

Approved: 2-21-96
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on February 14, 1996 in Room 254-E- of the Capitol.

All members were present except:
Senator Vancrum, Excused

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Ardan Ensley, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:
John Irwin, Director, Bureau of Air and Radiation, KDHE
John Carter, Sierra Club, Kansas Natural Resources Council
Terry Leatherman presenting information from Dupont Corporation

Others attending: See attached list

SB 518--relating to chlorofluorocarbons; concerning use, possession, manufacture, purchase, installation, transportation and sale

Chairperson Sallee announced that due to scheduling difficulties the proponents of **SB 518** would be heard in a joint meeting with the House Energy and Natural Resources Committee hearings on **HB 2710**, a similar bill, scheduled at 3:30 p.m. February 14, Room 313-S.

John Irwin, Director, Bureau of Air and Radiation, KDHE, appeared in opposition to **SB 518** (Attachment 1). Mr. Irwin told the Committee that the U. S. Environmental Protection Agency has created a complex regulatory program to protect the ozone layer. The Title VI initiative extends the regulation of CFCs as a part of a larger global effort with 150 nations signing the protocol.

Mr. Irwin told members the benefits of national and international efforts to reduce CFC emissions are beginning to confirm a substantial decline in the rate of growth of atmospheric concentrations of CFCs.

Senate Bill 518 would render the Title V program in Kansas vulnerable to disapproval by the federal EPA and could create numerous problems for both KDHE and the hundreds of affected emission sources statewide.

A member made the observation that a number of people dispute the science which has driven the chlorofluorocarbons issue and the extent of harm done and questioned that since Federal Law would supersede **SB 518** how the bill would inhibit the department. Mr. Irwin stated that this bill would prevent compliance under the new Title V permit program in Kansas which requires that operating permits issued to major sources of air emissions contain provisions for assuring that any provisions of the federal Title VI program are made a state-enforceable element of the Title V permits issued by KDHE.

Further dialogue expressed concern about the costs involved in the banning of chlorofluorocarbons as far as converting various units to operate with other substances. Another member asked about the effect of amending the bill to permit large manufacturers out of the bill with Mr. Irwin stating it would not work, that the federal requirements are placed on the state of Kansas. Mr. Irwin also stated his department needed to be able to have compliance with the EPA.

Questioning the tremendous costs over all to consumers a member requested the best possible estimates on such costs. Mr. Irwin stated information filtering down estimated the time period before this issue is in total compliance between 10 to 15 years. He noted there is some stock piling as well as recycling. Further comments by Mr. Irwin stated that the benefits far outweigh the cost, that there is a large group working on this issue internationally and it is a long term program.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on February 14, 1996.

John Carter, Sierra Club and Kansas Natural Resources Committee, appeared in opposition to **SB 518** (Attachment 2). Mr. Carter stated this bill is based on bad science and violates federal and international law. Mr. Carter noted that one of the effects of **SB 518** is that it violates federal law and will prevent Kansas from compliance with the Clean Air Act. This noncompliance would allow the EPA to take over administration of the act by-passing the Department of Health and Environment.

Mr. Carter suggested that those determined to ignore good science hold a referendum which would not violate federal or international law.

Terry Leatherman, Kansas Chamber of Commerce and Industry, told the committee that his organization did not have a position on **SB 518**. However, DuPont Corporation a member of the Chamber of Commerce, oppose this legislation and their Legislative Affairs manager could not be present. Therefore Mr. Leatherman presented their discussion document (Attachment 3).

The document touches on the scientific background and the regulatory/legal issues as well as the economic issues involved with this bill and indicates DuPont Corporation has invested a large amount of funds into developing and producing alternative products for the chloroflourocarbons. It was also noted that existing air conditioning and refrigeration equipment can be managed effectively through CFC recovery, recycling, stockpiling and retrofitting of equipment.

During discussion it was noted that conversion kit costs would range anywhere from \$150 to \$700.

A member stated that John Cowell, a republican county chairman in Smith County who held a chemical engineering degree had stated the scientific information relating to the chloroflourocarbons was good.

The minutes for February 6, 7, and 8, 1996 were presented for approval or correction.

Senator Lee moved to approve the minutes of February 6, 7 and 8, 1996. Senator Morris seconded the motion and the motion carried.

The meeting adjourned at 8:40 a.m.

The next meeting is scheduled for February 15, 1996.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

Senate Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

Senate Bill 518

On behalf of the Kansas Department of Health and Environment (KDHE), I would like to comment briefly in opposition to the enactment of SB 518 into law.

Under the authority of Title VI of the federal Clean Air Act Amendments of 1990 (CAA), the U.S. Environmental Protection Agency has created a complex regulatory program to protect the ozone layer. The program includes product labeling, a phase-out of production of certain chemicals, mandatory recycling and recovery while repairing equipment, bans on non-essential products, and a program to review the health and environmental acceptability of alternatives.

