Approved: Carl Dean Holmes
Date 3-25-96

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:36 p.m. on March 6, 1996, in Room 526-S of the Capitol.

All members were present except: Representative Doug Lawrence - Excused
Representative Steve Lloyd - Excused
Representative Dennis McKinney - Excused

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

Conferees appearing before the committee: Ron Hammerschmidt, Ks. Department of Health & Environment
David Schlosser, The Williams Company
The Honorable Stan Clark, Senator, 40th District
Jamie Clover Adams, Kansas Fertilizer & Chemical Association
Bill Craven, Ks. Natural Resource Council & Ks. Sierra Club
Bill Bider, Kansas Department of Health & Environment
Ron Hein, Aptus, Inc.

Others attending: See attached list

Chairperson Holmes distributed copies of the 1995 Receipts and Disbursements Report for the Petroleum Storage Tank Release Trust Fund from the Department of Health and Environment as discussed in committee yesterday.

Hearing on SB 686: Liability of landowner for remedial action in accidental discharge of materials detrimental to water and soil of state

The Honorable Stan Clark. Senator Clark appeared in support of **SB 686** because it would relieve a landowner from future liability for remedial action in accidental discharges of contaminated materials. He distributed testimony from a landowner who testified before the Senate Energy and Natural Resources Committee. (Attachment #1)

Questions for Senator Clark followed.

Ron Hammerschmidt. Mr. Hammerschmidt, Director of Environment, testified that the purpose of this bill is to provide a way for innocent property owners to be released from liability for additional cleanup costs as a result of future changes in cleanup standards/requirements, but it will not release landowners from federal liability. The bill is very broad and open ended. (Attachment #2)

David Schlosser. Mr. Schlosser testified on behalf of The Williams Companies in support of **SB 686** and offered amendments for expansion of the bill's intent. (Attachment #3)

Jamie Clover Adams. Ms. Adams, representing the Kansas Fertilizer and Chemical Association, is concerned that some of the language contained in **SB 686** is convoluted and does not clearly define who is impacted. (Attachment #4)

Bill Craven. Mr. Craven, of the Kansas Resource Council and the Sierra Club, supports the bill as amended by the Senate Committee if it is limited to the innocent landowner "when the plane falls out of the sky" type of accidental spill. (Attachment #5)

Questions followed after which the hearing was closed.

Hearing on SB 531: Hazardous waste fees paid by off-site treatment and disposal facilities

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on March 6, 1996.

Bill Bider. Mr. Bider, Director of the Bureau of Waste Management, provided testimony in support of **SB 531** which was identical to **HB 2789** before being amended by the Senate. The amended bill now contains provisions agreed to by the three Kansas cement producers, Aptus, Inc., and the department thus providing equal treatment to all facilities which burn hazardous waste. (Attachment #6)

Ron Hein. Mr. Hein, legislative counsel for Aptus, Inc., testified that **SB 531** as amended by the Senate was agreed to by the cement kilns, Aptus, and KDHE to solve the deficiencies in the current statute. He urged the committee to approve the amended bill. (Attachment #7)

There being no questions, the hearing was closed.

The meeting adjourned at 4:38 p.m.

The next meeting is scheduled for March 7, 1996.

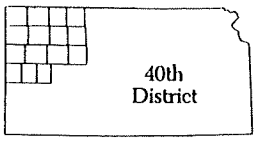
ENERGY AND NATURAL RESOURCES COMMITTEE
COMMITTEE GUEST LIST

DATE: March 6, 1996

NAME	REPRESENTING
Stan Clark	
John Mitchell	KDHE
Ron Hammerschmidt	KDHE
Wayne Kitchen	Western Resources
DAVID B. SCHLOSSER	PETE McGILL & ASSOC.
PHILIP HURLEY	PATRICK J. HURLEY & CO.
Leslie Kaufman	Ks Farm Bureau
Joe Liebig	KS Co-op Council
Lisa VanCampen	Turon, Ks.
Jamie Clover Adams	Ks Fertilizer & Chemical Assn
Dale Lambley	KDA
Don Schnacke	KIOGA
Julie Hein	Aptus
Tom Palace	KOMA
STEVE KEARNEY	KOMA

STATE OF KANSAS

STAN CLARK
STATE SENATOR



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
VICE CHAIR: ELECTIONS
MEMBER: AGRICULTURE
ASSESSMENT AND TAXATION
FINANCIAL INSTITUTIONS
AND INSURANCE

TESTIMONY - SENATE BILL 686
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
MARCH 6, 1996

Mr. Chairman and members of the committee. I appreciate the opportunity to appear before you in support of SB 686.

If an airplane falls out of the sky and crashes on your property, or a train derails on your property, or a semi truck leaves the road and comes to rest on your property or, theoretically, a ship runs aground on your property which results in environmental contamination from a chemical spill, the person responsible for the spill and his insurance company are responsible for the initial clean-up. When these remedial efforts meet the current EPA/KDHE acceptable levels, the Department issues a letter to the company (attachment 1) that performed the environmental clean-up and to the owner of the land (attachment 2). The party responsible for the contamination and his insurance carrier are discharged from future liability.

