham, Mass.
- Bell-Aire, St. Louis
- Environmental Protection Insurance Co., Chicago
- Evanston Insurance Co., Evanston, Ill. †
- Federated Mutual Insurance Co., Owatonna, Minn.
- Front Royal Group, Inc., McLean, Va. **
- Impairment Purchasing Group, Hillsboro, Wis.
- James Group Insurance Co., Chicago †
- Liberty Mutual Insurance Co., Boston
- New England Life and CIGNA, Tampa, Fla.
- Oilmen's Fund, New York
- R.L. Jarrett, Dallas †
- Petromark, Reston, Va.
- Travelers Cos./Frank B. Hall & Co. of Missouri, St. Louis
- Universal Underwriters Insurance Co., Kansas City, Mo.

*Emphasizes small business coverage †Available only in certain states **Available only in Virginia
†Complements state trust fund coverage

SOURCE: Environmental Protection Agency

DOUG PINKERTON/Journal of Commerce

Journal of Commerce 1/30/90

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2/15

EPA Deadlines Loom For Service Stations

Mandatory Insurance Set

By TOM McNIFF Jr.

Journal of Commerce Special

BOSTON — Service station operators are faced with obtaining expensive pollution liability insurance to meet Environmental Protection Agency requirements, which phase in this April and October.

A nationwide April 26 deadline applies to service station operators with more than 12 but fewer than 100 underground storage tanks. The operators must obtain insurance pollution liability limits of \$1 million an incident, with a \$1 million annual aggregate, or cap.

Those owning or operating 1 to 12 tanks have an Oct. 26 deadline to meet the so-called financial responsibility requirements. The mandate took effect in 1989 with regard to self-insurance programs and insurance or performance bond requirements for

those firms owning more than 100 underground tanks.

The insurance must cover policyholder cleanup costs as well as third-party lawsuits that stem from a spill, excluding legal costs.

Most gasoline retailers agree that pollution coverage for underground storage tanks is available. But it's also very costly, they say.

"Anything you read about insurance not being available is not true," said Joseph Koach, Service Station Dealers of America executive director. "(But) cost is relative to return on investment," and insurance prices are "way the hell out of proportion," he said.

Thus tank owners and their associations stumble around seeking the best possible coverage at least cost.

The New York Association of Service Station Dealers is among those seeking an underground tank insurer — in this

case, to cover members in New York City and nearby suburbs.

Michael Carbonella, executive director, said the New York Association has premium cost estimates of \$1,000 a tank, with minimum \$3,500 annual premiums. "Where does it end?" Mr. Carbonella asked. "We estimate losing 20%-25% of (our) locations, even those owned by the (major) oil companies. It's not economic."

James Kimble, senior counsel for the American Insurance Association, sympathizes somewhat with gasoline retailers. "It might be considered expensive," he said. "I don't know if it's being priced properly. You can have a large loss, (but) one loss typically is \$60,000-\$100,000. There are not too many million-dollar claims."

SEE EPA, PAGE 11A

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COPY

MEMORANDUM

TO: Special Committee on Energy and Natural Resources
FROM: Kansas Insurance Department
SUBJECT: Rates for Underground Storage Tanks
DATE: October 31, 1989

As requested by the Committee, we are attaching an exhibit which contains the rating, premium or actuarial data on underground storage tanks. Such information was provided by the insurance companies indicated on the exhibit.

You can observe from the companies indicated that some are licensed in Kansas, some are risk retention groups or risk purchasing groups and one of the companies although not licensed in Kansas is an approved non-admitted company.

The last column on the exhibit indicates whether the coverage complies with EPA Requirements. You can note that not all of the forms comply with EPA requirements and therefore would not appear to be a source to satisfy the EPA financial requirements.

The rates/premium between companies are averages and are varied because of the specialized, individual underwriting consideration for this type of coverage.

Premium charges for some coverages are indicated as "not available" because the company will not write the coverage or has not yet accumulated sufficient information for that coverage to develop a rate.