The United States was one of the first countries to ban CFCs in aerosols in the 1970s. The Title VI initiative extends the regulation of CFCs as a part of a larger global effort. The Montreal Protocol on "Substances that Deplete the Ozone Layer" is the international treaty designed to protect the ozone layer. The original Montreal Protocol was signed by 27 countries, including the United States, in September 1987. To date, 150 nations have signed the Protocol. SB 518 authorizes actions related to CFC possession, use, manufacture, purchase, installation, transportation, and sale that are in direct conflict with the federal CFC program.

The benefits of these national and international efforts to reduce CFC emissions are beginning to become apparent. Recent data confirm that the rate of growth of atmospheric concentrations of CFCs has begun to decline substantially with peak levels expected before the turn of the century. This global effort has slowed the build-up of ozone-depleting chemicals in the atmosphere.

In Kansas, the direct implementation of Title VI of the federal CAA is the responsibility of the U.S. Environmental Protection Agency. Kansas is, however, indirectly involved in Title VI as a result of the responsibilities assigned to the states under Title V of the CAA related to the implementation of a new operating permit program. The new Title V permit program in Kansas requires that operating permits issued to major sources of air emissions contain provisions for assuring that any provisions of the federal Title VI program are made a state-enforceable element of the Title V permits issued by KDHE. Notice of final approval of the Kansas program was published in the *Federal Register* January 30, 1996. SB 518 is read to prevent any such provisions from being enforced by KDHE in Kansas.

This problem renders the Title V program in Kansas vulnerable to disapproval by the federal EPA. After four years of intense effort by numerous parties across Kansas developing the program required to obtain federal approval, the threat of federal sanctions could create numerous implementation problems for both KDHE and the hundreds of affected emission sources statewide. For this reason, KDHE strongly recommends against the enactment of SB 518 into law.

Thank you for the opportunity to appear today.

Testimony presented by: John C. Irwin
Director, Bureau of Air and Radiation
February 14, 1996

Senate Energy & Nat'l Resc.
February 14, 1996
Attachment 1



Kansas Natural Resource Council

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Testimony of John Carter
Kansas Natural Resource Council
and Kansas Sierra Club
H.B. 2710 and S.B. 518
House and Senate Natural Resources Committees
February 14, 1996

I appreciate the opportunity to testify on this bill which is opposed by the group I represent. This bill seeks to lift the ban on chloroflourocarbons in the state of Kansas. It is based on bad science and violates both federal and international law.

The majority of scientists not loyal to special interest groups acknowledge that there is a problem with ozone depletion, and that CFC's play a major but reversible role in it. A lot of people, and even some scientists disagree with this conclusion, and that's human nature. I'm sure that ten years after Galileo there were many "scientists" who could prove the earth was flat.

Bad science says the ban is unnecessary because there is no conclusive proof that CFC's contribute to ozone depletion, or alternatively, there is no conclusive proof that ozone depletion is harmful. They say the hole in the ozone and the part CFC's play in it are just theories. By that same token, gravity is just a theory. But we all know it's real. We also know some things about the stratopheric ozone layer which protects the earth from certain harmful ultraviolet rays.

We know, for instance, that the chemical reaction that causes the break-down of ozone utilizes chlorine molecules that reach the stratosphere. We know that both nature and humans contribute to the amount of chlorine existing in the environment. We know that CFC's are a more stable carrier of chlorine than most natural carriers so the chlorine contained in CFC's is more likely to reach the stratosphere than natural chlorine. We know that it takes between fourty and sixty years for the chlorine released today to reach the stratosphere and expend its reactive potential. We know there is a hole in the ozone layer, and that it is growing, every year exposing more of the earth to harmful ultraviolet radiation. Finally, studies show that one of the very real effects of the increase in solar radiation is interference with the photosynthesis process plants rely on to utilize sunlight. No one knows what the effects might be on Kansas wheat and other crops, but this bill would commit us to find out.

I am a proponent of the right of Kansas to be free from federal interference. This bill, however may have the opposite effect.

This bill is a violation of federal law, and will knock Kansas out of compliance with the Clean Air Act. One of the provisions of the Act is that a state's noncompliance gives the EPA, a federal agency, the ability to take over administration of the Act. Enacting this bill is an invitation to the EPA to take over. Now if you want to deal with the EPA instead of the Kansas Department of Health and Environment, this is a good bill.



Senate Energy + Nat'l Resc.
February 14, 1996
Attachment 2

This bill is a violation of international law. It violates provisions of the Montreal Protocol, a treaty entered into by the United States, and binding on all the states. As such, this bill, if enacted, would be rendered void under Article VI of the Constitution of the United States.

If you are determined ignore good science, you might consider doing it in the form of a referendum which would not violate federal or international law. Enacting this bill amounts to nothing more than an unconstitutional invitation for federal interference.

