

Approved

Ken Entwistle
Date 2/17/92

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Representative John McClure at
Vice Chairperson

3:35 a.m./~~p.m.~~ on February 11, 1992 in room 526-S of the Capitol.

All members were present except:

Representative Correll, excused

Committee staff present:

Raney Gilliland, Principal Analyst, Legislative Research Department

Pat Mah, Legislative Research Department

Mary Torrence, Revisor of Statutes Office

Lenore Olson, Committee Secretary

Conferees appearing before the committee:

Larry Kenoche, Bureau Director, Bureau of Environmental Remediation,
Department of Health and Environment

Larry Kenoche, Bureau Director, Bureau of Environmental Remediation, Department of Health and Environment, appeared before the Committee to present a briefing on the Underground Storage Tank Program. He said that the Department implemented the provisions of the Storage Tank Act since its passage, most of the program framework has all been established at this time, and the Department continues to fine tune the program as needed to meet the intent of the legislation.

Mr. Kenoche then explained the activities in the Leaking Petroleum Storage Tank Program. He said that the UST unit receives federal funding to remediate UST sites where the responsible party is unable or unwilling to provide remedial action. He also reviewed Trust Fund activities and expenditures as of January 1992, explaining that many UST owners are small businesses who are not able to perform the required tasks to obtain reimbursement without considerable assistance from the Department. (Attachment 1)

Mr. Kenoche then responded to questions from the Committee.

The meeting adjourned at 4:22 p.m.

Date: 2/11/92

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Larry Knodler	KDHE		296-1662
Pan Hammers chund	"	Bldg 740 Forbes Fld	296-1535
Gary Blackburn	KDHE	"	296-0610
CHARLES JONES	KDHE	"	296-1535
KATHRYN ARBUCKLE-HEDDOW	KDHE	LSOB #904	296-1330
Trudy Racine	KDOT	DSOB 7 th Floor	296-3597
David Cooper	League of KS Municipalities	112 W 7th	354-9565
TED FREERS	TANK MANAGEMENT SERVICES	201 NW Highway 24	233-1714
Patrick Henderson	Rep. Shove's office	660 Gateway Ct. Lawrence, KS	832-2774
Robert Ralston	Rep. Carl Holmes	6746 Red oak Shawnee, KS 66217	268-1390
Dan Haas	KCPK	Overland Park	599-2375
STEVE KEARNEY	PIRE MCGILL ASSOC.'S	TOPEKA, KS	233-4510
Anne Smith	Ks. Assoc. of Counties	Topeka	233-2271
TREVA POTTER	PEOPLES NAT. GAS	"	235-5996
Rebecca Rice	Amoco Oil	Topeka	234-9702
Tom Day	KCC	TOPEKA	271-3100
Michael Johnson		Topeka	
Jim Cooper	Quick TRIP	St Louis	644-1989
Charles Nicolay	KOMA	Topeka	233-9655
Michelle Lester	KBC	Topeka	
Ken Peterson	KS PETROLEUM COUNCIL	Topeka	234-0589
LARRY MAGILL	IND. INS. AGENTS OF KS	"	232-0561

UST PROGRAM OVERVIEW

The Kansas Department of Health and Environment implemented the provisions of the Storage Tank Act since its passage. Most of the program framework has all been established at this time and the department continues to fine tune the program as needed to meet the intent of the legislation.

UST UNIT

The preventive aspects of the program are enforced by the UST unit.

Approximately 15,000 active USTs are registered with KDHE as of September 30, 1991.