Please contact our office should the Committee desire any additional information.

FCBW5310
TXTFMS
(10/89)

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<u>Company</u>	<u>Minimum Deductible</u>	<u>Minimum Premium</u>	<u>Liability and Clean-Up Premium</u>	<u>Liability Only</u>	<u>Does Coverage Comply With EPA Requirement?</u>
Federated Mutual Ins. Co. (Admitted Insurer)	\$25,000	\$2,500/policy	\$2,700-\$17,00	50%-70% of Total Premium	Yes
Universal Underwriters Ins. Co. (Admitted Insurer)	\$1,000 (Clean-Up Cost Only)	None	\$750-\$1,750	Not Available	No
John Deere Ins. Co. (Admitted Insurer)	None	\$500/tank	\$8,500	Not Available	No
National Union Fire Insurance Company of Pittsburgh, PA (Admitted Insurer)	\$25,000	\$5,000/Policy	Not Available	\$800/tank	Yes
Environmental Protection Ins. Co. (Approved Risk Retention Group)	\$25,000	\$7,500	\$7,500	\$7,500	Yes
Petroleum Marketers Ins. Co. (Petromark) (Approved Risk Retention Group)	\$5,000	\$2,300	\$2,300	Not Available	Yes
Laramie Ins. Co. (Eligible Non-Admitted Insurer)	\$5,000	\$3,500	\$3,500	Not Available	Yes
Environmental Impairment Purchasing Group (Pending - Risk Purchasing Group)	No Rates or Forms Have Been Filed				

FCBW5310
 TXTFMS
 (10/89)

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SENATE BILL No. 550

By Committee on Financial Institutions and Insurance

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2/15

9 AN ACT relating to insurance; concerning apportionment or
10 assignment of risk of certain liability insurance required as financial
11 responsibility with respect to underground storage tanks.
12

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

14 Section 1. Every insurer undertaking to transact in the state of
15 Kansas the kinds of insurance specified in subsections (b) or (c) of
16 K.S.A. 40-1102, and amendments thereto, and every rating
17 organization which files rates for such insurance shall cooperate in
18 the preparation and submission to the commissioner of insurance of
19 a plan or plans for the equitable apportionment among insurers of
20 applicants for insurance who are in good faith entitled to, but who
21 are unable to procure through ordinary methods, insurance necessary
22 to achieve compliance with the financial responsibility requirements
23 imposed by 40 CFR part 280, subpart H and part 281 adopted by
24 the federal environmental protection agency. Such plan or plans shall
25 provide:

the

26 (a) ~~Reasonable rules governing the equitable distribution of risks~~
27 ~~by direct insurance, reinsurance or otherwise and their assignment~~
28 ~~to insurers, including provisions requiring, at the request of the~~
29 applicant, an immediate assumption of the risk by an insurer or
30 insurers upon completion of an application, payment of the specified
31 premium and deposit of the application and the premium in the
32 United States mail, postage prepaid and addressed to the plan's
33 office;

For the appointment by the plan of a servicing carrier which need not be a licensed insurance company and for reasonable rules governing administration of the plan, including provisions requiring that the plan provide coverage for all tank owners and operators who meet the EPA's technical requirements and

34 (b) rates and rate modifications applicable to such risks which
35 shall be ~~reasonable, adequate and not unfairly discriminatory;~~

Option 1: 125% of the average rates charged by the two largest writers of UST's in Kansas.

36 (c) the limits of liability which the insurer shall be required to
37 assume;

Option 2: Equal to the average rate charged per tank by the two largest writers of UST's in Kansas.

38 (d) a method whereby applicants for insurance, insureds and
39 insurers may have a hearing on grievances and the right of appeal
40 to the commissioner;

Option 3: Equal to 50% of the average rate being charged per tank by the two largest writers of UST's in Kansas or similar states for the first year of plan operation which percentage shall be increased each year by 15% until it reaches 125%.