Ex. 1

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FOR YOUR INFORMATION
from the
SIERRA CLUB
ENVIRONMENTAL QUALITY STRATEGY TEAM

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Pollution News #163

[From Chemical & Engineering News, 1/2/95, p.9]

SATELLITE DATA CONFIRM CFC LINK TO OZONE HOLE

Newly released satellite data confirm that chlorofluorocarbons (CFCs) are the source of the chlorine that is eroding - Earth's protective ozone layer.

Three years' worth of data from the National Aeronautics & Space Administration's Upper Atmosphere Research Satellite (UARS) have enabled NASA scientists to prepare the first global maps of CFCs and their breakdown products in the stratosphere -- hydrogen chloride (HCl) and hydrogen fluoride (HF). The maps refute the claims of skeptics that natural sources, not human activities, cause ozone depletion.

"We believe these data eliminate the possibility [that] there are major natural sources of chlorine in the stratosphere," says UARS project scientist Mark Schoeberl. "They confirm CFCs are responsible for the ozone loss we are observing."

Critics of the theory that chlorine from CFCs catalyzes ozone depletion argue CFC molecules are too heavy to rise into the stratosphere. And even if they did, the skeptics say, the amount of chlorine CFCs carry into the stratosphere is dwarfed by natural sources such as seawater and volcanic eruptions. These arguments are laid out by Rogelio A. Maduro in his 1992 book, "The Holes in the Ozone Scare," and they have been popularized on radio talk shows.

The UARS data solidly refute these claims. UARS was launched in September 1991 to provide a comprehensive picture of stratospheric chemistry. Its 10 instruments gather data on the chemical composition of the upper atmosphere, as well as wind patterns and solar energy input.

Measurements of CFC-12 (CCl₂F₂) by UARS's Cryogenic Limb Array Etalon Spectrometer indicate high levels of this refrigerant reach the stratosphere. The amounts begin to decrease above about 20 km as the molecules are broken apart by ultraviolet light. Simultaneous measurements of HCl and HF by UARS's Halogen Occultation Experiment show levels of these CFC decomposition products rise at heights where CFCs are photolyzed.

"We now have the global distribution of man-made CFCs in the stratosphere," Schoeberl says. "They are not just lying around on the ground as some people will have you believe."

In addition, by comparing concentrations of HCl and HF, the scientists calculated that virtually all the HCl comes from breakdown of CFCs. "HF has no natural sources, it is not produced by volcanic eruptions or salt spray. It comes only from CFCs. We only see high amounts of HCl in the same places where we see high HF," stresses deputy project scientist Anne Douglass.

DuPont Talking Points on CFC Phaseout Issue

TALKING POINTS SCIENCE, REGULATIONS, ECONOMIC ISSUES AROUND THE CFC PHASEOUT

1. Science

- * The best scientific information available, from nearly 300 from scientists from over 30 countries, tells us that ozone depletion in the upper atmosphere is caused mostly by man-made compounds (like CFCs) that are very persistent in the atmosphere.
- * This represents scientific consensus from every research facility in the world participating in the field of atmospheric chemistry
- * Ozone in the upper atmosphere filters harmful UV rays from the sun. Ozone loss in the upper atmosphere is believed to be linked to increases in non-melanoma skin cancer and cataracts in humans, potential for crop damage, and danger to animal and aquatic life.
- * Scientists and policy makers made the decision that the economic pain associated with the CFC phaseout is justified by the grave potential concerns from continued CFC production.
- * If the world adheres to the commitments made in the Montreal Protocol treaty, the ozone layer will recover by about 2060.

2. Regulatory/Legal

- * Because this is a global issue, decision and controls measures have been pursued on a global basis rather than on a local basis.
- * Laws and restrictions cover only the new manufacture of CFCs, not use. Continued use in air conditioners and refrigerators is not banned.
- * The U.S. signed the Montreal Protocol, an international treaty, in 1988, and participated in the treaty's amendments in 1990 and in 1992, which agreed to end manufacture of CFCs globally.
- * In 1990, the U.S. Congress passed the Clean Air Act Amendments, which was signed by President Bush, legislating the U.S. to adhere to the Montreal Protocol. The Clean Air Act gives the federal government authority over the states with respect to CFC phaseout regulations.

3. Economic

- * Industries that produce and use CFCs have been working globally with international, national, state, and local regulatory agencies to develop responsible regulations dealing with CFCs.
- * Industry has worked for years to phase out CFCs and develop CFC alternatives, which are available and are being used today.
- * Industry believes that the situation regarding service of existing air conditioning and refrigeration equipment, particularly motor vehicle air conditioning equipment, can be managed effectively through CFC recovery, recycling, stockpiling, and retrofit of equipment.

Senate Energy & Nat'l Res.
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Attachment 3