

Approved: Carl Dean Holmes
Date 3-8-95

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on February 9, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Phill Kline - Excused

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: Larry Knoche - KS Dept of Health and Environment
David M. Traster - Foulston and Siefkin, Wichita KS
Scott E. Shmalberg - Scotch Fabric Care Services, Lawrence KS
Gene Leonard - Rite-Way Laundry & Dry Cleaners
John Neal - Ineeda Cleaners, Hutchinson KS
Connie Tweito - Larkland Shopping

Others attending: See attached list

The Chair opened business with the Committee scheduling a time to work **HB 2036**. It was agreed they would take action on the measure Monday, February 13, following the regular Committee meeting. Hearing was then opened on today's business.

Hearing on HB 2256:

Larry Knoche. Mr. Knoche testified that it was discovered while conducting environmental investigations that the majority of the pollution sites are small family-owned drycleaning facilities. Furthermore, many of the known pollution problems associated with drycleaning activities are being discovered 20-30 years after the closure of the facility. (Attachment 1)

It is the opinion of the KDHE that the establishment of a drycleaning facility trust fund will allow environmental remediation activities to be implemented on past problems, as well as any new sites that are discovered (which threaten the public health and environment). Additionally the Department supports the industry concept to create a process addressing associated environmental problems. Mr. Knoche noted that the funding for this type of program was not included in the Governor's budget and legislative action may need to be deferred.

David Traster. (See Attachment # 2.) As counsel for the Kansas Drycleaner Environment Committee (a group of Kansas drycleaners), Mr. Traster explained the provisions in **HB 2256**. He said this bill was very carefully reviewed with several KDHE Bureau of Environmental Remediation officials and received their support for the language used in the bill. It is his understanding they cannot support the funding for the bill at this time. He reported there is included in the bill language from the Kansas Storage Tank Act, and model legislation drafted by a national drycleaning trade association. Additionally there are a few provisions from similar legislation from Florida.

Mr. Traster said the act is principally designed to provide for corrective action (or remediation) where there has been a release of drycleaning solvents from drycleaning facilities. Having occurred over the past three to five decades, and resulting from "normal and generally accepted operating practices," there has been a general lack of understanding by many industries of the impact of all kinds of chlorinated solvents on the environment. Also, because drycleaners have been typically small businesses the impact of the dramatic change created by the enactment of CERCLA has been disproportionately harsh. As he began his review by section of this bill, Mr. Traster said the bill is designed to soften the impact on individual drycleaners and by spreading the costs over the industry as a whole. The reader is invited to peruse Mr. Traster's proposal in its entirety in his attachment.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on February 9, 1995.

Scott Shmalberg. (See Attachment #3.) Mr. Shmalberg is President of Scotch Fabric Care Services of Lawrence and Topeka and President of the Mid America Fabricare Association. He said he was appearing in an attempt to find a solution to the contamination problem by providing the state with the funds necessary to take corrective action while preserving the dry cleaning industry in Kansas.

Although his company could deal with one or two contaminated sites, it would be a financial strain but they would survive. A small operator could not survive the legal fees to respond to the initial complaint, and significant cleanup action would simply force the cleaner out of business and into personal bankruptcy. This bill is designed to remediate sites and keep the cleaners in business. He added that this measure was drafted with consensus from cleaners across the state, large; small; rural; and urban.

For those who may perceive the proposed solvent tax as high he said it would increase the operating costs of his company four-tenths of one percent. For a cleaner who is operating reasonably modern equipment and is in compliance with the Clean Air Act, these additional costs will not be a burden and will actually promote solvent conservation.

In closing Mr. Shmalberg pointed out that this issue is not one of profits and bottom lines; nor, is it one of expecting a handout or subsidy, but a matter of survival. He and his colleagues appear before this Committee today to resolve an industry problem, while insuring the dry cleaning in Kansas remains a viable industry - for generations to come.

Gene Leonard. (See Attachment #4.) Speaking to the well intentioned legislation designed to force polluters to clean up their problems, CERCLA has become an aberration threatening the financial security of many small and large businesses. The Superfund's goals must be met, but he said it can cripple or bankrupt drycleaners and others whose disposal actions were (and are) legal. Much of the money spent in a cleanup is wasted on legal fees, as everyone involved tries to protect themselves or find others to pay all or part of the cost.

Mr. Leonard shared a personal experience wherein a well located one block from his facility tested for Volatile Organic Chemicals and the well was ultimately removed from service. The ensuing KDHE investigation cited his facility as a potentially responsible party, resulting in potential financial ruin for him. The ultimate finding by the KDHE was that Mr. Leonard's facility was not found responsible for closing of the well, that perc contamination had been found on his property and he had to clean it up. If, Mr. Leonard explained, he refused to clean it up voluntarily and it was done by the government, he would be responsible for triple the cost under Superfund's treble damages clause. The ultimate cooperation by Mr. Leonard to clean up a problem that began in innocence 35 years ago, still leaves over two years left before reclassification.