41 (e) for every such plan or plans, there shall be a governing board
42 to be appointed by the commissioner of insurance which shall meet
43 at least annually to review and prescribe operating rules, and which

shall consist of the following members:

(1) Seven members who shall be appointed as follows: ~~Three of~~ two such members shall be representatives of foreign insurance companies, ~~two~~ members shall be representatives of domestic insurance companies, and two members shall be licensed independent insurance agents. Such members shall be appointed for a term of three years, except that the initial appointment shall include two members appointed for a two-year term and two members appointed for a one-year term as designated by the commissioner; and

(2) Two members representative of the general public interest with such members to be appointed for a term of two years.

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The commissioner shall review the plan as soon as reasonably possible after filing in order to determine whether it meets the requirements set forth in subsections (a), (b), (c) and (d). As soon as reasonably possible after the plan has been filed, the commissioner shall in writing approve or disapprove the same. Any plan shall be deemed approved unless disapproved within 45 days. Subsequent to the waiting period the commissioner may disapprove any plan on the ground that it does not meet the requirements set forth in subsections (a), (b), (c) and (d), but only after a hearing held upon not less than 10 days' written notice to every insurer and rating organization affected specifying the matter to be considered at such hearing, and only by an order specifying in what respect the commissioner finds that such plan fails to meet such requirements, and stating when within a reasonable period thereafter such plan shall be deemed no longer effective. Such order shall not affect any assignment made or policy issued or made prior to the expiration of the period set forth in such order. Amendments to such plan or plans shall be prepared, and filed and reviewed in the same manner as herein provided with respect to the original plan or plans.

If no plan meeting the standards set forth in subsections (a), (b), (c) and (d) is submitted to the commissioner within the period stated in any order disapproving an existing plan, the commissioner shall, if necessary to carry out the purpose of this section, after hearing, prepare and promulgate a plan meeting such requirements. If, after a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, the commissioner finds that any activity or practice of any insurer or rating organization in connection with the operation of such plan or plans is unfair or unreasonable or otherwise inconsistent with the provisions of this subsection, the commissioner may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this subsection and requiring

(f) A method whereby adequate reserves are established for open claims and claims incurred but not reported based on advice from an independent actuary retained by the plan at least annually, the cost of which shall be born by the plan.

(g) A method whereby annually the plan shall compare the premiums earned to the losses and expenses sustained by the plan for the preceding fiscal year. If there is any surplus of premiums over losses, and expenses received for that year such surplus shall be transferred to the fund. If there is any excess of losses and expenses over premiums earned, such losses shall be transferred from the fund.

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1 discontinuance of such activity or practice.

2 Sec. 2. An insurer participating in the plan approved by the
3 commissioner may pay a commission with respect to insurance
4 assigned under the plan to an agent licensed for any other insurer
5 participating in the plan or to any insurer participating in the plan.

6 ~~Sec. 3.~~ In any clause, paragraph, subsection or section of this
7 act shall be held invalid or unconstitutional, it shall be conclusively
8 presumed that the legislature would have enacted the remainder of
9 this act without such invalid or unconstitutional clause, paragraph,
10 subsection or section.

11 ~~Sec. 4.~~ This act shall take effect and be in force from and after
12 its publication in the statute book.

Sec. 3. (See attached from SB 554)

Sec. 4.

Sec. 5.

Kansas Register.

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1 activities, such as the installation of corrosion protection devices or
2 inground relining of underground storage tanks, and may require
3 persons wishing to engage in such activities to demonstrate additional
4 qualifications to perform these services;

5 (12) prescribing fees for the issuance of licenses to underground
6 storage tank installers and contractors. The fees shall not exceed the
7 amount of revenue determined by the secretary to be required for
8 administration of the provisions of K.S.A. 1989 Supp. 65-34,110; and

9 (13) adopting schedules requiring the retrofitting of underground
10 storage tanks in existence on the effective date of this act and for
11 the retirement from service of underground storage tanks placed in
12 service prior to the effective date of this act. Such schedules shall
13 be based on the age and location of the storage tank and the type
14 of substance stored. Such retrofitting shall include secondary
15 containment, corrosion protection, linings, leak detection equipment
16 and spill and overfill equipment.