If those EPA/KDHE standards change, which they have in recent years, the landowner is responsible for further clean-up even though the initial contamination was through no fault of his own. This bill relieves the owner of this costly liability. The peanut of the bill starts with line 24, "Any owner or subsequent purchaser of land . . . . shall not be liable for any costs of subsequent remedial action."

This bill was drafted to address a plane crash in Norton county. An ag spray plane crashed spilling herbicide and fuel. Over a 17 month period, an environmental clean-up continued at the crash site until a hole 20 feet by 30 feet by 21 feet deep meet the maximum permitted level of 100 parts per million. Forty-five days later the hole was filled-in.

House E&NR Comm.
3-6-96
Attachment 1

205 U.S. 83
OAKLEY, KANSAS 67748
913-672-4280

STATE CAPITOL, RM. 128-S
TOPEKA, KS 66612-1504
913-296-7399

1. Kansas Department of Health and Environment would not give any assurance that the current standard of 100 parts per million would not be lowered in the future.
2. KDHE will not assure the current property owner that he, his heirs or subsequent property owners will not be held personally liable for further remediation costs should current standards for hydrocarbons and chemicals be lowered.
3. The insurance carrier has been relieved of all future liability.
4. The initial clean-up cost was $24,651.75. Future monitoring holes are estimated to cost $7,000 each in today's costs and several probably would be needed.

If current EPA/KDHE standards are met, the landowners liability should cease. KDHE considers the landowner an innocent victim but will not issue a written release absolving the landowner of all liability. The landowner has the full future potential liability. With your passing SB 686 favorably, the landowner is released from future liability. I will gladly stand for questions.

Reply To: (913) 296-1673/ FAX (913
Bureau of Environmental Remedi
Forbes Field, Building 740
Topeka, KS 66620-0001

Department of Health and Environment
Robert C. Harder, *Secretary*

November 10, 1993

Dan Krause
D & K Environmental
6620 Jennie Barker Road
Garden City, Kansas 67846

Dear Dan:

Attached are the sample results of soil collected September 22,1993 by Shawn and myself at the site of the Miller Aviation soil remediation north of Norton. As previously discussed, these samples were obtained from the areas found to be in excess of the 100 ppm total petroleum hydrocarbon standard utilized by KDHE.

On the basis of these analyses, the remaining hydrocarbon contamination has been successfully remediated below levels which may cause adverse environmental impact.

It is our conclusion that the contamination caused by this aircraft crash has been remediated to current applicable standards. Therefore, the soil may be returned to the excavation and the site restored to original grade. Native vegetative cover should be established as soon as possible to prevent erosion damage.

After these activities are accomplished, the site may be considered closed with no further action necessary.

If you have any further questions or comments, please contact me at 913-296-1679 or by FAX at 913-296-1686.

Sincerely,

G. Paul Belt

G. Paul Belt
Environmental Technician
Landfill Remediation Section
Bureau of Environmental Remediation

Enclosure

1-3

State of Kansas

Joan Finney Governor

Department of Health and Environment

Robert C. Harder, Secretary

May 19, 1994

Mr. Leroy Lang
R.R. 2
Norton, Kansas 67654

Dear Mr. Lang:

Pursuant to the request of Mr. William J. Ryan, of Ryan, Walter, & McClymont, I am transmitting this letter summarizing the final sampling of area of your farm impacted by an aircraft crash. Samples were obtained from the material excavated following the crash. These samples were taken in areas which still exceeded the 100 ppm total petroleum hydrocarbon standard utilized by KDHE. Samples were collected by a representative of D & K Environmental and myself. These samples were hand carried by myself to a State certified laboratory for analyses.

Based on the outcome of these analyses the hydrocarbons were remediated below levels shown to cause adverse environmental impact.

It is the conclusion of KDHE that contamination resulting from the crash has been cleaned up to current environmental standards. Therefore, in my letter to D & K environmental on November 10, 1993 I stated that the soil removed subsequent to the crash could be returned to the excavation and the site restored to original grade. I further noted that native vegetative cover should be established to prevent erosional damage. Once these tasks were accomplished the site would be considered closed requiring no further action.

A copy of the letter to D & K Environmental is attached for your information.

If you or your attorney have any further questions please contact me at 913/296-1679 or by FAX at 913/296-1686.

Sincerely,

G. Paul Belt

G. Paul Belt, Environmental Technician
Bureau of Environmental Remediation
Landfill Remediation Section

GPB:hca

Enclosures

1-4

Division of Environment, Bureau of Environmental Remediation
Forbes Field, Building 740, Topeka, KS 66620-0001

Telephone: (913) 296-1660
FAX: (913) 296-1686

TESTIMONY SENATE BILL 686

ENERGY AND NATURAL RESOURCES COMMITTEE

Introducing myself. I am Leroy Lang, a farmer-stockman from Norton, Kansas.