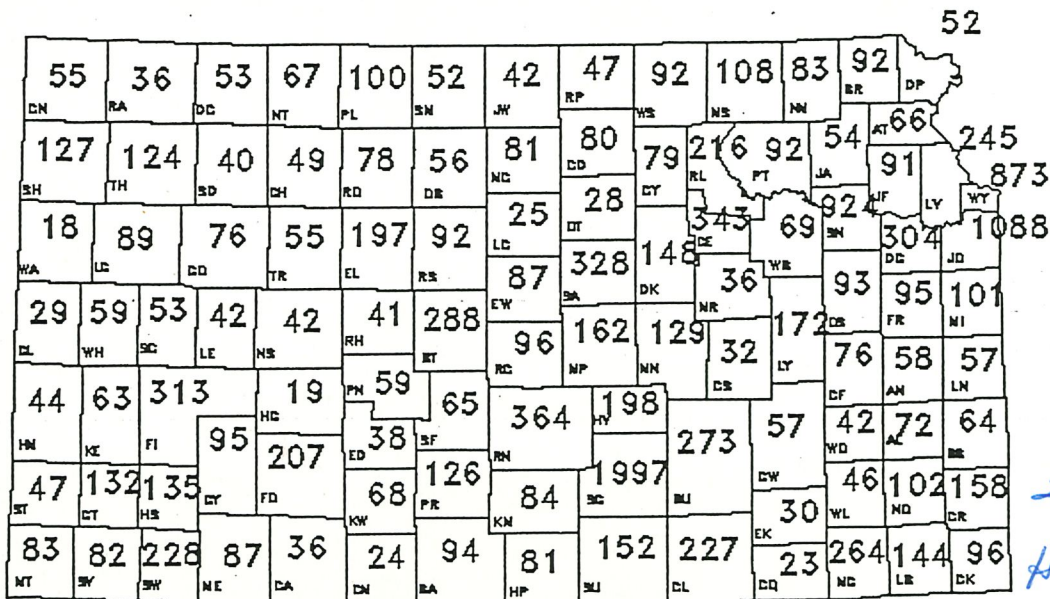
UST owners were required to obtain permits for all active USTs by June 1, 1991. As of September 30, 1991 over 90% of the registered USTs were in compliance with permitting requirements. At the present time the compliance rate of greater than 95% is anticipated.

The UST contractor and installer licensing program was implemented effective in November of 1990. A total of 244 companies hold licenses with 464 individuals licensed to install, remove, and test UST systems.

During the last year about 2000 UST were removed and destroyed. Applications were submitted for approval at 411 locations where new USTs were to be installed. 390 additional applications were reviewed for locations where existing systems were being upgraded.

Figure 1 illustrates the number of UST per county which were registered with the department as of September of 1991.

FIGURE 1
ACTIVE REGISTER UNDERGROUND STORAGE TANKS
TOTAL OF 15,281 AS OF SEPTEMBER 1991



2/11/92
House E+NR

Attachment 1

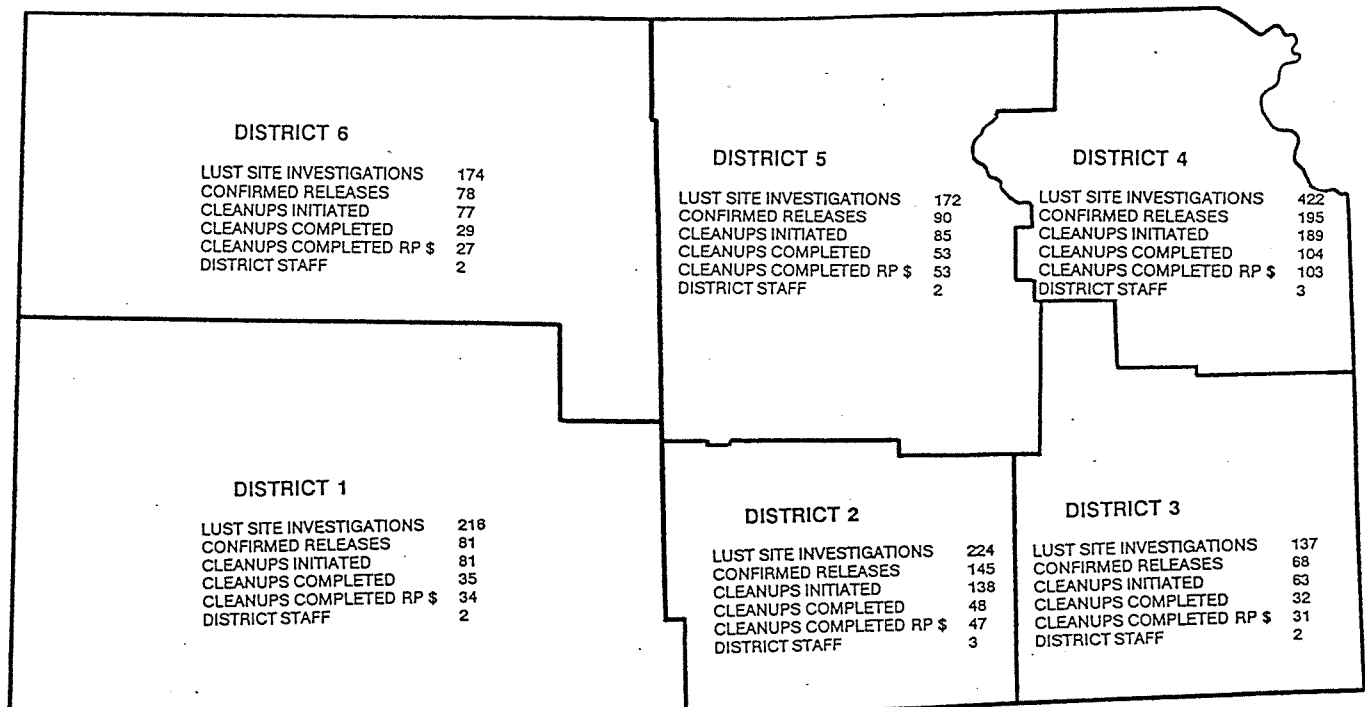
LUST UNIT

The LUST unit receives federal funding to remediate UST sites where the responsible party is unable or unwilling to provide remedial action. Eligible sites are ranked so the higher risk sites are addressed first due to limited resources. Federal funds can also be used to provide field oversight of responsible party cleanups.