Although the bill before the Committee today will not help Mr. Leonard with his ongoing cleanup, it will help other drycleaners across the state and restore value to their businesses, putting property back on the tax rolls. In essence, Mr. Leonard said **HB 2256** will restore fairness to Kansas drycleaners.

John Neal. (See Attachment #5.) Mr. Neal told the Committee that he has a family-owned company that has been in the laundry business since 1946. In 1984 and 1987, respectively, he purchased two dry cleaning facilities in Hutchison, which are now the only two facilities operating at this time. Prior to their purchase both plants had been in continuous operation as drycleaning plants since the 1960's. Mr. Neal was not aware of any environmental problems at either site. In 1994 he was notified by KDHE that there was contamination of soil and groundwater contamination extended several blocks beyond one of the sites. Faced with the phenomenal charge Mr. Neal had to hire an attorney, and subsequent environmental consulting and testing firm. There is presently no resolve to this situation. However, he added there is little doubt that the costs will exceed their ability to pay, without some method of relief.

Mr. Neal said that with **HB 2256**, it will offer a solution where everyone wins, and, at the same time, an affordable way is found to address the very real need of cleaning up soil and groundwater contamination.

Connie Tweito. (See Attachment #6.) Ms. Tweito shared the history of Larkland Center since 1955, stating one of the original businesses within the Center was a One-Hour Martinizing Dry Cleaners. KDHE did an investigation of the Center in 1993 and found PCE and TCE in the ground water at the old dry cleaners location. (Another location was identified one-half block away.) A search was initiated to locate the original owners/operators to no avail, leaving them with the liability for the cleanup. Ms. Tweito said people should not be held responsible for a problem which they did not cause, and provisions in **HB 2256** is the only fair way to correct the problem.

Upon conclusion of the hearing on **HB 2256**, Chairperson Holmes appointed a Subcommittee to study this bill. Subcommittee members are: Representative Bob Krehbiel, Chair; Representatives Feuerborn; Hutchins;

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on February 9, 1995.

and Sloan.

There being no further business to come before the Committee the meeting adjourned at 5:00 p.m.

The next meeting is scheduled for February 10, 1995.

ENERGY AND NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: February 9, 1995

NAME	REPRESENTING
Mae Farrar	City of Overland Park
Clark DeHazer	Village Dry Cleaners
James Ford	Ryan's Cleaners-
Dr. Northcutt	Olathe Cleaners
R. S. Shindler	Scotch Industries, Inc.
Jerry Fitzgerald	Monaghan Corp.
GRAY GOLDEN	HYGIENIC Dry Cleaners
STEVE KEARNEY	UMX TECHNOLOGIES
Loonnie Juma	Larkland Shopping
Glenda Vogel	(guest)
BOB WITCHER	MONAGHAN CORP.
Ann Clark	Royal Cleaners
Lori Rogers	Royal Cleaners
Pat Casey	KDHE
Larry Knoche	KDHE
ROSS MARKLE	HARRIS BROS CLEANERS
Kelly Mulcahy	SCOTCH INDUSTRIES
John Neal	Ineeda Cleaners
Frank Shindler	Scotch Fabric Care Services

Gene Leonard
 Marlene Howalter
 Laurie Clark
 Stan Beckel

Kite-Way Laundry & Dry Cleaners
 Scotch Fabric Care Services
 " " " "
 ambassador, Leawood, Mo.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Committee on Energy and Natural Resources

by

The Kansas Department of Health and Environment

House Bill 2256

While conducting environmental investigations required by other state and federal environmental programs, several sources of contamination associated with drycleaning facilities have been discovered. In the majority of the pollution sites discovered, the potential responsible party is a small business person who is operating or has operated a family owned drycleaning facility. Due to the small quantity of waste being generated, specific product and waste handling regulations may not be applicable to the facilities. Nearly all of the current and past drycleaning solvents used by the industry are classified as hazardous to human health and the environment. The longevity of the drycleaning solvents that are released into the environment is long, due to the slow degradation process of chlorinated solvents. Many of the known pollution problems associated with drycleaning activities are being discovered 20 - 30 years after the closure of the facility.

It is KDHE's opinion that by permitting existing drycleaning facilities and establishing operational performance standards, a positive approach for future pollution prevention activities will be accomplished. The establishment of a drycleaning facility trust fund will allow environmental remediation activities to be implemented on past problems as well as any new sites that are discovered which threaten the public health and the environment.

KDHE supports the industry concept to create a process to address the environmental problems associated with the dry cleaning industry. However, it should be noted that the funding for this type of program was not included in the governor's budget recommendations. Until a suitable funding source is identified, the department recognizes legislative action may need to be deferred.

Thank you for allowing me to speak today.

Testimony presented by:

Larry Knoche
Bureau of Environmental Remediation
Division of Environment
February 9, 1995

**TESTIMONY BEFORE THE HOUSE, ENERGY & NATURAL RESOURCES COMMITTEE
House Bill 2256**

**by David M. Traster
Foulston & Siefkin
Wichita, Kansas**

My name is David M. Traster; I am an attorney with the law firm of Foulston & Siefkin in Wichita, Kansas, practicing primarily environmental law. Between May 1989 and May 1991, I was the general counsel and then the assistant secretary and general counsel at the Kansas Department of Health & Environment. I have been retained by a group of Kansas drycleaners called the Kansas Drycleaner Environmental Committee to draft legislation which you now have before you in the form of House Bill 2256. My testimony will be an explanation of the provisions of this bill. You will be hearing from members of the committee shortly.