In February of 1992, I purchased the Southwest Quarter of Section 5, Township 2, Range 23, in Norton County.

On June 23, 1992 (five months later), Miller Aviation of Norton, our local aerial crop sprayer, was spraying wheat for weeds on the above quarter section. The plane developed engine trouble and as a result the plane crashed in my wheat field, leaving pesticide and hydrocarbon pollution.

I was notified at home by Mr. Delvis Miller, owner of Miller Aviation, about 11 hours after the crash, that there was a problem and instructed to be at the airport the next morning at 8:30 a.m. I had been working in the field several miles away when the crash occurred and arrived home late that evening.

A meeting was held the next morning with an insurance adjuster from Lloyds of London, Mr. Miller, Mr. Dan Kraus, of D and K Environment Services of Garden City, Kansas and myself in attendance. I was told then that Mr. Kraus was hired by Lloyds of London to clean up the spill. I was led to believe by Mr. Kraus that using approved procedures by Environmental Protection Agency/Kansas Department of Health and Environment, that the soil would be totally clean. I later learned this earth removed from the 10' by 30' by 21' deep hole would only meet minimum standards established by EPA/KDHE of 100 parts per million.

Written clearance from KDHE to put the earth back in the

hole came Nov. 16, 1993. Wet weather and inattentive work procedures by D and K Environment Services led to approximately eighteen and a half months of this hole remaining open and finally closed on January 7, 1994.

I was asked for a bill of damages to my property and it was agreed by all parties that $4,862.50 was the total amount. This was about one month before June 23, 1994 which was the statute of limitations date. I had two concerns about this problem. First, I was concerned about future liability to me as the landowner. Secondly, what now was the property's present market value? I asked my lawyer to request that Miller Aviation and Lloyds of London be responsible for future liability should it arise. Both parties declined. The statute of limitations date was fast approaching.

My lawyer and I agreed that to keep this matter open we had to file a lawsuit before the statute of limitations date in the District Court of Norton County.

The results of the lawsuit included the following:

1. KDHE cannot and will not assure me that the current standard of 100 parts per million will not be lowered in the future.

2. KDHE cannot and will not assure me and subsequent owners of the subject property that they will not be held liable for future remediation costs should current standards for hydrocarbons and chemicals be lowered.

3. The Insurance carrier will not agree to leave said claim open or tell statute of limitations date.

4. If I sold this property, I would be morally and legally obligated to inform any prospective purchaser of the hydrocarbon and chemical incident and possibly of future liability.

5. Since filing this suit, my lawyer and I have been endeavoring to find a way to eliminate the threat of future remediation being required by myself or future owners, but we have been unsuccessful in doing so.

This suit was settled by my receiving $4,862.50 for the damages incurred to my property. Miller Aviation and Lloyds of London have fulfilled the current law as it now stands. My property was cleaned up to current EPA and KDHE standards and goodbye.

I have some questions:

1. Why should I, as a landowner, have all the future liability for an act that I didn't have anything to do with and was miles away from when it happened.

2. If I decide to sell this property, what is the market value of the property with this cloud of liability that hangs over it?

3. If I decide to give this property to one of my children, why would they take it with the possibility of future liability?

4. If the KDHE required me to retest this site, what would be the cost? It cost $24,651.75 to clean it up the first time. An environmental contractor from Hays has told me a hold bored 33" in diameter and 80 feet deep would cost $7,000. It is 160 feet to water at this site. The contractor said one hole will

never do it. It will take several.

5. If contamination was found, what would be the total cost twenty or fifty years from now? Would it bankrupt me, my heirs, or someone who I sold it to?

6. If a close neighbor dies and contamination is found in their water table, what's the legal cost for defending myself, or my heirs, or another owner defending himself. I've spent plenty already for legal fees for something I didn't do and wasn't around when the act was committed.

It appears to me that if current EPA and KDHE standards are met, the landowners liability should cease. We've met the law. If the law is changed lowering the standards, then the parties who committed the act originally should be responsible, or a landowner should qualify for the "super fund", as I understand a filling station now qualifies. The landowner would be limited to a small liability and the "super fund" would pay the balance. Right now the landowner is in left field with full potential liability. It's just not fair!

I understand KDHE considers me an innocent victim in this case, but will not give me anything in writing that I'm not responsible for future liability should it arise. I cannot accept verbal word not knowing whom I'm dealing with 5, 20, or 30 years from now. I want the written release. I urge you to support Senate Bill No. 686 or some version of it that is fair to all landowners. We need some relief!

Many thanks!

State of Kansas

Bill Graves Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

The House Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

Senate Bill 686

This bill relates to landowner liability for corrective action when materials that are detrimental to the quality of the waters and soils of the state are accidentally released or discharged. We believe that the purpose of this bill is to provide a way for innocent property owners to be released from liability for additional cleanup costs as a result of future changes in cleanup standards/requirements. This bill will not release landowners from federal liability.

