

Approved: Carl Dean Holmes  
Date 3-7-95

## MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on February 1, 1995 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Jamie Clover Adams - KS Fertilizer & Chemical Assn  
Ronald Hammerschmidt - KS Dept of Health & Environment  
Bill Craven, Sierra Club

Others attending: See attached list

Chairperson Holmes opened the meeting with bill action.

### **Action on HB 2061:**

Representative Kline made a motion to table HB 2061. The motion was seconded by Representative Myers. Motion carried.

### **Hearing on HB 2120:**

**Jamie Clover Adams.** Citing what the Kansas Fertilizer and Chemical Association members deem practical concepts to **HB 2120**, Ms. Adams reported they are wholeheartedly in agreement with the proposed changes. (See Attachment #1.)

Ms. Adams said this measure requires agencies to assess all aspects of a problem in a meaningful way and find the most cost-effective method to solve the problem. Also, it provides policymakers with the tools necessary to make informed decisions (as funds grow tighter and public demands do not lessen).

**Ronald Hammerschmidt:** Mr. Hammerschmidt reported that the Kansas Department of Health and Environment is in support of **HB 2120**. There is one area of concern to the Department where in the bill definition of "environmental rule and regulation" is proposed, it is very general and does not differentiate between the many types of regulations adopted by KDHE. He recommends clarification of the types of regulations proposed for inclusion in the new process. He assured the Committee their Department remains available to them to address any issues on this bill. (See Attachment #2)

**Bill Craven.** (See Attachment #3.) Mr. Craven reported opposition to **HB 2021** and pointed out some common misperceptions about what is called "risk assessment," and "cost-benefit analysis," suggesting some possible minor language changes that he feels would improve the bill.

Mr. Craven said risk assessment is a phrase which is often used by polluters as an excuse to limit regulations and politicians often use it in terms of regulatory reform. He said if this phrase is designed to determine the severity and likelihood of environmental harm, they support the idea. It should not, however, be used to reflect a false sense of precision and scientific certainty. (He added there would never be enough information about the toxic potency of the chemicals citizens are exposed to.) Citing maladies to humans due to exposure to multiple substances and the impact on species other than humans (or environmental effects), Mr. Craven said the burden of proof should be placed on the polluting industries to prove that what they do is safe and acceptable.

According to Mr. Craven's argument in opposition to this bill, he said that the bill is expensive, imposes a great burden on the regulatory agencies and will lead to a larger bureaucracy, and more and longer (not fewer)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on February 1, 1995.

regulations. Instead of asking how much of something is bad, he said the question should be that of how to prevent exposure.

In conclusion Mr. Craven offered the following suggested amendments:

Page 4, line 5, omit "or other persons or entities."

Page 5, line 8, add after "health," *including special considerations applicable to children, the elderly, or other vulnerable populations.* And, on the same line after "health," add *or environment.*

Written testimony was provided the committee:

Kansas Corporation Commission. (See Attachment #4.)

E. R. "Dick" Brewster, Amoco Corporation. (See Attachment #5.)

Brochure: Living with Risk by Chemical Manufacturers Association. (The reader may request a copy of brochure from The Chemical Manufacturers Association, 2501 M Street, NW, Washington DC 20037 (phone: 202/887 1100). Brochure #40K 10/94.

Chairperson Holmes announced that the Subcommittee on **HB 2036** was meeting upon adjournment of this Committee meeting today and tomorrow. Also, the bill review Subcommittee is scheduled to meet tomorrow upon adjournment of the Committee meeting.

Upon completion of its business, the meeting adjourned at 4:35 p.m.

The next meeting is scheduled for February 2, 1995.

# HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: February 1, 1995

NAME	REPRESENTING
<del>STEVE KEARNEY</del>	<del>W MAX TECHNOLOGIES</del>
Whitney Dameron	McMill & Associates
Art Groves	Omio - Am Lumberment ASPN
TOM DAY	KCC
Matt Holt	KCC/Student
Jamie Clover Adams	Ks fert & Chem Assn.
Joe Lieber	KS Co-op Council /
Michelle Peterson	Ks. Gov. Consulting
Anne Spiess	Ks. Assoc. of Counties
Beth Engle	SRS
Nancy Power	Washburn U
James Ludwig	Western Resources
Beep Aaver	KMCC/Sierra -
Alan Holmes	Division of Budget
Deb Hambley	KIDA
Kenneth M. Wilke	Ks. Dept of Agriculture
Bill Bider	KDHE
Rex Buchanan	Ks. Geological Survey
Robert Sawin	Kansas Geological Survey
Suzanne Larson	Vestor

Bill Anderson

Water Dist # 1 of Jo Co

J.C. Long

Utili Corp United

Jack Graves

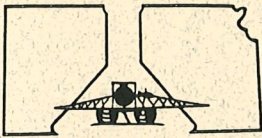
Opq - PH & NN

Rach Strickley

None

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# KANSAS FERTILIZER & CHEMICAL ASSOCIATION



KFCA is COMMITTED  
TO PROFESSIONAL  
DEVELOPMENT AND  
BUSINESS VIABILITY FOR  
THE PLANT NUTRIENT  
AND CROP PROTECTION  
INDUSTRY IN KANSAS.

STATEMENT ON

H.B. 2120

TO THE

HOUSE ENERGY & NATURAL RESOURCES

COMMITTEE

REP. CARL HOLMES, CHAIR

FEBRUARY 1, 1995

2/1/95  
Energy: Natural Resources  
Attachment #1

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**THE KANSAS FERTILIZER AND CHEMICAL ASSOCIATION .....**

**..... A VOLUNTARY PROFESSIONAL ASSOCIATION FOR THOSE INVOLVED IN THE PLANT NUTRIENT AND CROP PROTECTION INDUSTRY. KFCA REPRESENTS OUR NEARLY 500 MEMBERS INTERESTS IN LEGISLATIVE MATTERS AT ALL LEVELS OF GOVERNMENT, AS WELL AS PROVIDING EDUCATIONAL OPPORTUNITIES AND BUSINESS SERVICES. THE INDUSTRY IS COMMITTED TO PROFESSIONAL DEVELOPMENT AND BUSINESS VIABILITY FOR THE PLANT NUTRIENT AND CROP PROTECTION RETAIL INDUSTRY.**

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Mr. Chairman and Members of the Committee, I am Jamie Clover Adams, Director of Legislative and Regulatory Affairs for the Kansas Fertilizer and Chemical Association (KFCA). KFCA is the professional trade association of our state's plant nutrient and crop protection industry. Our nearly 500 members are primarily retailers, but also include distribution firms, manufacturer representatives and others who serve the industry. Thank you for this opportunity to comment on H.B. 2120.

The bill has two components. First, it requires more specificity in the economic impact statement as it relates to the cost of regulation. Second, it requires a basic analysis of the benefits and risks of environmental regulation. Governor Graves in his State of the State address talked at length about making hard choices and managing for results. He advocated performance based budgeting to determine whether funds spent on a program were actually accomplishing the stated goals and if not to "turn out the lights." He directed a review of all current rules and regulations with a view toward eliminating those no longer needed and asked his Secretaries to refrain from issuing any rules and regulations in the future until the costs to individuals and businesses could be measured against the benefits to the state. KFCA supports these practical concepts wholeheartedly and believes the changes proposed in H.B. 2120 are necessary to accomplish this task.

We believe all sides would agree that regulation should be implemented in the most cost-effective manner possible. Responsible individuals understand that "slash and burn" will not benefit the citizens of Kansas. However, programs must be cut or trimmed back. Without objective information on the cost, benefits and parties impacted, reasonable choices cannot be made in the effort to solve increasingly complex problems. Hard choices cannot be made without relevant information.

The bill requires an analysis of capital and annual cost, initial and annual cost of implementing and enforcing, an assessment of the paperwork burden and discussion of the data and methodology. These specifics better serve the current analytic requirements of K.S.A. 77-416 to describe other less costly and intrusive methods considered and why they were not chosen. How can these determinations be objectively made without consideration of the facts required by the amendment?