17 (b) In adopting rules and regulations under this section, the
18 secretary shall take notice of rules and regulations pertaining to fire
19 prevention and safety adopted by the state fire marshal pursuant to
20 subsection (a)(1) of K.S.A. 31-133, and amendments thereto.

21 (c) Nothing in this section shall interfere with the right of a city
22 or county having authority to adopt a building or fire code from
23 imposing requirements more stringent than those adopted by the
24 secretary pursuant to subsections (a)(1), (2), (3), (7) and (13), or affect
25 the exercise of powers by cities, counties and townships regarding
26 the location of storage tanks and the visual compatibility of above
27 ground storage tanks with surrounding property.

28 ~~Sec. 2:~~ K.S.A. 1989 Supp. 65-34,114 is hereby amended to read
29 as follows: 65-34,114. (a) There is hereby established as a segregated
30 fund in the state treasury the petroleum storage tank release trust
31 fund, to be administered by the secretary. Revenue from the
32 following sources shall be deposited in the state treasury and credited
33 to the fund:

Sec. 3.

34 (1) The proceeds of the environmental assurance fee imposed by
35 this act;

36 (2) any moneys recovered by the state under the provisions of
37 this act, including administrative expenses, civil penalties and
38 moneys paid under an agreement, stipulation or settlement;

39 (3) interest attributable to investment of moneys in the fund; and

40 (4) moneys received by the secretary in the form of gifts, grants,
41 reimbursements or appropriations from any source intended to be
42 used for the purposes of the fund, but excluding federal grants and
43 cooperative agreements.

1 (b) The fund shall be administered so as to assist owners and
 2 operators of underground petroleum storage tanks in providing
 3 evidence of financial responsibility for corrective action required by
 4 a release from any such tank. Moneys deposited in the fund may
 5 be expended for the purpose of reimbursing owners and operators
 6 for the costs of corrective action ~~and for indemnifying owners and~~
 7 ~~operators for the costs of compensating third parties for bodily injury~~
 8 ~~or property damage caused by a release from an underground~~
 9 ~~storage tank;~~ subject to the conditions and limitations prescribed by
 10 this act; ~~but moneys in the fund shall not be used for~~
 11 ~~compensating third parties for bodily injury or property damage~~
 12 ~~caused by a release from an underground petroleum storage~~
 13 ~~tank, other than property damage included in a corrective action~~
 14 ~~plan approved by the secretary.~~ In addition, moneys deposited
 15 in the fund may be expended for the following purposes:

16 (1) To permit the secretary to take whatever emergency action
 17 is necessary or appropriate to assure that the public health or safety
 18 is not threatened whenever there is a release from an underground
 19 petroleum storage tank;

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

25 (3) payment of the state's share of the federal leaking
 26 underground storage tank trust fund cleanup costs, as required by
 27 the resource conservation and recovery act, 42 U.S.C.
 28 § 6991b(h)(7)(B); and

29 (4) payment of the administrative, technical and legal costs
 30 incurred by the secretary in carrying out the provisions of sections
 31 15 through 25, including the cost of any additional employees or
 32 increased general operating costs of the department attributable
 33 thereto, which costs shall not be payable from any moneys other
 34 than those credited to the fund.

35 (c) The petroleum storage tank release trust fund shall be used
 36 for the purposes set forth in this act and for no other governmental
 37 purposes. It is the intent of the legislature that the fund shall remain
 38 intact and inviolate for the purposes set forth in this act, and moneys
 39 in the fund shall not be subject to the provisions of K.S.A. 75-3722,
 40 75-3725a and 75-3726a, and amendments thereto.

41 (d) Neither the state of Kansas nor the petroleum storage tank
 42 release trust fund shall be liable to an owner or operator for the
 43 loss of business, damages or taking of property associated with any

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and for reimbursing the plan established by Senate Bill 550
for any excess of losses and expenses over premium earned.