The bill as currently drafted is very broad and open ended. Terms used in the bill, such as materials and accidental release, are not defined. The department may need to develop regulations to clarify these terms and to limit the scope of agency involvement to those areas under the jurisdiction of the secretary.

Under several of the programs it administers, KDHE has the authority to require corrective action by a permitted entity or the responsible party. We do not believe this bill will impact upon that authority. The majority of the corrective actions that are currently being performed under the direction of the KDHE are done by the permitted entity or the responsible party, who is not always the landowner. Since this bill places a requirement to perform corrective action on the landowner and not on the responsible party, KDHE will implement this bill, if passed, in conjunction with other applicable statutes such as K.S.A. 65-3452, et seq. The majority of the cleanups currently are being performed under consent orders with the permitted entity or the potentially responsible party, not under rules and regulations. Many of the releases currently being remediated were releases that occurred many years ago, before environmental standards were developed and before the risk from such releases was identified. Some of these releases may have been accidental releases; however, many are the result of operating procedures that were not thought to be harmful at that time.

Since this bill potentially conflicts with future federal cleanup requirements, we may be required to promulgate rules and regulations that would address not only current requirements, but also any future standards that might be implemented at the federal level. There has been a great deal of discussion about the delegation of federal Superfund authorities to the state. In the event of a Superfund delegation, KDHE may have to promulgate much stricter standards in those programs delegated from EPA than may ever be needed for the future in order to avoid violation of the "no less stringent than" criteria. As an example, the Maximum Contaminant Level (MCL) for carbon tetrachloride is currently 5 parts per billion. The EPA MCL goal is 0. KDHE would have to set the standard for carbon tetrachloride at 0, with the possibility that the EPA MCL goal will not materialize. In the event that KDHE fails to meet the criteria for delegation, EPA could withdraw the program, overfile against the property owner or both.

House E+NR Comm.
3-6-96
Attachment 2

Division of Environment, Director of Environment Office
Forbes Field, Building 740, Topeka, KS 66620-0001

Telephone: (913) 296-1535
FAX: (913) 296-8464

The risk analysis process for chemicals is an on-going process. The effects of many chemicals on human health and the environment have not been fully determined. As research progresses, new information develops which may result in lowering of contaminant levels which could result in additional cleanup becoming necessary to be protective of human health and the environment. Under certain circumstances, this bill could possibly result in state liability for additional cleanup costs. An example is discharges or releases which occurred before any environmental regulations were in place. It is possible the cleanup of a historic release may become the responsibility of the state. It is not possible to predict potential liability or the amount of costs.

We have attached a draft balloon of Senate Bill 686, as amended by the Senate Committee. The first change adds "or owner-permitted occupant" to the first sentence of section 2, page 1, line 24. This is a technical change. The second amendment moves the phrase "or conditions of administrative orders or agreements" from the middle of the sentence to the end in line 40, page 1. This is clarification of an amendment we offered in the Senate committee. The final change is the addition of a new section 3 which clearly defines the state has no liability to perform cleanups. While the innocent property owner may deserve some relief, we do not believe the state should have a liability where the responsible party cannot or will not perform a cleanup. That may be a matter best left for the judicial system.

Thank you for your attention. I will attempt to answer any questions you have.

Testimony presented by: Ronald F. Hammerschmidt, PhD
Director of Environment
March 6, 1996

As Amended by Senate Committee

Session of 1996

SENATE BILL No. 686

By Committee on Energy and Natural Resources

2-14

AN ACT relating to the accidental release or discharge of materials detrimental to the quality of the waters and soil of the state; concerning the liability of landowners for correction or remedial action therefor.

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

Section 1. It shall be the duty of the owner *or owner-permitted occupant* of any land upon which there has occurred an accidental release or discharge of materials detrimental to the quality of the waters or soil of the state *or person responsible for such release, which release or discharge occurred through no fault on the part of such owner, or owner-permitted occupant* to comply with all existing rules and regulations and requirements of the secretary of health and environment designed to ensure the prompt correction of any such release or discharge for the protection of the public health and environment.

or owner-permitted occupant

Sec. 2. Any owner or subsequent purchaser of land, upon which there has occurred an accidental release or discharge of materials detrimental to the quality of the waters or soil of the state, which occurred ~~through no fault or by reason of any neglect on the part~~ *without any contribution to the contamination and without any causal connection to the release or discharge by any action* of the owner of the property ~~at the times~~ *or the owner-permitted occupant* such release or discharge, shall not be liable for any costs of subsequent remedial action required as a result of changes in standards adopted after the time of such accident, if such owner or purchaser can demonstrate that the parties ~~responsible for the correction of the release utilized the best available demonstrated technology in the correction or remedial process~~ and the secretary of health and environment has *approved the corrective action and* certified that the action taken has met all requirements and ~~standards~~ prescribed by rules and regulations of the secretary, ~~or conditions of administrative orders or agreements~~ which were in effect at the time of the accidental release or discharge. *The provisions of this section shall apply to both releases and discharges and remedial actions taken prior to the effective date of this act and releases and discharges and remedial actions taken hereafter.*

or conditions of administrative orders or agreements

Sec. 3. Nothing in this act shall establish or create any liability or responsibility on the part of the secretary, the department or its employees, or the State of Kansas.