I utilized the Kansas Storage Tank Act, a model legislation drafted by a national drycleaning trade association, and a few provisions from similar legislation from Florida. We reviewed this bill very carefully with several KDHE Bureau of Environmental Remediation officials and received their support for the language used in the bill. I understand that they cannot support the funding for the bill at this time.

Summary

The act is principally designed to provide for corrective action, or remediation, where there has been a release of drycleaning solvents from drycleaning facilities. These releases have occurred in the past three to five decades and have been the result of normal and generally accepted operating practices. There was a general lack of understanding by many industries of the impact that chlorinated solvents of all kinds have on the environment. Further, there was a dramatic change in the liability of any party who released chlorinated solvents when the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund) was enacted in 1980. The historic releases and the dramatic change created by the enactment of CERCLA imposing strict, joint, several and retroactive liability have combined to create a monumental problem for all industries which have utilized these solvents. Because drycleaners have typically been small, family-operated businesses the impact of these changes has been disproportionately harsh. This bill is designed to soften the impact on individual drycleaners and by spreading the costs over the industry as a whole.

Performance Standards and Permitting

The act imposes a set of operating or performance standards on the drycleaning industry; it also requires reporting of releases and requires an immediate response after a known release. The act also requires an owner or operator to obtain a permit before operating a drycleaning

facility. The permitting requirement gives KDHE the ability to insure that the performance standards are being followed. These provisions are designed to reduce the possibility of future releases. Thus, the fund should be used primarily to address historical problems.

Revenue

The act imposes a two percent gross revenue tax on all receipts from commercial drycleaning facilities. There is also a \$3.50 per gallon tax on chlorinated solvents used at a drycleaning facility and a 35¢ per gallon tax on non-chlorinated drycleaning solvents. The two types of solvent are treated differently because the current focus of KDHE and EPA is on the chlorinated solvents. Petroleum solvents do create environmental problems, however. Therefore, the act provides benefits for facilities utilizing them. All revenues are deposited in a separate fund to be administered by the KDHE and utilized for purposes of the act.

While there has been discussion about the propriety of additional taxes, the Kansas Drycleaner Environmental Committee believes that imposing this tax is a wise policy choice for Kansas. The cost of drycleaning over the last several decades has been artificially low in relationship to the actual impact that drycleaning is having on the environment. There was no way to predict the cost that is now being incurred. This tax will level the playing field, spreading the cost across the range of individuals who utilize drycleaning services and provide for prompt and effective remediation of historic releases. Without the act, there will be numerous environmental insults that simply will not be remediated.

Corrective Action

The fund will be used by KDHE to perform corrective action at drycleaning facilities. Corrective action includes investigation, remediation, operation and maintenance costs and monitoring. Corrective action will be performed according to a system of priorities to be established by KDHE in rules and regulations. KDHE will have the authority to rearrange the priority of individual sites as new facts about existing facilities become known and new sites are brought into the system. Clean up will be to specific standards which will be set out in rules and regulations. Both existing drycleaning operations and facilities at which drycleaning operations have occurred in the past are eligible for corrective action.

The fund is responsible only for the portion of corrective action costs attributable to a release from a drycleaning facility. Thus, where there is a plume of mixed contaminants, the fund will be responsible only for the release from the drycleaning facility. KDHE has the discretion to determine the percentage of the total cost at each site which will be paid from the fund.

The act does not change Kansas law relating to third party liability except in the area of corrective action costs. Since the fund is available to pay for corrective action, a third party will not be allowed to bring a claim under state law for these same costs. There is nothing in the

act that changes federal law. A lawsuit can still be brought in federal court under CERCLA seeking corrective action costs.

The act regulates commercial drycleaning facilities. It does not apply to governmental organizations or linen and uniform supply companies. While coin operated drycleaning machines that are available to the general public can gain access to the fund for corrective action costs, they will not be required to pay the gross revenue tax.

Section by Section Analysis

Recitals

This section reiterates the importance of environmental protection, discusses the impact of drycleaning solvents on the environment, and recites the need for funding to address this problem.

Section 1

This section names the act the "Kansas Drycleaner Environmental Response Act."

Section 2

The terms defined in this section are used throughout the act.

"Chlorinated drycleaning solvent" generally means perchloroethylene.

"Corrective action" includes investigation, remediation, operation and maintenance costs, and monitoring.

"Drycleaning solvent" includes both perchloroethylene and petroleum solvents.

The term "immediate response" means containment and control of known releases. The act seeks to insure that known problems are reported and addressed immediately. In this way long term consequences of spills occurring after the enactment of this statute can be minimized. This provision is not designed to address small drips, nor is it designed to require immediate response to problems of which the owner or operator is not aware.