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1 corrective or enforcement action taken pursuant to this act.

2 (e) The pooled money investment board may invest and reinvest
3 moneys in the fund established under this section in obligations of
4 the United States or obligations the principal and interest of which
5 are guaranteed by the United States or in interest-bearing time
6 deposits in any commercial bank or trust company located in Kansas
7 or, if the board determines that it is impossible to deposit such
8 moneys in such time deposits, in repurchase agreements of less than
9 30 days' duration with a Kansas bank or with a primary government
10 securities dealer which reports to the market reports division of the
11 federal reserve bank of New York for direct obligations of, or
12 obligations that are insured as to principal and interest by, the United
13 States government or any agency thereof. Any income or interest
14 earned by such investments shall be credited to the fund.

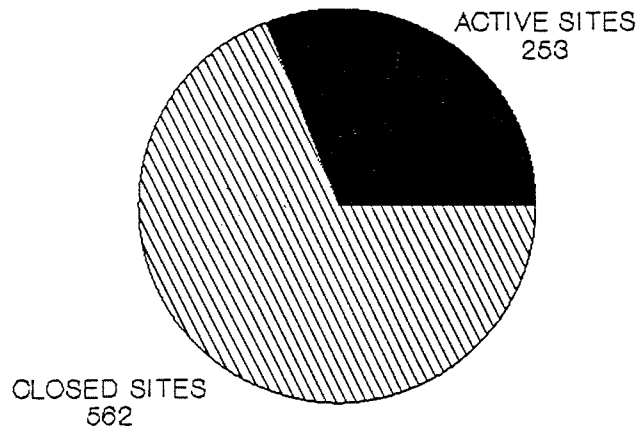
15 (f) All expenditures from the fund shall be made in accordance
16 with appropriation acts upon warrants of the director of accounts and
17 reports issued pursuant to vouchers approved by the secretary for
18 the purposes set forth in this section.

19 ~~Sec. 3. K.S.A. 1989 Supp. 65-34,115 is hereby amended to read
20 as follows: 65-34,115. Except as otherwise provided in this act, an
21 owner or operator of an underground petroleum storage tank, or
22 both, shall be liable for: (a) All costs of corrective action taken in
23 response to a release from such petroleum storage tank; and (b)
24 compensating third parties for bodily injury or property damage
25 caused by a release from such petroleum storage tank. Eligibility to
26 participate in the petroleum storage tank release trust fund may be
27 submitted as evidence of financial responsibility required of owners
28 and operators of underground petroleum storage tanks.~~

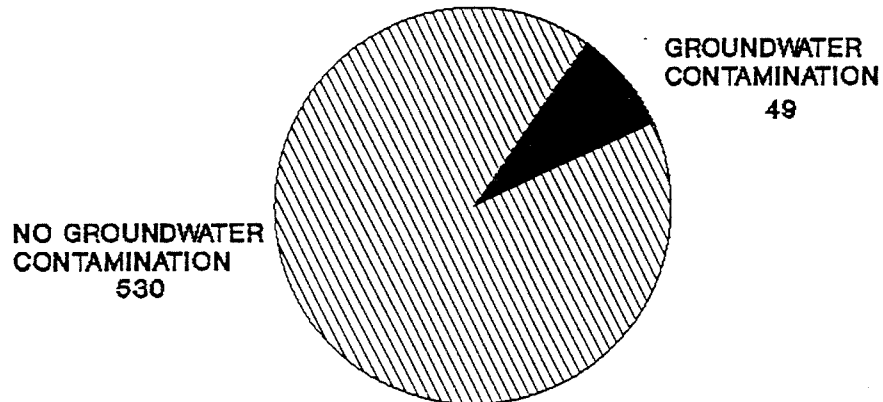
29 ~~Sec. 4. K.S.A. 1989 Supp. 65-34,119 is hereby amended to read
30 as follows: 65-34,119. (a) An owner or operator of an underground
31 petroleum storage tank, other than the United States government
32 or any of its agencies, who is in substantial compliance, as provided
33 in subsections (d) and (e), and who undertakes corrective action,
34 either through personnel of the owner or operator or through
35 response action contractors or subcontractors, is entitled to
36 reimbursement of reasonable corrective action costs from the fund,
37 subject to the following provisions:~~