2-3

Sec. ~~3~~. The secretary of health and environment is hereby authorized to adopt rules and regulations necessary for the administration of the provisions of this act.

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

TESTIMONY PRESENTED

TO THE

HOUSE

ENERGY & NATURAL RESOURCES COMMITTEE

BY

DAVID SCHLOSSER

OF

PETE McGILL & ASSOCIATES

ON BEHALF OF

THE WILLIAMS COMPANIES

ON

SB 686

House E+NR Comm.
3-6-96
Attachment 3

Mr. Chairman, members of the committee, thank you for the opportunity to appear before you today. My name is David Schlosser, and I work with Pete McGill and Associates to represent the Williams Companies and its subsidiaries, Williams Natural Gas and Williams Field Services. The Williams Companies are among the largest producers and transporters of natural gas in America.

Williams strongly supports SB 686, and would offer for clarification the amendments contained in the balloon at the end of my testimony.

For information, SB 686 was introduced in response to a very specific incident that occurred in northwest Kansas, when a crop duster crashed on the property of a farmer who had hired the crop duster to treat his land. The accident caused considerable environmental damage, which was eventually remediated to standards required by state and federal environmental agencies. The farmer, in his testimony in the Senate, expressed his very valid concern that he not be held liable for future changes in environmental standards, which could have the effect of rendering his land useless for sale, or even create a financial liability for his heirs.

Because SB 686 was drafted in response to that specific, unusual accident, it does not fully address all the issues concerning the more likely scenario for an environmental accident in Kansas, which is a pipeline leak.

The first two amendments in the balloon make explicit the reciprocal obligations of a landowner and the party responsible for an environmental accident on that landowner's property. Specifically, the first two amendments declare the landowners must allow the party who is responsible for the accident the access necessary for containment and cleanup.

Believe it or not, Williams has one or two incidents a year in which a landowner refuses access to a leaking pipeline, which necessitates a legal action which delays containment and cleanup -- which causes greater environmental damage and higher cleanup costs.

The third, larger amendment creates a new Section 3, which embodies standard language already contained in most easement agreements. Despite its length and convoluted punctuation, new Section 3 simply says that a landowner cannot build or plant on an easement if it would interfere with visual or physical access to a pipeline. Section 3 specifically exempts crops from this prohibition. As I said before, this language is standard in most easement agreements, although some older agreements lack these common sense safeguards.

I appreciate the opportunity to offer these amendment to SB 686, and urge the committee to give them favorable consideration. I will gladly answer any questions you have. Thank you.

As Amended by Senate Committee

Session of 1996

SENATE BILL No. 686

By Committee on Energy and Natural Resources

2-14

AN ACT relating to the accidental release or discharge of materials detrimental to the quality of the waters and soil of the state; concerning the liability of landowners for correction or remedial action therefor.

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

Section 1. It shall be the duty of the owner ***or owner-permitted occupant*** of any land upon which there has occurred an accidental release or discharge of materials detrimental to the quality of the waters or soil of the state ***or person responsible for such release, which release or discharge occurred through no fault on the part of such owner, or owner-permitted occupant*** to comply with all existing rules and regulations and requirements of the secretary of health and environment designed to ensure the prompt correction of any such release or discharge for the protection of the public health and environment.

Sec. 2. Any owner or subsequent purchaser of land, upon which there has occurred an accidental release or discharge of materials detrimental to the quality of the waters or soil of the state, which occurred ~~through no fault or by reason of any neglect on the part~~ ***without any contribution to the contamination and without any causal connection to the release or discharge by any action*** of the owner of the property ~~at the times~~ ***or the owner-permitted occupant*** such release or discharge, shall not be liable for any costs of subsequent remedial action required as a result of changes in standards adopted after the time of such accident, if such owner or purchaser can demonstrate that the ~~parties responsible for the correction of the release utilized the best available demonstrated technology in the correction or remedial process and~~ the secretary of health and environment has ***approved the corrective action and*** certified that the action taken has met all requirements and ~~standards prescribed by~~ rules and regulations of the secretary, ***or conditions of administrative orders or agreements*** which were in effect at the time of the accidental release or discharge. ***The provisions of this section shall apply to both releases and discharges and remedial actions taken prior to the effective date of this act and releases and discharges and remedial actions taken hereafter.***

In such cases when the accidental release or discharge is not the responsibility of the owner or owner-permitted occupant, it shall be the duty of the owner or owner-permitted occupant to permit access to the site of the accidental release or discharge for purposes of repair, containment, remediation, or other activities required pursuant to this section.

. . . parties responsible for the correction of the release were allowed access to the location of the release timely and adequate to conduct the corrections necessary pursuant to Section 1 and. . .