The second portion of the bill requires more specificity when analyzing environmental regulations. It requires the agency to spell out what benefits are gained and what risk is being removed or controlled. Again, information necessary to make an informed decision and address real risk in these times of fiscal restraint.

Some would argue that H.B. 2120 is too costly given the "doing more with less" philosophy advocated by the Graves administration and the citizens of Kansas. KFCA would argue that you don't need an economist to determine this information, just someone with good analytical and problem solving skills. It is money well spent to insure we make the most informed policy choices and use the limited funds we have to address real rather than perceived problems.

Another argument against cost-effectiveness analysis is dubbed "paralysis by analysis." KFCA would counter that it is better to spend a little longer to get the facts than jump headlong into regulation when we are unsure of the benefits or if a real problem even exists.

KFCA thanks the Committee for this opportunity to support H.B. 2120. The bill requires agencies to assess all aspects of a problem in a meaningful way and find the most cost-effective method to solve the problem. It also provides policymakers with the tools necessary to make informed decisions as funds grow tighter and public demands do not lessen. In the closing lines of the State of the State, Governor Graves stated "Programs that are not proving themselves will not be supported; while programs that are critical to our future will find strong and often increasing support." His vision cannot be accomplished without the information H.B. 2120 provides. I would be happy to answer any questions you may have.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

Bob J. Mead, Acting Secretary

Testimony presented to

House Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

House Bill 2120

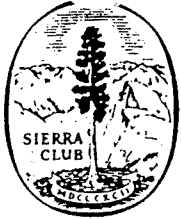
The Kansas Department of Health and Environment (KDHE) is pleased to provide testimony in support of the concepts embodied in House Bill 2120 that propose clarifications to the types of economic impact, environmental benefit, and risk information that should be made available for public discussion during the promulgation of a new substantive environmental protection requirement. KDHE views the regulation-adoption process as a critical tool for communicating with the public and the regulated community on all new regulatory proposals and takes very seriously the responsibility for assuring that comprehensive background information is available for discussion during the regulation-adoption process. KDHE also believes that information related to implementation costs, environmental benefit, and risk reduction are essential elements of a comprehensive background document for newly-proposed initiatives.

The definition of "environmental rule and regulation" proposed in HB 2120 is, however, of some concern to the agency. The proposed definition is very general and does not differentiate between the many types of regulations adopted by KDHE. Many of the regulatory actions completed by the agency involve the adoption by reference of federal regulations that have already undergone an extensive public discussion of costs, benefits, and risk. Other regulations are designed primarily to establish state-specific procedural requirements that modify federal mandates so as to apply more practically to conditions in Kansas. Many of this type of regulation actually reduce the administrative and economic burden of federal mandates in Kansas. The adoption of this type of regulation may require a modified version of the previously developed national information. Without additional clarification, KDHE reads HB 2120 to require the same adoption process for these types of regulations as those that propose new substantive environmental requirements. For this reason, KDHE recommends that the Committee consider defining more precisely the types of regulations proposed for inclusion in the new process.

Thank you for allowing me to speak today. We are available to work with the committee to address any issues on this bill.

Testimony presented by: Dr. Ronald Hammerschmidt  
Acting Director  
Division of Environment  
Kansas Department of Health and Environment  
February 1, 1995





# SIERRA CLUB

## Kansas Chapter

H.B. 2021  
House Energy and Natural Resources Committee  
Testimony of Bill Craven  
Kansas Natural Resource Council  
Kansas Sierra Club  
Feb. 1, 1995

My opposition to this bill is modest, but I did want to point out some common misperceptions about what is called "risk assessment" and "cost-benefit analysis" and suggest some possible minor language changes that in my opinion would improve the bill.

As for risk assessment, this is now a catchy phrase which is often used by polluters as an excuse to limit regulations. Politicians often use it as a catchall to talk about regulatory reform. It sounds so good, it's a wonder everyone doesn't support it. But risk assessment reflects a collision between contrasting policy goals. The effort to minimize regulations comes at the expense of the objective of the environmental community, which is to minimize pollution and public health threats.