38 ~~(1) An owner or operator who is not a petroleum marketer and
39 who owns or operates not more than four underground petroleum
40 storage tanks shall be liable for the first \$5,000 of costs of corrective
41 action taken in response to a release from any such petroleum storage
42 tank, provided all petroleum or petroleum products are not stored
43 for purposes of resale.~~

STATUS OF LUST SITES 9/30/89



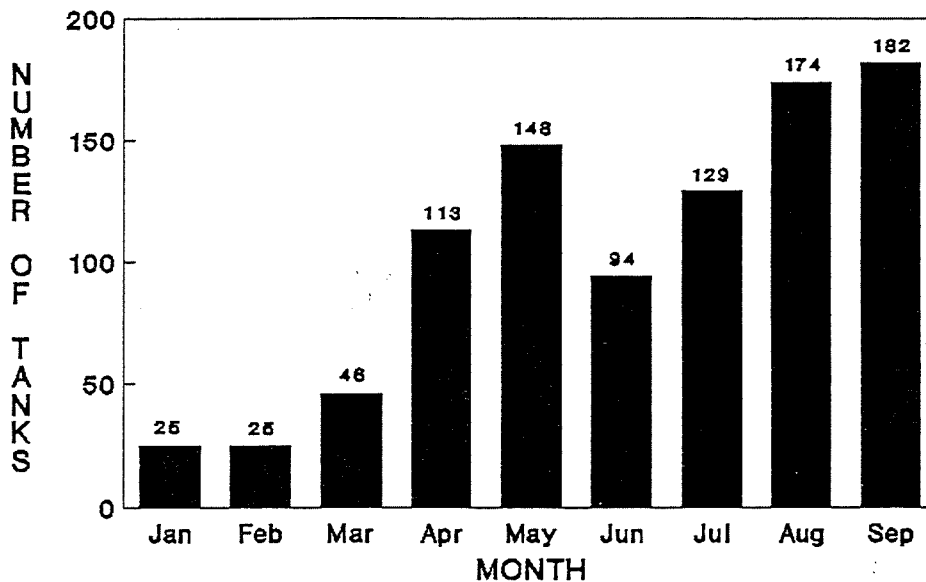
GROUNDWATER CONTAMINATION KANSAS LUST SITES



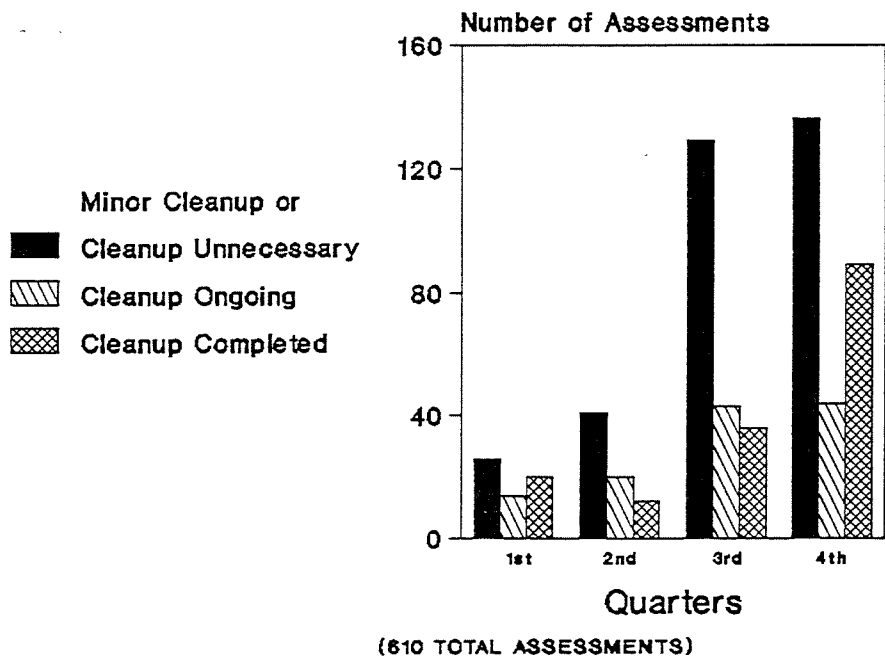
Prepared by the Kansas Department of Health and Environment,
Bureau of Environmental Remediation, February 1990.