3-3

~~Sec. 3.~~ The secretary of health and environment is hereby authorized to adopt rules and regulations necessary for the administration of the provisions of this act.

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

Sec. 4.

Sec. 5.

New Section 3. Beginning after July 1, 1996, unless otherwise specifically authorized in the grant or reservation of the easement or in subsection (a) of this section, it shall be considered unreasonable interference with a pipeline easement for a person, other than the operator of a pipeline, to build, erect, or create, or permit the building, erection, or creation of, a structure or improvement upon or adjacent to a pipeline or pipelines which would prevent complete and unimpaired surface access to the pipeline or pipelines; or, plant or install, or permit the planting or installation of, trees or shielding within a pipeline easement which impairs or will impair aerial observation of the pipeline or pipelines.

(a) The provisions of this section shall not prevent the revegetation of any landscape within the boundaries of a pipeline easement which was disturbed as a result of construction of a pipeline. In addition, this section shall not prevent the holder of the underlying fee interest or the tenant of that holder from planting or harvesting seasonal agricultural crops within the boundaries of the pipeline easement. For purposes of this section, seasonal agricultural crops shall not include silviculture or any crop produced on trees or shrubs.

(b) The owner of the pipeline easement may maintain an action for the enforcement of the provision of this section.

(c) This section does not prohibit a pipeline operator from performing any necessary activities within a pipeline easement, including, but not limited to, the construction, replacement, relocation, repair, maintenance, or operation of the pipeline.

3-14

Mr. Chairman and members of the committee, I am Jamie Clover Adams, Vice President of Government Affairs for the Kansas Fertilizer and Chemical Association (KFCA). We thank you for giving us the opportunity to appear today in support of S.B. 686.

KFCA is the professional trade association for the state's plant nutrient and crop protection industry. Our nearly 500 members are primarily retail dealers scattered across Kansas. They sell and custom apply pesticides and fertilizers for Kansas producers. Our membership also includes distribution firms, manufacturer representatives, equipment manufacturers and others who serve the industry.

The fertilizer and chemical industry in Kansas has taken steps to minimize the possibility of soil and water contamination. KFCA was instrumental in the passage of the bulk fertilizer containment law, one of the first in the nation (K.S.A. 2-1226 to 2-1231; K.A.R. 4-4-900 to 4-4-984). In addition, many members have already constructed pesticide containment in response to pesticide manufacturer requirements and we are currently working with Kansas Department of Agriculture to develop standard pesticide containment regulations. While these efforts have and will cost Kansas agribusiness millions of dollars, we believe it is an important step to insure product is not lost to groundwater, surface water or soil from storage facilities. The technology to store and handle plant nutrient and crop protection products is continually improving and enabling KFCA members to do an even better job of protecting the environment. In general, containment structures are constructed of concrete and involve a loadpad for loading and unloading product and secondary containment that surrounds bulk storage tanks to contain a catastrophic spill (see attachment). This additional environmental protection also limits the future liability of a dealer because he is minimizing the chance of product loss to the environment.

S.B. 686 would further reduce future liability for accidental discharges or releases for KFCA members. It provides business with much needed closure when an accidental release or discharge occurs because it allows businessmen to clean-up the problem and not have one accident jeopardize the future viability of the business.

House E+NR Comm.
3-6-96
Attachment 4

However, KFCA is concerned that some of the language contained in S.B. 686 is convoluted and hard to understand. For example, line 27 of the original bill is pretty straightforward about who falls within the parameters of the legislation. However, the substitute language is vague and does not clearly define who is impacted. KFCA would also ask if some of the terms contained in S.B. 686 need to be defined. Since this bill does not amend current statute, who will determine what the terms mean? Terms have different meanings depending upon which environmental statute you reference. Is a discharge defined as it is within the Clean Water Act and release as it is defined under CERCLA?

KFCA supports the concept of S.B. 686. However, we need some clarification on terms and sentence structure within the amended bill . Thank you for the opportunity to appear today. I would be happy to answer any questions you may have.