The terms "owner" and "operator" are generic. There are probably at least two problems that need to be addressed. First, the term operator is broadly defined and could include mere employees. Second, the intent was to address companies who own and have an interest in a drycleaning business. The definition of the term owner is broad enough to include people who merely own a facility that has been used as a drycleaning facility. This definition needs to be narrowed.

The definition of the term "person" is very broad but does not include governmental organizations.

The term "release" includes any spill and is taken directly from the Storage Tank Act. This definition is probably too broad and should be narrowed to provide for a minimum reportable quantity.

Section 3

This section authorizes the secretary to adopt rules and regulations which are protective of the waters of the state, public health, and the environment generally. Sections a.1 and 2 are key elements to this bill because they give KDHE the authority to establish rules and regulations setting performance standards for drycleaning facilities. The concept is borrowed from the Storage Tank Act which requires tank tightness testing, release detection systems, recordkeeping and various other performance standards which help insure that new problems are not created. The performance standards for drycleaning facilities include authority for rules and regulations which are "at least as protective of human health and the environment as the following. . . ."

- (1) proper storage and disposal of waste;
- (2) a prohibition on the discharge of wastewater containing drycleaning solvent into either septic tanks or publicly owned treatment works;
- (3) a requirement similar to Clean Air Act requirements for dry to dry type machines, meaning that the machine must be capable of cleaning and drying the clothes without exposing the wet clothes to the atmosphere;
- (4) containment for drycleaning machines, solvent and waste storage areas;
- (5) sealed floors; and
- (6) delivery systems that reduce the chance of spills.

These performance standards would be effective for new facilities upon the promulgation of the rules and regulations. The regulations will also contain a five year schedule to phase-in the requirements for existing facilities.

KDHE is also given authority to establish rules and regulations relating to reporting of releases, establishing immediate response criteria, criteria for closure of facilities, prioritizing expenditure from the fund and clean up criteria. The priority for expenditures from the fund and clean up criteria must be based on a risk/benefit analysis and on the impact on human health and the environment.

Section 4

Section 4 is designed to give KDHE guidance regarding the administration of the fund. act. This section encourages the department to take the lead at drycleaning sites. There is no funding in the act to seek out new sites. Instead KDHE is to utilize the fund to address sites as they become known in the normal course of agency business. Section 4 also encourages early corrective action which will reduce risk and cost and encourages the use of innovative technology.

Section 5

Section 5 is the penalty section, making it a Class A misdemeanor to violate the statute or the rules and regulations.

Section 6

Section 6 provides that a drycleaning facility must obtain a permit from KDHE and pay a \$50 annual fee. This annual fee would be deposited into the fund. The section allows for transfer of permits and goes on to give the secretary the authority to deny, suspend or revoke a permit for certain specified actions in violation of either the rules and regulations or the statute.

Section 7

This section establishes the drycleaning facility release trust fund modeled after the storage tank fund. It should be noted that all expenditures are subject to the budget process. Thus, the legislature will retain control over the manner in which funds are expended by KDHE.

Section 8

Section 8 insures that the fund will be utilized for corrective action and not for loss of business or for taking of property associated with corrective action. This is a provision similar to that found in the Storage Tank Act.

Paragraph b insures that the state does not incur liability beyond the monies in the fund.

Paragraph c limits third party claims brought under state law for corrective action costs. Because KDHE has a fund and a system of priorities for performing corrective action at various sites, the expenditure of funds for corrective action by individuals is not needed. A third party is thus prohibited from making a state law claim for corrective action costs. This provision in no way limits the ability of a third party to bring any other type of claim, such as diminution in property value.

Section d makes it clear that the fund shall be not used for compensating third parties for costs other than corrective action.

Section 9

Section 9 gives the secretary the authority to expend money for corrective action and for the costs of administration and enforcement of the act. It also gives the secretary the authority to take appropriate emergency action, including providing alternative drinking water supplies, when human health or the environment is threatened by a release or potential release.

Section b provides that the monies in the fund may be used for the costs of administration and enforcement. The tax imposed by this act will pay for both corrective action and administration so that the act will have no impact on state general revenues.

Section c provides that the department can modify the priority status of particular sites to expend monies at the locations where they are most needed.

Section 10

Section 10 sets out the requirement for corrective action. Corrective action includes investigation and assessment, remediation, operation and maintenance and monitoring.

Subsection b limits the use of the fund so that it may only be used to pay for actual corrective action costs for releases of drycleaning solvents at drycleaning facilities. Thus, if there is a release of drycleaning solvent from a drycleaning facility that commingles with other contaminants the fund is responsible only for that portion of the corrective action costs which relate to the drycleaning solvent. Further, to the extent that drycleaning solvents used for other purposes are released into the environment, the fund will not provide for corrective action costs. Section b also makes it clear that the fund will not be used at sites which are listed on the United States Environmental Protection Agency National Priorities List.

Sections c and d provide the procedure the secretary is to utilize to determine the proportionate share of liability which is attributable to a release of drycleaning solvents from a drycleaning facility. KDHE is authorized to determine the extent of liability, expressed as a percentage of the total costs at the site. Once KDHE has made a determination of the percentage of liability, that percentage is binding until the secretary modifies the order. The percentage determination is also binding during the pendency of any appeal. This section allows corrective action to proceed even when there is disagreement about the allocation of liability.