If risk assessment means trying to determine the severity and likelihood of environmental harm, we support that idea. But risk assessment also is very subjective and reflects built-in preferences about the need to do something about the harm. Choices of safety margins reflect policy choices, not simply scientific principles. Risk assessment does not produce data. It merely interprets the underlying data. It should not be used to reflect a false sense of precision and scientific certainty. Much data is incomplete, inconclusive, or simply not available. For example, there are about 70,000 synthetic chemicals in commerce. Up to 1,000 new ones are introduced each year. Fewer than two percent have been sufficiently tested for a complete health hazard assessment to be made. Adequate information to support even a partial assessment is available for only 14 percent of the chemicals. For 70 percent, no information is available. These numbers reflect human effects. Environmental hazards are even less well understood. We will never have enough information about the toxic potency of the chemicals we expose our citizens to.

Technical models of risk assessment come largely from cancer research. This methodology is less adapted to assessing other effects of pollutants, such as birth defects, neurotoxicity, and immune system damage. These consequences are just as important as cancer risk.

There are many problems in trying to ascertain when there is no threshold risk to a given substance. Phrased differently there are many problems in trying to ascertain when the threshold level of danger is crossed. This is the idea of "acceptable risk." What is being requested is to adopt a technocratic process that hides the fact that society is going to sanction a certain number of assaults on people's health. A moral wrong is turned into the price of admission into contemporary life.

Additionally, the "threshold" does not uniformly apply to genetically diverse populations of people living under varying conditions with varying degrees of health. What's worse, the threshold approach has no application to carcinogens. There is no safe level of exposure to a carcinogen.

Another factor is that chemicals are increasingly concentrated, so that it is important to track them down with equipment that can measure them in parts per trillion. The problem is that for carcinogens, parts per trillion means that the public is increasingly aware of how many carcinogens are released into the environment from a wide variety of sources.

That, in part, led to what this bill is talking about, so-called quantitative risk assessment. This is not the same kind of risk assessment which tried to prohibit unsafe exposure levels. This is the kind of risk assessment which pre-determines that exposure at certain levels is "acceptable" or "negligible." The decision to use this approach is not consistent with the goal of minimizing adverse health and environmental impacts.

2/1/95  
Energy & Natural Resources  
Attachment # 3

There are two parts to this process. One deals with the effects of specific dose levels. The other deals with assessing the level of exposure. Neither is very certain.

On the dose response side: People don't react the same way. Some people are young, or old, or have various health problems. What's more, they aren't exposed to a single chemical. They are exposed to multiple substances, which are assumed not to exist in risk assessment theory. Some of the chemicals in this chemical soup are mistaken by our body for hormones, which can predispose us to certain cancers or other adverse effects.

On the exposure side, not all people are equally exposed. There really isn't such a thing as an "average diet." People who live closer to major polluters have higher exposures than others. Risk assessment doesn't deal with the cumulative effect of multiple exposures. It ignores the combination of compounds. It doesn't deal with the possible synergistic effects of these combinations. It doesn't even consider the impact on species other than humans or environmental effects. It doesn't take into account the social costs of these diseases. It certainly doesn't consider whether exposure is voluntary. (Thus, risk assessment is not like the "driving a car" or "taking an airplane" examples we hear a lot about.) It certainly doesn't take into account our most vulnerable populations (like children, who have a proven greater susceptibility than adults), the poor, and minority communities.

What it boils down to is that what seems like a conservative one in a million cancer risk in the laboratory may turn out to be 1 in 10 or 1 in 20 (pick a number) in the real world. Think about it--breast cancer rates have increased from 1 in 20 to 1 in 8 in the past 40 years. Risk assessment asks the public to accept being nickled and dimed to death by the "little bit here, little bit there" approach. The burden of proof should be not on the taxpayer or the regulatory agency, but on the polluting industries to prove that what they do is safe and acceptable.