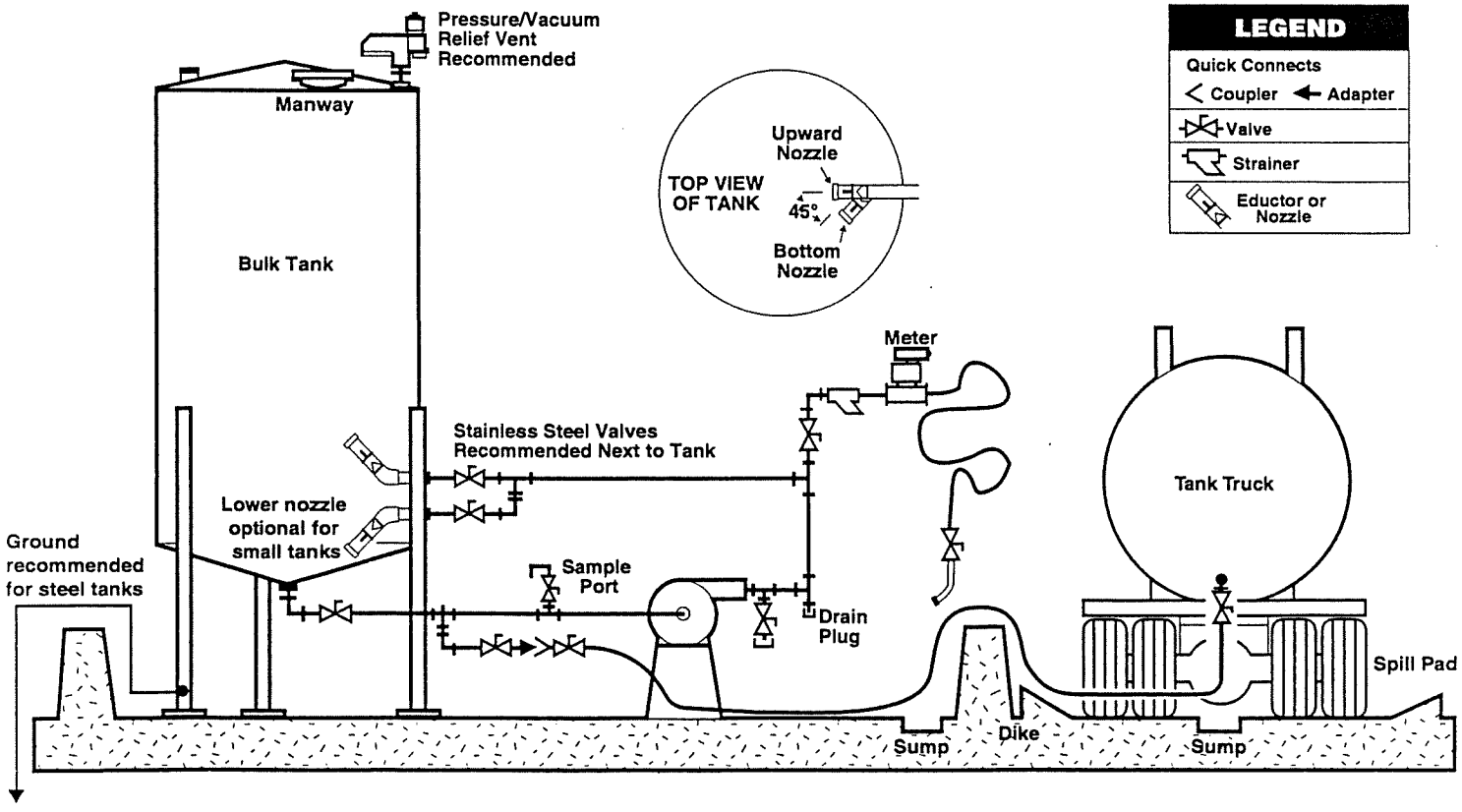
GENERAL BULK SITE REQUIREMENTS AND RECOMMENDATIONS

General Bulk Site Regulatory Requirements

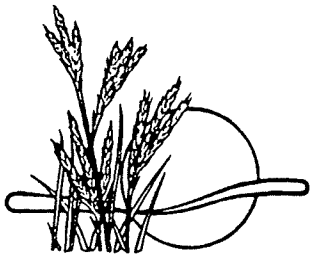
Prior to establishing a bulk handling facility, the owner or operator must obtain all required permits and comply with all applicable laws and regulations governing the storage of bulk pesticides.

The bulk pesticide facility must meet DowElanco's requirements in addition to federal, state, and local codes, laws, regulations, and ordinances covering such product systems. These include but are not limited to those issued by the federal and state Department of Transportation (DOT), Occupational Safety and Health Act (OSHA), and the Environmental Protection Agency (EPA).

General Bulk Site Set-up



4-3



Kansas Natural Resource Council

P.O. Box 2635
Topeka, KS 66601-2635

Officers
President
Bill Ward, Lawrence

Vice President
Joan Vibert, Ottawa

Secretary
Ann Fell, Winfield

Treasurer
Art Thompson, Topeka

William J. Craven,
Legislative Coordinator
935 S. Kansas Ave.
Suite 200
Topeka, KS 66612
913-232-1555
Fax: 913-232-2232

Testimony of William Craven
Kansas Natural Resource Council and Kansas Sierra Club
House Energy and Natural Resources Committee
March 5, 1996
S.B. 686

Thank you for the opportunity to appear. Our concerns about this bill were resolved in the Senate Committee, thanks to the cooperation of Senator Clark, the bill's chief sponsor. The changes made in the Senate Committee resolve our concerns. With those changes, the two groups I represent can support this bill.

House E&NR Comm.
3-6-96
Attachment 5

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

Senate Bill 531

The Department of Health and Environment appreciates this opportunity to provide testimony in support of Senate Bill 531. On February 7, 1996 this committee held a hearing on House Bill 2789 which was identical to Senate Bill 531 prior to being amended by the Senate.