Section e allows the secretary to deny an owner or operator access to the fund if the owner or operator has engaged in certain specified acts. In order to deny an owner or operator access to the fund the secretary must find that the denial will not prejudice another owner or operator who is otherwise eligible. The last paragraph of subsection e deals with the question of successor liability. Where a corporation could be denied access to the fund, but the ownership of the corporation has changed, the secretary must treat the old owner and the new owner as separate parties even though the corporation would normally be treated as a single entity.

Section 11

This section imposes a two percent gross revenue tax. There is an exemption for coin operated drycleaning units available for use by the public. Owners of these units do not have to pay the tax but do have access to the fund for corrective action. There is also an exemption for commercial uniforms and linens, for the State of Kansas and political subdivisions which is modeled after the sales tax statutes.

The balance of the provisions of section 11 are procedural aspects for collection of the tax which are modeled after the state sales tax law. The intent is to make the collection of this tax as much like the collection of sales tax as possible.

Section 12

Section 12 creates an additional tax of \$3.50 per gallon on chlorinated drycleaning solvents. Solvents normally used in drycleaning operations which are sold to non-drycleaners are not subject to the tax. Section b imposes the tax on the drycleaning facility if the solvent vendor does not, for some reason, pay the tax.

Paragraph c establishes a factoring system so that the full \$3.50 is collected on the sale of chlorinated drycleaning solvents while only 35¢ is collected on the sale of non-chlorinated solvents. Petroleum solvents are treated differently than perchloroethylene because the current focus of CERCLA is on chlorinated solvents. The release of petroleum solvents still results in environmental damage that can be equally devastating to both the business which has released the solvent and the environment. Thus, even though the tax on petroleum solvents is one-tenth that imposed on chlorinated solvents, facilities utilizing petroleum solvents have full access to the fund for payment of corrective action costs.

Paragraph e provides for refunds in the event a drycleaning solvent is resold for use at a location other than a drycleaning facility.

The balance of the provisions in this section are designed to allow the collection of the tax.

Section 13

Section 13 is modeled after the Storage Tank Act. To the extent that the balance in the fund exceeds \$4 million on April 1 in any year, the tax will not be collected for the following year. If after the collection of the tax has been terminated, the balance is below \$2 million on April 1 of any ensuing year, the tax will again be levied. The environmental fee imposed by the Storage Tank Act is turned on and off on a month by month basis rather than a year by year basis.

Section 14

Section 14 is a standard provision allowing for appeals under the Kansas Administrative Procedures Act and the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions.

Section 15

Section 15 is a severability clause making it clear that the invalidity of a particular provision does not affect the validity of rest of the provisions.

It's been a pleasure to testify before this committee once again. If there are any questions, I would be happy to answer them.

Respectfully submitted,

David M. Traster
Foulston & Siefkin
700 Fourth Financial Center
Wichita, Kansas 67202
316/267-6371
Fax: 316/267-6345

The testimony of Scott E. Shmalberg regarding House Bill no. 2256
before the House Energy and Natural Resources Committee
February 9, 1995

My name is Scott E. Shmalberg, I am the President of Scotch Fabric Care Services of Lawrence and Topeka as well as Select Dry Cleaners of Kansas City. I also stand before you today in my position as the elected President of the Mid America Fabricare Association, which is the trade association representing dry cleaners in Kansas and Missouri.

I, along with my fellow dry cleaners, have not come here today to argue against the pollution standards that have been established for our solvents or to complain that our industry's treatment has been unfair, but rather we are here in an attempt to find a solution to the contamination problem by providing the state with the funds necessary to take corrective action while preserving the dry cleaning industry in Kansas.

The persons who appear before you in this room are not criminals, simply hard working business owners who awoke one morning to the news that the laws had been changed. They learned that the standard industry practices for the disposal of dry cleaning by-products, that had been common and legal for the past 50 years, were no longer acceptable. Our industry quickly implemented new waste disposal systems and installed new equipment but then we discovered we would be expected to correct the contamination which existed prior to the establishment of the current standards and herein lies the issue of Retroactive Liability and the subsequent clean up dilemma.

My company operates 25 stores in Northeast Kansas, ten of these locations are production facilities. We are in the fairly unique situation of operating plants using perchloroethylene

2/9/95
Energy & Natural Resources
Attachment # 3

solvent as well as petroleum solvent plants. To date no dry-cleaning solvent contamination has been discovered on any of my properties, yet I am here today in support of Bill 2256 in an effort to preserve our industry as well as individual business owners whose financial futures may be put in jeopardy by contamination.