Cost tracking is required for each site where LUST funds are used to perform actual remedial action. This cost tracking is required by EPA so cost recovery actions can be taken against uncooperative owners.

The statistics presented on Figure 2 document the level of activity within this program during federal fiscal year 1991.

**FIGURE 2
LEAKING PETROLEUM STORAGE TANK PROGRAM ACTIVITIES
BETWEEN OCTOBER 1, 1990 AND SEPTEMBER 30, 1991**

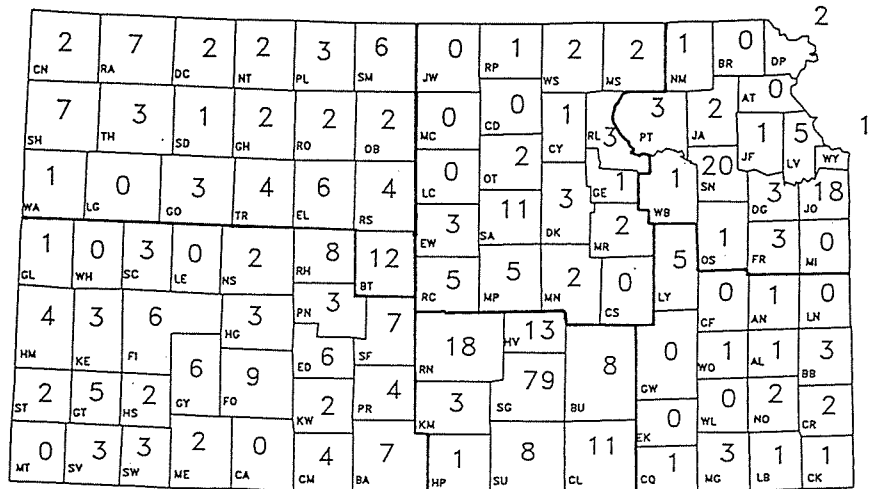


The Petroleum Storage Tank Release Trust Fund (Trust Fund) became effective on April 1, 1990 and began accepting applications during August of 1990. As of December 31, 1991 a total of 449 applications have been received. The department has worked hard over the last 21 months to meet two program goals: 1) Provide UST owners a method of complying with EPA financial responsibility requirements and 2) to assist UST owners with remedial action costs.

KDHE was informed, on December 18, 1991, that the Kansas Program had been approved as a full coverage financial responsibility plan for UST owners in Kansas.

Many UST owners are small businesses who are not able to perform the require tasks to obtain reimbursement without considerable assistance from the department. For this reason the department has developed a process to assist owners in obtaining three bids of pre-approved plans, so reimbursement can be insured. Figure 3 shows the number of Trust Fund sites in each county throughout the state. Figure 4 documents the Trust Fund activities and expenditures as of January 1992.

**FIGURE 3
PETROLEUM STORAGE TANK RELEASE TRUST FUND SITES
NUMBER OF SITES PER COUNTY**



AS OF JANUARY 1992

DISTRICTS TOTALS

- | | |
|---------------------------------|-------------------------------|
| 1. SOUTHWEST DISTRICT - 95 | 4. NORTHEAST DISTRICT - 71 |
| 2. SOUTH CENTRAL DISTRICT - 141 | 5. NORTHCENTRAL DISTRICT - 43 |
| 3. SOUTHEAST DISTRICT - 21 | 6. NORTH WEST DISTRICT - 69 |

**FIGURE 4
PETROLEUM STORAGE TANK TRUST FUND
ACTIVITIES AND EXPENDITURES**

TRUST FUND ACTIVITIES	THRU 12/91
APPLICATIONS	
Total Applications	449
Closed Sites	28
Denied Sites	12
SITE INVESTIGATIONS (SI)	
SI (Underway or Currently on Bid)	138
Work Plans Received	113
Work Plans Reviewed	110
Work Plans Approved	92
Final Reports Received	65
Final Reports Reviewed	61
Final Reports Approved	38
REMEDIATION	
Remediation (Underway, Bid, Design)	19
Design Plans Reveived and Approved	6
Design Plans In Development Phase	13
Remediation Completed (Site Closed)	28
REQUEST FOR REIMBURSEMENTS	
Requests Received	427
Requests Processed	424
MONITORING	
Sites in Monitoring Phase	8