The amended bill now contains provisions agreed to by the three Kansas portland cement producers which burn hazardous waste in place of fossil fuels, Aptus, Inc., a commercial hazardous waste incineration company, and the department. The amendments to the original bill accomplish the following:

1. Requires the secretary, in establishing hazardous waste treatment fees, to give consideration to the energy content of the hazardous waste in addition to the other criteria required under current statute;

2. Raises the annual calendar year cap from $50,000 to $60,000 for a facility which burns hazardous waste for energy or material recovery only (i.e., cement kilns), and retains the current $200,000 per year cap for a facility which burns hazardous waste for treatment or disposal only;

3. Creates a separate $60,000 cap for hazardous wastes which are burned for energy or material recovery within the $200,000 cap for facilities which burn hazardous waste for both energy or material recovery and treatment or disposal (i.e., Aptus); and

4. Requires the secretary to establish a differential fee schedule for hazardous waste based upon waste characteristics which is consistently applied to all facilities which burn hazardous wastes.

In establishing the differential fee schedule which will be incorporated into regulations the department's plan would be to invite participants from the four affected companies (Aptus, Inc., Ash Grove Cement, Heartland Cement, and Lafarge Corp.) to discuss this matter with the department and arrive at consensus. It is the department's desire to maintain fee revenues near the current level of $150,000 per year. In

House E+NR Comm.
3-6-96

Division of Environment, Bureau of Waste Management, Forbes Field Building 740, Topeka, Kansas 66620-0001 Telephone: (913) 296-1600
Fax Number: (913) 296-1592

Attachment 6

order to accomplish this, the department would propose consideration of a three-tier fee system. Under this system, the highest fee level should apply to highly toxic hazardous wastes (such as dioxins) which are destroyed through incineration; the lowest level fee should apply to the high energy/low toxicity hazardous wastes burned for energy recovery (i.e., the types of waste most commonly burned by the cement kilns but in some instances by Aptus as well); and for other less toxic but low fuel value hazardous wastes, an intermediate fee should be applicable.

In setting the new fees, it will be necessary to project future quantities of hazardous waste to be burned at each tier level. The department would review the previous four year history of hazardous waste management by each of the facilities as well as projections provided by the facilities for future years. Future projections will take on special significance since Aptus has recently announced plans for some level of reduction of waste management activities at its Coffeyville facility. Hopefully, the impacted businesses can reach consensus on an appropriate fee schedule. However, with or without consensus, the department must proceed to amend the current administrative regulations.

The department believes the provisions of the amended bill provide equal treatment to all facilities which burn hazardous waste. We therefore urge the members of the committee to support its passage. Thank you again for this opportunity to provide comments related to SB 531.

Testimony presented by:

Bill Bider
Director, Bureau of Waste Management
Division of Environment
March 6, 1996

HEIN, EBERT AND WEIR, CHTD.
ATTORNEYS AT LAW
5845 S.W. 29th Street, Topeka, KS 66614-2462
Telephone: (913) 273-1441
Telefax: (913) 273-9243

Ronald R. Hein
William F. Ebert
Stephen P. Weir
Melissa A. Wangemann

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
TESTIMONY RE: SB 531
Presented by Ronald R. Hein
on behalf of
Aptus, Inc.
March 6, 1996

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Aptus, Inc. Aptus, Inc. is a wholly owned subsidiary of Rollins Environmental Services; interested in general business issues, environmental issues, and specifically issues relating to hazardous waste:

This Committee previously heard testimony presented by Aptus and the cement kilns regarding HB 2789, which was introduced to equalize the fees paid by all facilities which burn hazardous waste that have similar characteristics. Identical legislation was introduced in the Senate in the form of SB 531.

After a hearing before the Senate Energy and Natural Resources Committee, representatives of Aptus, the cement kilns, and KDHE met to work out language agreeable to all parties that would solve the deficiencies in the current statute.

SB 531 as amended by the Senate is the compromise legislation which has been agreed to by all three groups.

As amended by the Senate, SB 531 now provides that the statutory cap on wastes which are burned for energy recovery will be $60,000 whether burned at a cement kiln or at a facility such as Aptus. The Secretary of KDHE will set the fee by rules and regulations so that the fees are consistently applied and equalized as to all wastes which meet certain characteristics. In order to qualify as a waste being burned for energy recovery, the waste will have to exceed a certain BTU content to be determined by KDHE.

Aptus is permitted through its RCRA permit to burn other wastes which have low BTU value. If a facility only burns those wastes, the facility would be subject to a $200,000 cap, as is in the existing statute. Aptus, which will be burning a combination of the low BTU and the high BTU wastes, will fall under the $60,000 cap for high BTU waste as defined by the Department, with a total fee for all wastes not to exceed $200,000.

Aptus would urge the committee to approve SB 531 as it passed the Senate.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

House E+NR Comm.
3-6-96
Attachment 7