The cleaners who are at the greatest risk of financial devastation from a contaminated site are not the larger cleaners with multiple plant exposures but rather the smaller one plant operators. Our company could probably deal with one or two contaminated sites, incurring great financial pains but we would survive. A small operator, whose total annual sales might average \$150,000 per year, could not survive the legal fees to respond to the initial complaint. A significant clean up action would simply force the cleaner out of business and into personal bankruptcy. A business is closed, employees laid off, tax dollars lost but more importantly the site is never cleaned because neither KDHE or the Federal government have the funds to deal with these situations. My personal opinion is that fewer than 10% of the dry cleaners in Kansas would have the financial resources to deal with a \$200,000 clean up action. The bill before you is an attempt to remediate these sites and keep the cleaners in business.

Our industry in Kansas is extremely fragmented, many owners with a diverse set of opinions. This bill before you was drafted with input from cleaners across the state, large and small, rural and city, to gain consensus. There are a few in our industry who use non-chlorinated petroleum solvents who feel that the contamination issue is not their problem and they should be excluded from the funding of this Trust. As the

owner of two petroleum solvent plants I am here to tell you, that is a false assumption on their part. The drinking water standards established for chlorinated solvents (Perc) were set lower than those for petroleum so the immediate focus has been on Perchloroethylene. If your constituents learn that dry cleaning solvents have migrated into their city water well, they really aren't going to care whether its chlorinated or non-chlorinated solvent, they will simply demand immediate action.

You may perceive the solvent tax as high if you compare it to our current gasoline taxes, what you need to understand is that solvent purchases are not a major cost for our businesses. To provide you with a reference, the proposed taxes would increase the operating costs for my company four-tenths of one percent (.004). For a cleaner, who is operating reasonably modern equipment and is in compliance with the Clean Air Act, these additional costs will not be a burden and will actually promote solvent conservation.

For the dry cleaning Industry in Kansas, this issue is not one of profits and bottom lines, it is a matter of survival. My company's oldest division was founded in 1881 here in Topeka, my family has operated the business through three generations since 1946. The issues surrounding pollution liability could very well be the determining factor in the decision as to whether a fourth generation of our family enters the Kansas dry cleaning industry.

In closing I would like to reiterate that we are before you today not to ask for a hand out or a subsidy but simply to request an opportunity to work with the state, through this bill, to resolve our industry's problems while insuring that dry cleaning in Kansas remains a viable industry for decades and generations to come.

TESTIMONY

FEBRUARY 9, 1995

TO: HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBJECT: HB #2256 KANSAS DRYCLEANERS ENVIRONMENTAL RESPONSE ACT

BY: GENE LEONARD
1606 HIGHLAND DRIVE
CONCORDIA, KS

Chairman Holmes, Vice Chairman Lawrence, Minority Leader Krehbiel, and each committee member, thank you for letting me testify today.

Fifty years ago my Grandfather started the Rite-Way Laundry & Dry Cleaners. As a cleaning solvent he chose perchlorethylene (perc), the "newest and best" system available.

In January 1968 I became the third generation to enter the family business and took over completely in 1978 when my father retired. By this time our primary business was commercial laundry.

In 1973, the City of Concordia hired an engineering firm to design a new sewer treatment facility. As part of their study, an engineer came to see our operation. He stopped at the cleaning machine and asked "What's in this bucket". We explained that it was wastewater from distillation. He thought a moment and told us that since we don't really know what all may be in the water he would rather we not put it in the sewer and instead to pour it outside to evaporate.

In March of 1980 we stopped doing drycleaning at 217 West 3rd and perc hasn't been used there since.

In December of 1980 the Federal government passed CERCLA commonly known as Superfund. This is well intentioned legislation designed to force polluters to clean up their problems. Instead it has become an aberration that threatens the financial security of many small and large businesses. Because of retroactive and other liability aspects, Drycleaners and many other businesses face devastating liability to pay for cleanup of the groundwater and soil under or near their businesses. While Superfund's goals must be met, it can cripple or bankrupt

2/9/95
Energy & Natural Resources
Attachment #4

Drycleaners and others whose disposal actions were (and are) legal. Many innocent entities can be pulled into Superfund's web such as banks, landlords, previous owners, adjoining property owners, heirs and occasionally even taxing agencies who levy unpaid taxes. Much of the money spent in a cleanup is wasted on legal fees as everyone involved tries to protect themselves or find others to pay all or part of the cost.

In June 1985 as part of a statewide scan of all Public Water Wells, the Bureau of Water Protection tested well #17 located one block from our facility. The test indicated that Volatile Organic Chemicals (VOC) were present and the well was ultimately removed from service. The ensuing site investigation performed by KDHE targeted us as a Potentially Responsible Party. I became aware of our involvement when Rick Bean from Environmental Remediation came to my office to inform me that KDHE would be drilling wells around our property. Until that day I thought that Superfund dealt only with "polluters" such as Times Beach or Love Canal. Little did I know that we would soon be labeled as such and have our business, with a drilling rig next to it, pictured on the front page of the paper. Insurance denied coverage, banks refused any new loans and ultimately I sold my home to raise cash for the cleanup effort. Financial ruin seemed to be at hand.

During the site investigation, I offered Rick Bean a tour of our drycleaning facility. He stopped at our cleaning machine and asked "What's in this bucket". After I explained the contents he asked to take samples, and the test results indicated moderate to high VOCs. For years, at the request of an engineer, we had poured this contaminated water on the ground at our old location.