The National Academy of Sciences calculates that pesticides are responsible for 2.1 percent of all U.S. cancer deaths each year. This is roughly 10,000 deaths per year. That is approximately 40 out every million Americans. Why do we let our government kill this many citizens a year? Mainly because they are anonymous, and faceless. We don't know who they are. These numbers are the product of what industry calls acceptable levels of risk.

This bill is expensive, imposes a great burden on our regulatory agencies, and will lead to a larger bureaucracy, and more and longer--not fewer--regulations. It asks the wrong question. Instead of asking the end-of-pipe question of how much of something is bad, we should be asking the front-end question of how we can prevent exposure in the first place.

#### Cost-Benefit Analysis

Like risk assessment, this effort rises out of the perfectly natural desire to strive to do more harm than good in pursuing regulations. However, these equations must weigh many intangible factors. Efforts to reduce the complexity of reality to a financial formula is not rational. These attempts often confuse public policy with private economic concerns. Specifically, cost-benefit analyses typically understate the worth of environmental gains or benefits. For example, what is it worth to stop environmental pollution which lowers childrens' IQ's. What would this be worth to you if it was your child? They also understate environmental gains because we don't completely know what pollution is doing to the environment.

#### Suggested Amendments.

Page 4, line 5. Omit "or other persons or entities." The compliance costs of the regulated community of regulations which meet the new risk assessment language are largely irrelevant.

Page 5, line 8. Add after "health": "including special considerations applicable to children, the elderly, or other vulnerable populations."

Same line: Add after "health": "or environment"

Before the  
House Energy and Natural Resources Committee  
House Bill 2120

Kansas Corporation Commission  
February 1, 1995

The Commission is providing this written testimony in lieu of making an appearance before the Committee.

Many of the environmental and water protection regulations adopted by the Commission relate to oil and gas activities and are administered by the Conservation Division. The Conservation Division, since 1988, has made an effort to determine the fiscal impact of new regulations on both the Conservation Division and the regulated community, though probably not to the degree suggested in HB 2120. In concept, the Commission agrees with HB 2120 as long as some flexibility is provided by the implementing administrative agencies and the Legislature on what constitutes acceptable detail for the various cost/benefit/public health risk assessments associated with the environmental benefit statement. If the intent of HB 2120 is to have the agency communicate with the regulated industry and other agencies in developing better regulations or ones which do not duplicate existing requirements, we are supportive. If the intent however, is to slow down adoption of all environmental regulation however badly needed, then we have some concerns over the rather staff intensive and paperwork oriented procedures suggested in HB 2120 as well as the intent.

The Conservation Division generally forms a subcommittee of its KCC Oil and Gas Advisory Committee to develop new water protection regulations because it has representatives of most water agencies and all segments of industry as members. These subcommittees are commissioned with the task of drafting regulations and identifying capital costs and annual operating costs for an operator to comply once the regulation or set of regulations is implemented. Experience with this procedure, which we believe is compatible with the philosophy of HB 2120, has led to some problems which the House Committee should be aware of when providing implementation guidance on the balance between strictness and flexibility. A few of these problems have been:

- (1) If the regulations call for capital outlay to comply or a service connected cost, vendors of the necessary materials or service often quote prices to the task force which turnout to be low once the regulation is implemented. Examples would include a pit liner where costs vary widely with the thickness of the liner and the availability of "Ford versus Cadillac" models and the operator is required to use one to satisfy a regulation. Another example would be the cost of drilling and equipping monitoring wells. Sometimes industry has no firm knowledge of costs.

2/1/95  
Energy & Natural Resources

Attachment # 4

- (2) The determination of risk to public health is very difficult to resolve with the oil industry because any proposed environmental benefit from an agency standpoint has to be cautious and futuristic. An example would be the level of protection provided for the area around Hays where a populated area has a shortage of ground water. Requirements and regulatory implementation would be a degree strickter than the area for Southwest Edwards County where Hays is now negotiating for water rights for supplemental water. The industry would have strongly opposed a suggestion that equal levels of regulatory protection should be provided between the two scenarios prior to the action by Hays. The philosophy of HB 2120 would suggest that the two locations should have been regulated differently.
- (3) The annual cost of compliance by industry with a new set of environmental regulations cannot be evaluated except by using historical trends in drilling, plugging or general industry practices as a gauge. Even with the best cost analysis, fluctuations in industry activity could put the Commission in the unenviable position of always being wrong in its analysis after the particular regulation was adopted. House Bill 2120 provides industry the opportunity of adversely analyzing even the best available environmental benefit statement a cost scenario and with some justification.