TRUST FUND BALANCE	THRU 12/91
RECEIPTS	
Assurance Fees	\$10,931,987
Compliance Fines	\$41,852
Interest	\$608,033
Refund From PLAN	\$50,000
TOTAL RECEIPTS:	\$11,631,872
DISBURSEMENTS AND ENCUMBERANCES	
Salaries and Benefits	\$435,805
Other	\$175,405
Corrective Action Expenditures	\$2,021,175
Corrective Action Encumbered	\$3,152,593
TOTAL DISBURSEMENTS:	\$5,784,978
SUMMARY	
Receipts	\$11,631,872
Disbursements and Encumbrances	\$5,784,978
TRUST FUND BALANCE:	\$5,846,894
<i>For Internal Use Only: Unaudited, unreviewed, and unverified</i>	

PRIORITIZATION OF TRUST FUND SITES

Since the enactment of the Trust Fund, priority has been given to contaminated sites where public health and severe environmental damages may occur if corrective action is not implemented. Due to the large number of Trust Fund applications, this trend to address immediate health and environmental problems will need to continue in the future.

Sites which pose little or no threat to the public and surrounding property and groundwater are placed onto a hold or monitor status even though KDHE's site remediation levels have not been reached. Many individuals want the department to label their site as clean so the property can be sold at previous market values. The only feasible method of protecting the public health from some of these sites is simply document that the contamination exists so that the future use of the property can be limited.

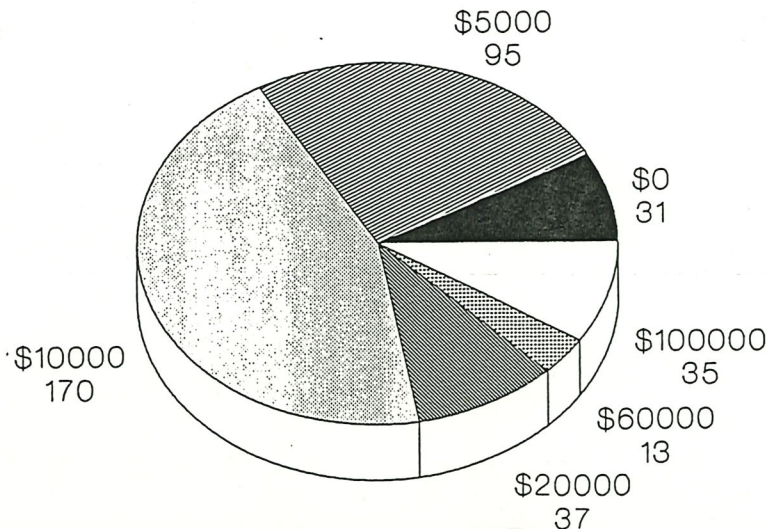
The department had received 449 trust fund applications as of December 31, 1991 and with the average site remediation cost being \$150,000 the remediation of all sites would cost an estimated \$67,350,000. The department continues to receive about 15 new applications each month, if each site could be immediately remediated at cost of \$150,000 the monthly cost would be \$2,250,000.

TRUST FUND DEDUCTIBLES

The department receives numerous complaints about the deductible requirement where the property owner has not used the tanks. The provisions of K.S.A. 65-34,119 (f) allowed individuals like this to obtain Trust Fund access without meeting a deductible if a corrective action plan is submitted prior to July 1, 1990. This requirement does nothing for property owners who discover the contamination after this date.

Figure 5 contains a breakdown of the number of owners who fit into each deductible category.

**FIGURE 5
TRUST FUND DEDUCTIBLES**



ATTORNEY GENERAL OPINION NO. 91-121

With the constitutionality of the Trust Fund deductibles in question, the issue of Equal Protection is raised. Attorney General's Opinion No. 91-121 found that the risk to the environment does increase with the number of USTs owned or operated; and therefore, insofar as the classification scheme is based on the number of tanks, the system does not violate the Equal Protection Clause.

However as to the difference in treatment between marketing, non-marketing, and self-insured facilities, the Attorney General indicated that no reasonable relationship could be identified upon which to base the smaller deductible for a non-marketing facility. They found that a marketing facility was no more likely to cause a release than a non-marketing facility with the same number of tanks. Furthermore, an increased risk could not be identified for owners who could meet self insurance requirements. This difference then violates the Equal Protection Clause.