On July 22, 1989 I met with KDHE in Topeka. I was informed that even though we were not found responsible for the closing of well #17, that perc contamination had been found on our property and we had to clean it up. It was made clear that we had no choice and even

bankruptcy would not remove the liability. If we refused to do this voluntarily and the government cleaned up the site, we would be responsible for triple the cost under Superfund's treble damages clause.

Our contamination was minor and with great cooperation from Rick Bean and KDHE we put together a simple remedial action plan using the water to launder clothes. After four years we have pumped thirty million gallons of water and lowered the contamination to below the State action level for safe drinking water. Even with this success we are over two years away from reclassification.

We were required to pay for cleanup of a problem that began in innocence the year I was born and continued for 35 years. The problem was aggravated by the recommendation of the City's engineer, and if he didn't know, how could we. **Everything** we did in our day to day operations was normal and legal. In fact any ongoing contamination ended at least eight months before Superfund was passed. With it's enactment, fairness ended in December 1980.

Ours was a very low cost cleanup but still came close to putting us out of business. We would not be able to pay for another cleanup and I don't think many other Drycleaners in the State could either.

The bill before you today will not help me with our ongoing cleanup, but it will help other Drycleaners across the state. It will restore value to their business and as such will put property back on the tax roles. It will allow for cleanup of active or abandoned sites. It will spend more money on cleanup and less on legal actions. It will involve the consumer where in the past they have not paid for the potential liability we've incurred. It will once again allow Drycleaners to pass the business on to their children. It will restore "fairness" to Kansas Drycleaners and keep them from living the nightmare I have experienced these past six years.

Gene Leonard

TESTIMONY BEFORE THE HOUSE COMMITTEE ON ENERGY AND NATURAL
RESOURCES

By
John Neal
Ineeda Cleaners
Hutchinson, Kansas
on
FEBRUARY 9, 1995

Regarding
HOUSE BILL NO. 2256

My name is John Neal. I own Ineeda Cleaners, a family-owned company which has been in the laundry and dry cleaning business since 1946. In 1984 and 1987, respectively, Ineeda purchased two dry cleaning facilities in Hutchinson, which are the only two facilities which Ineeda operates at this time. Prior to our purchase of these plants, they had been in continuous operation as drycleaning plants since the 1960's. When they were purchased, I was not aware of any environmental problems at either of these sites. It was only later that our industry literature began to discuss the possibility of soil and groundwater contamination throughout the country from the use of drycleaning solvents.

In 1994 I was notified by the Kansas Department of Health and Environment that there was contamination of soil and groundwater at both sites caused by the drycleaning solvent, perchloroethylene, and that the groundwater contamination extended several blocks beyond one of the sites. Ineeda Cleaners was named as a potentially responsible party (PRP) for cleanup costs at that site. As a PRP, Ineeda Cleaners was asked to sign an open-ended agreement to pay for **all** corrective action costs at that site. It was explained that if no PRP signed such an agreement, the matter would be turned over to the EPA, and that if the EPA cleaned up the site it could, and likely would, charge treble damages for the the costs of cleanup.

Faced with this situation, we felt that we needed to hire an attorney. Since then we have had to hire an environmental consulting and testing firm. To date my company has spent or committed to spend over \$40,000 on legal and consulting fees, with no

end in sight. The ultimate potential costs of complete corrective action, including investigation and cleanup costs, over a five to ten year period are unknown. There is, however, little doubt that they will exceed our ability to pay. If some method of relief is not found, my family and I are faced with the ultimate loss of our business.

How could this happen? We have always operated environmentally clean plants. We have never had a spill. We have complied with, and in many cases exceeded, every environmental requirement placed on our industry by state or federal laws and regulations.

The answer is that under the Superfund law my company can be held responsible because under that law liability is **strict, retroactive, and joint and several**. This means that even if the occurrence of contamination was unknown to us, even if it occurred in spite of our taking every reasonable and required precaution to prevent it, or if the contamination occurred before Ineeda owned the property, as it almost certainly did, Ineeda Cleaners can be held responsible to pay for all cleanup costs!

We are not alone. While Ineeda is one of the first drycleaning operations in Kansas to be notified that it is a potentially responsible party for solvent contamination, other Kansas cleaners face the same scenario. Drycleaners in every state are living this horror story, as we read every month in our industry literature. In the absence of a change in the Superfund law at the federal level, which we have worked hard for but which appears unlikely, our only hope for avoiding bankruptcy while also addressing the need to clean up the environment, is the creation of a trust fund such as that outlined in House Bill No. 2256.

The approach taken in House Bill No. 2256 is very similar to that taken in the Kansas Underground Storage Tank legislation passed a few years ago by this Legislature. It is also similar to legislation passed in 1994 in Florida and Connecticut and being prepared in at least seven or eight other states.