The Commission believes that a reasonable fiscal impact on environmental regulation is valuable both for the agency in implementing a regulation and for the regulated community that has to comply. Incorporation of the "best available environmental benefit analysis " as a part of regulation notification and filing is supported by the Commission. If HB 2120 is viewed as necessary by the Legislature, we believe that the agency implementing the regulation should have the flexibility to determine to what extent other agency input is necessary. We believe that since risk assessment is a relatively new field and reasonable parameters have not been well defined by EPA, the states or by the various regulated communities, this outline under (d) on Page 5 may be a deterrent to good regulation. Available research on some health issues tend to be very conservative in terms of what may be a realistic proportional risk.

We hope the Committee will accept these comments in the spirit in which they are provided and that is to make House Bill 2120, if enacted, more workable for both the regulators and regulated community alike.



**Amoco Corporation**

4334 N. W. Expressway  
Suite 275  
Oklahoma City, Oklahoma 73116  
405 848-0657  
405 848-0693 (FAX)

E. R. (Dick) Brewster  
Public & Government Affairs

Representing  
**The Amoco Companies**

February 1, 1995

The Honorable Carl Holmes, Chairman  
And Members of the House Committee on  
Energy and Natural Resources  
Kansas Capitol Building  
Topeka, Kansas

Re: 1995 House Bill No. 2120

Mr. Chairman, Members of the Committee, please accept my regret for being unable to attend your hearing on the above referenced bill in person.

**Amoco supports House Bill No. 2120.** Amoco is the largest producer of natural gas in Kansas, and one of the largest marketers of refined products. Our products can be purchased through 165 branded Amoco locations in Kansas. We operate 1,191 miles of pipeline in Kansas, and produce gas from 1,927 wells. We have 208 employees in the state, and pay \$49.3 million in state and local taxes, and collect and remit \$16.4 million in motor fuel excise taxes.

And, we plan to expand our operations. Amoco is party to a letter of intent to build a major new natural gas processing plant in Southwest Kansas. Additional expansion in our gas production and pipeline operations will be announced.

Amoco is proud of its record in the area of environmental responsibility. We accept nothing less from our operations than full compliance with applicable environmental laws, rules and regulations. In fact, much of what we do exceeds these requirements.

Changes in existing equipment, installation of new equipment, and changes in procedure to comply with these laws, rules and regulations are not without cost. While we recognize these costs as simply a part of the cost of doing business, there are times when the cost/benefit ratio seems questionable. This bill can help assure that excessive and unneeded costs are not imposed on business operations in Kansas. We laud the Chairman in seeking approval of this legislation.

Kansas has historically provided a good business climate, and we have every reason to believe it will continue to do so. It is important to business planners that it operate in a stable tax and regulatory climate. H. B. No. 2120 will help stabilize that climate in the area of environmental regulation.

2/1/95  
*Energy! Natural Resources*  
attachment #5

Please do not think Amoco, or the oil and gas industry, desires to be anything less than environmentally responsible in its operations. Our industry in Kansas pays for its own regulation and oversight through its fees and taxes, and we expect to continue to do so. In fact, the industry is proposing to impose yet another fee upon itself to help clean up old oil and gas exploration and development sites which may have been abandoned by operators no longer in business.

As an industry, we will strive to maintain and improve our record of environmental stewardship. Amoco believes this legislation will help us accomplish this goal in a cost effective way.

Again, Mr. Chairman, Members of the Committee, I regret my absence today. We urge approval, of H. B. No. 2120.

I plan to be in Topeka in the coming weeks, and would be happy to discuss this or other proposals impacting our industry with you at your convenience.

Sincerely,