*ENR
Attachment XII
2-15-90*

TANKS REMOVED 1989



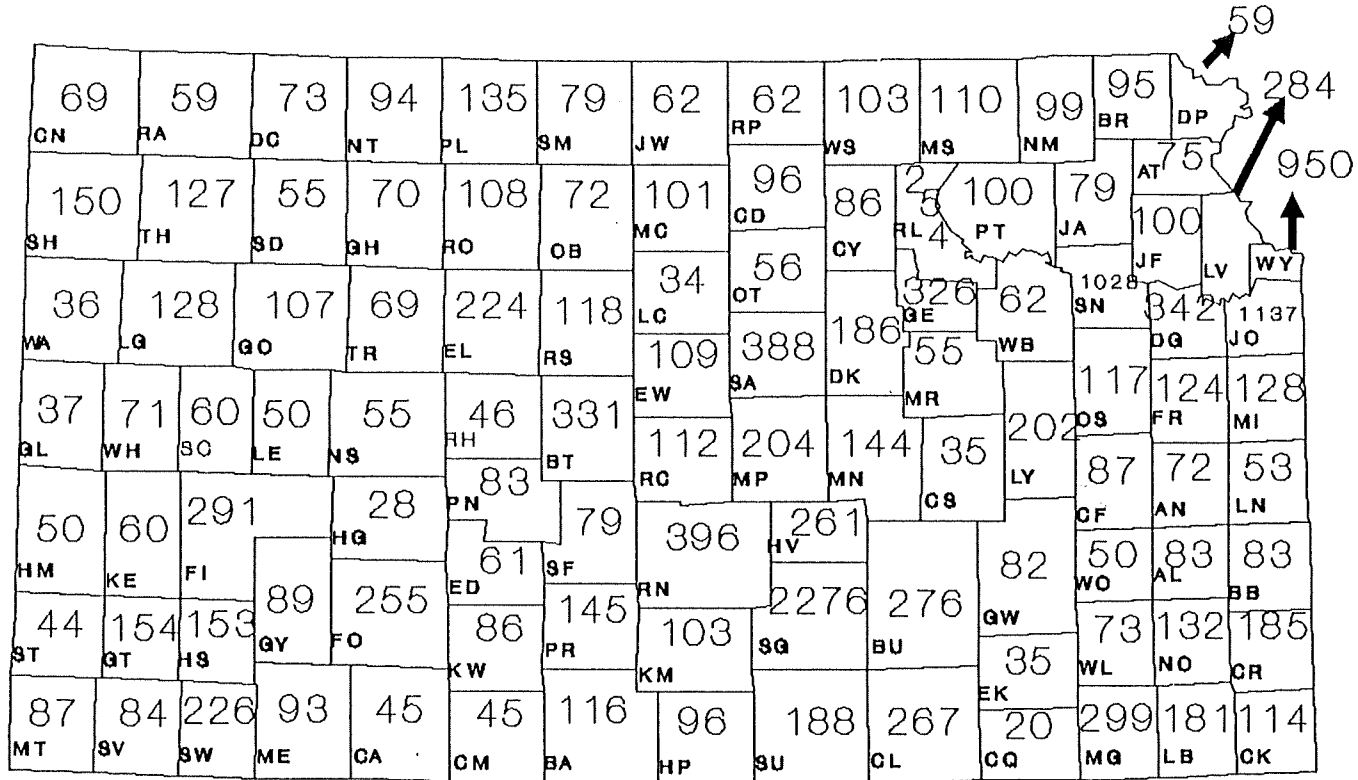
LUST SITE ASSESSMENTS 10/1/88 - 9/30/89



Prepared by the Kansas Department of Health and Environment,
Bureau of Environmental Remediation, February 1990.