Based on business statistics from census data from 1987 and 1992 (the latest data available from the Kansas Department of Commerce and Housing), gross receipts

from drycleaning establishments in Kansas appear to have grown at the rate of approximately 4% per year from 1987 to 1992. Since gross receipts for all drycleaning facilities in Kansas were \$41, 841,000 in 1992, a 4% annual growth factor would indicate expected 1995 gross receipts for the Kansas drycleaning industry of approximately \$47,000,000. A 2% usage or gross receipts tax, as envisioned by House Bill No. 2256, would therefore be expected to generate around \$940,000 per year.

In addition, House Bill No. 2256 proposes a tax on all drycleaning solvents used by the industry. We estimate that this tax will raise between \$125,000 and \$150,000 per year. This will bring estimated total revenue of approximately \$1,100,000 per year into the trust fund.

One of the features of House Bill No. 2256 is that it provides for cleanup of old or abandoned drycleaning sites as well as current operating facilities. As our next speaker will outline, anyone who owns property on which a drycleaning facility has operated in the past, even if they have never operated such a facility themselves, is faced with liability for cleanup of environmental contamination coming from the drycleaning facility--just by virtue of their ownership of the land!

Clearly there has to be end to such madness. House Bill No. 2256 offers a solution where everyone wins. Hardworking small business people avoid financial ruin while at the same time an affordable way is found to address the very real need of cleaning up soil and groundwater contamination. Our industry wants very much to be a part of the solution, but we need your help, by passing this bill, to make this solution a reality.

LARKLAND CENTER

LARKLAND SHOPPING CENTER WAS DEVELOPED IN 1955. AT ITS INCEPTION, IT WAS APPROXIMATELY 12,000 SQUARE FEET. IT WAS BUILT BY MY FATHER, HARRY COBERLY, AND VIV MAMMEL. MR. MAMMEL OPERATED A GROCERY STORE AND MR. COBERLY OPERATED A DRUG STORE. THE REMAINING SPACE WAS LEASED TO OTHER RETAILERS. ONE OF THE ORIGINAL TENANTS WAS A ONE HOUR MARTINIZING DRY CLEANERS. IT WAS IN OPERATION FROM 1956 UNTIL 1958 OR 1959.

IN THE LATE 1960'S MR. MAMMEL CLOSED HIS GROCERY STORE AND SOLD HIS INTEREST IN LARKLAND TO HARRY COBERLY. AT THAT TIME, HARRY GAVE MY SISTER, AND MY BROTHER AND ME EACH A 17% INTEREST IN LARKLAND.

IN 1993 K.D.H.E. DID AN INVESTIGATION AND FOUND PCE AND TCE (PCE AND TCE ARE BROKEN DOWN CHEMICALS USED IN DRY CLEANING) IN THE GROUND WATER AT THE OLD DRY CLEANERS LOCATION. ANOTHER LOCATION WAS ALSO IDENTIFIED ONE-HALF BLOCK AWAY. WE WERE TOLD THAT THE GROUND WATER WAS PROBABLY CONTAMINATED BY ONE HOUR'S USE OF THE PROPERTY. THEY PROBABLY PUT PCE AND TCE INTO THE CITY'S SEWER. THIS WAS A LEGAL AND COMMON WAY OF DISPOSAL AT THAT TIME.

SINCE NOTIFICATION OF THE CONTAMINATION, WE HAVE MET WITH K.D.H.E. DURING OUR VISIT, WE WERE TOLD IT WOULD BE VERY EXPENSIVE TO CLEAN UP. WE HAVE CONTACTED FORMER EMPLOYEES OF ONE HOUR, AS WELL AS THEIR CORPORATE OFFICE, AND HIRED A PRIVATE INVESTIGATOR TO FIND THE ORIGINAL

2/9/95
Energy & Natural Resources
Attachment #6

OWNERS OR OPERATORS. AT THIS POINT, THE ORIGINAL OWNERS ARE EITHER DEAD OR UNKNOWN. THIS LEAVES US WITH THE RESPONSIBILITY AND THE LIABILITY OF THE CLEAN UP.

THE OWNER OF THE OTHER IDENTIFIED LOCATION, PURCHASED HIS BUILDING 5 TO 10 YEARS AFTER IT WAS USED FOR DRY CLEANING. HE ALSO FACES TOTAL LIABILITY FOR THE CLEAN UP COST.

WHEN MY FATHER DIED IN JUNE, 1994, MY BROTHER, MY SISTER, AND I BECAME SOLE OWNERS OF LARKLAND SHOPPING CENTER. WITH GROSS REVENUE OF \$ 70,000. PER YEAR, AND A UNDETERMINED COST BEYOND OUR ABILITY TO PAY, BANKRUPTCY IS PROBABLY INEVITABLE.

PART OF GOVERNMENT RESPONSIBILITY IS TO PROTECT INNOCENT CITIZENS FROM THIS TYPE OF CALAMITY. PEOPLE SHOULD NOT BE HELD RESPONSIBLE FOR A PROBLEM WHICH THEY DID NOT CAUSE OR CONTRIBUTE TO. SETTING UP A TRUST FUND, SIMILAR TO THE GASOLINE TRUST FUND, IS THE ONLY FAIR WAY TO CORRECT THIS PROBLEM.