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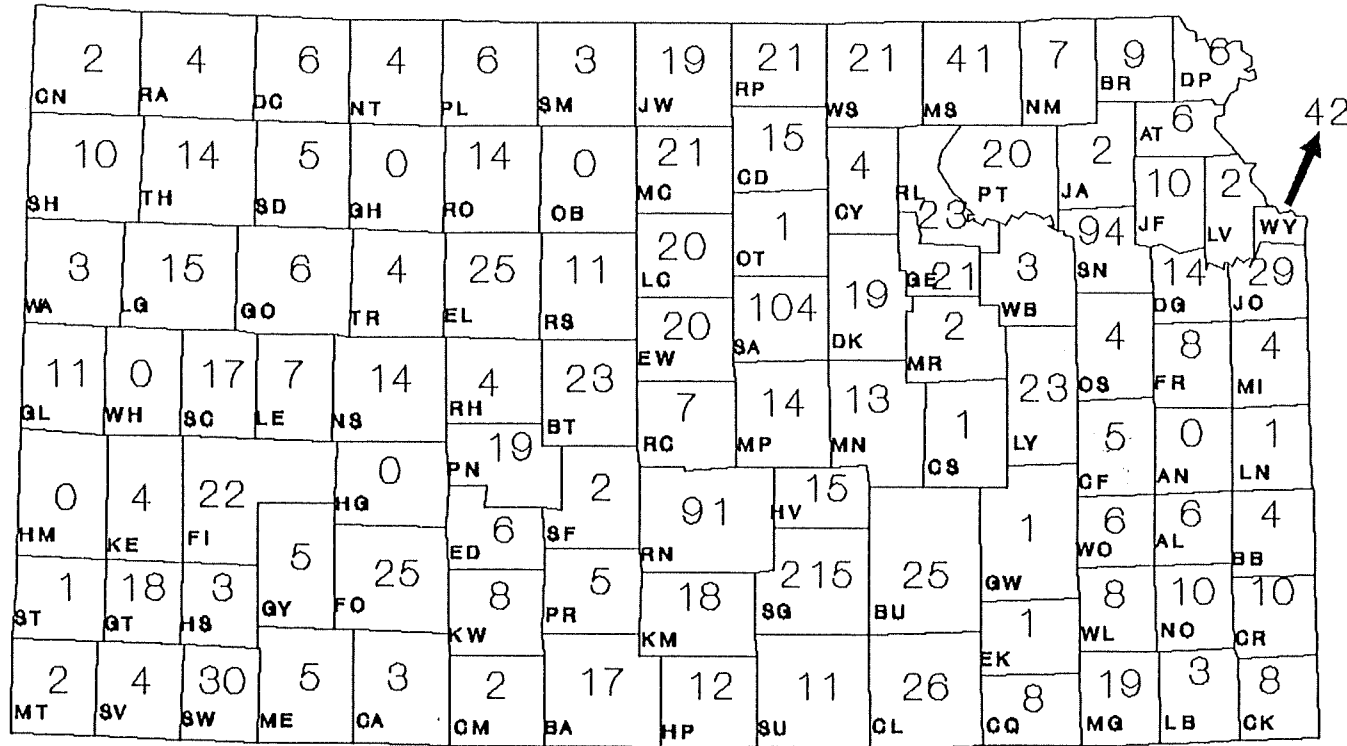
Active Registered Underground Storage Tanks



Prepared by the Kansas Department of Health and Environment,
Bureau of Environmental Remediation, February 1990.

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Underground Storage Tanks Removed



12-4
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Prepared by the Kansas Department of Health and Environment,
Bureau of Environmental Remediation, February 1990.