

Approved: 2-18-98  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Vice-Chairperson Joann Freeborn at 3:30 p.m. on January 27, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. Steve Lloyd - excused  
Rep. Sharon Schwartz - excused  
Rep. Peggy Palmer - excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Hank Avila, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Richard Wenstrom, President, Board of Directors, Water PACK,  
Rt 1, Box 107, Kinsley, KS 67547

Maurice Korphage, Director, Conservation Division, Kansas  
Corporation Commission, 130 S. Market Room 2078, Wichita,  
KS 67202

Donald Schnacke, Kansas Independent Oil & Gas Association,  
800 SW Jackson, Ste. 1400, Topeka, KS 66612

Others attending: See attached list

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m.

The Chairperson welcomed Richard Wenstrom, President, Board of Directors, Water PACK, to the committee. He distributed "Report to the Kansas Legislature, Agencies and Non-Government Organizations". (See attachment 1) Water Protection Association of Central Kansas, formed in 1990, is an organization of about 500 agricultural producers and businesses. The need for a pro-active voice for irrigated agriculture was the catalyst for the formation of the organization. Their mission is to promote, foster, and encourage the beneficial, economical and sustainable use of quality water. Mr. Wenstrom discussed the Irrigation Water Management Project, the Middle Arkansas River Project, and the South Central Kansas Irrigation Scheduling and Water Management Demonstration Project. Questions by the committee followed.

Chairperson Freeborn thanked Mr. Wenstrom for his presentation and opened public hearing on **HB 2419**.

**HB2419:** **An Act concerning oil and gas; relating to penalties for certain violations of law; amending K.S.A. 55-708, 55-904, 55-1004 and 55-1005 and repealing the existing sections.**

The Chairperson welcomed Maurice Korphage, Director, Conservation Division, KCC, to the committee. He is a proponent to the bill and presented testimony to that effect. (See attachment 2) He commented on amendments recommended by the KCC, Conservation Division, to KSA 55-708, 55-904, 55-1004 and 55-1005 contained in the bill. Questions followed.

Chairperson Freeborn welcomed Donald Schacke, KS Independent Oil and Gas Association, to the committee. He is an opponent to the bill and provided testimony. (See attachment 3) KIOGA opposes the enactment of the bill, and suggests that if felony penalties are to be made available that the violations of law to which these penalties will apply be confined to substantial and intentional endangerment of the environment. Questions followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 526-S Statehouse, at 3:30 p.m. on January 27, 1998.

Bill Wix, Attorney for KCC, answered questions regarding obtaining a license to operate a gas or oil well after being revoked and the fining and revoking of licenses.

The Chairperson appointed a sub-committee on HB 2419. The sub-committee will be Rep. Dan Johnson, Chairman; Rep. David Huff, and Rep. Eber Phelps.

The hearing on HB2419 was closed. The Chairperson asked if there were any bill requests today, no one came forward.

The meeting adjourned at 4:35 p.m.

The next meeting is scheduled for January 28, 1998.

# HOUSE ENVIRONMENT COMMITTEE COMMITTEE GUEST LIST

DATE: 1-27-98

NAME	REPRESENTING
William J. Wix	KCC
TOM DAY	KCC
Maurice Korpidge	KCC
Don Schuack	KIOGA
Wendy Prokorski	Kansas Aggregate Producers' Assn
Wendy Prokorski	KS Aggregate Producers' Assn.
Jim Allen	Seaboard EKOGA
Ken Gaches	McGill & Asso.
Larry Kleeman	League of Kansas Municipalities
Marty Vanier	KS Ag Alliance
Tom Sticks	KWO
Larrie Ann Brown	KS Govt Consultant
Susan Anderson	Hein + Weir
Deborah Zarka Ceri	Dept. of Agriculture
Kent & Galley	Rep Mark Crow
<del>_____</del>	KS Park Council
Brendan Wirth	Intern Schwarz
<del>_____</del>	KWO
Todd Thompson	Intern Sloan

HOUSE ENVIRONMENT COMMITTEE COMMITTEE  
GUEST LIST

DATE: 1/27/98

NAME	REPRESENTING
Charles Benjamin	KS Natural Resource Council/Sev. Club



**A REPORT TO THE  
KANSAS LEGISLATURE,  
AGENCIES AND NON-GOVERNMENT ORGANIZATIONS**

**BY**

**WATER PROTECTION ASSOCIATION OF CENTRAL KANSAS**

**JANUARY 1998**

## Overview

Water Protection Association of Central Kansas, formed in 1990, is an organization of about 500 agricultural producers and businesses. The need for a pro-active voice for irrigated agriculture was the catalyst for the formation of the organization.

### **Mission:**

To promote, foster, and encourage the beneficial, economical and sustainable use of quality water.

### **Objectives:**

- educate our members and the general public about the management of sustainable irrigated agriculture and the long term benefits to our society
- develop and maintain relationships with government and non-government organizations at all levels to promote the wise use and conservation of our water resource
- develop our membership to enhance our pro-active approach and maintain an effective organization in Kansas and the nation
- develop and implement projects that complement our mission

Water Protection Association of Central Kansas is a pro-active voice for irrigated agriculture and takes an active role in water issues and works with other groups and government agencies to develop water policy.

**Kansas Department of Agriculture Division of Water Resources  
Subbasin Water Resources Management Program (SWRMP)  
Middle Arkansas River Project**

This program is designed to address water resources issues that have been identified in the State Water Plan. The SWRMP began in 1993 in the Rattlesnake Creek Subbasin, the first of 12 subbasins selected for this program. Currently, the SWRMP is active in 8 of those subbasins in central and western Kansas. We are a partner with the Division of Water Resources, Groundwater Management District #5 and US Fish and Wildlife Service in the Quivira/Rattlesnake Basin Partnership. The Partnership's goal is to address water resource concerns and develop management strategies for the Rattlesnake basin. Three SWRMP projects are in the Water PACK area; Rattlesnake Creek, Pawnee-Buckner and Middle Arkansas Subbasins. The Quivira Coalition, of which our organization is a lead member, consists of other agricultural organizations, municipalities and environmental groups. The Coalition was successful in obtaining federal funds for Quivira National Wildlife Refuge. The funds will be used by US Fish and Wildlife Service to study ways to improve water management on the refuge.

**Economic Impact**

In South Central Kansas there are more than 758,800 acres of irrigated crops. These crops use \$159,830,000 worth of inputs and create \$280,659,000 worth of income from production. In addition to crops, this area has \$367,815,000 in livestock production. As you can see, this area has a substantial impact on the economy of Kansas.

## **South Central Kansas Irrigation Scheduling and Water Management Demonstration Project**

The Project is a five year cooperative effort between Kansas State University (K-State) Research and Extension and Water Protection Association of Central Kansas. The goal of this project is to increase the understanding, adoption, and use of improved irrigation management and scheduling procedures by using current technology and climatic forecasting with field feedback of crop growth, soil moisture, applied water, and rainfall. The research is on target for this specific area of Kansas. We are intermediate in rainfall with wetter conditions to the east and dryer conditions to the west. Unique in Kansas, this area has predominately sandy soils with high infiltration rates. With proper management, our water resource is totally renewable.

\*\*\*\*\*

Water Protection Association of Central Kansas is an educational organization with a focus on irrigation and water management. We would welcome the opportunity to share our knowledge and experience with those making policy decisions effecting water users throughout Kansas.

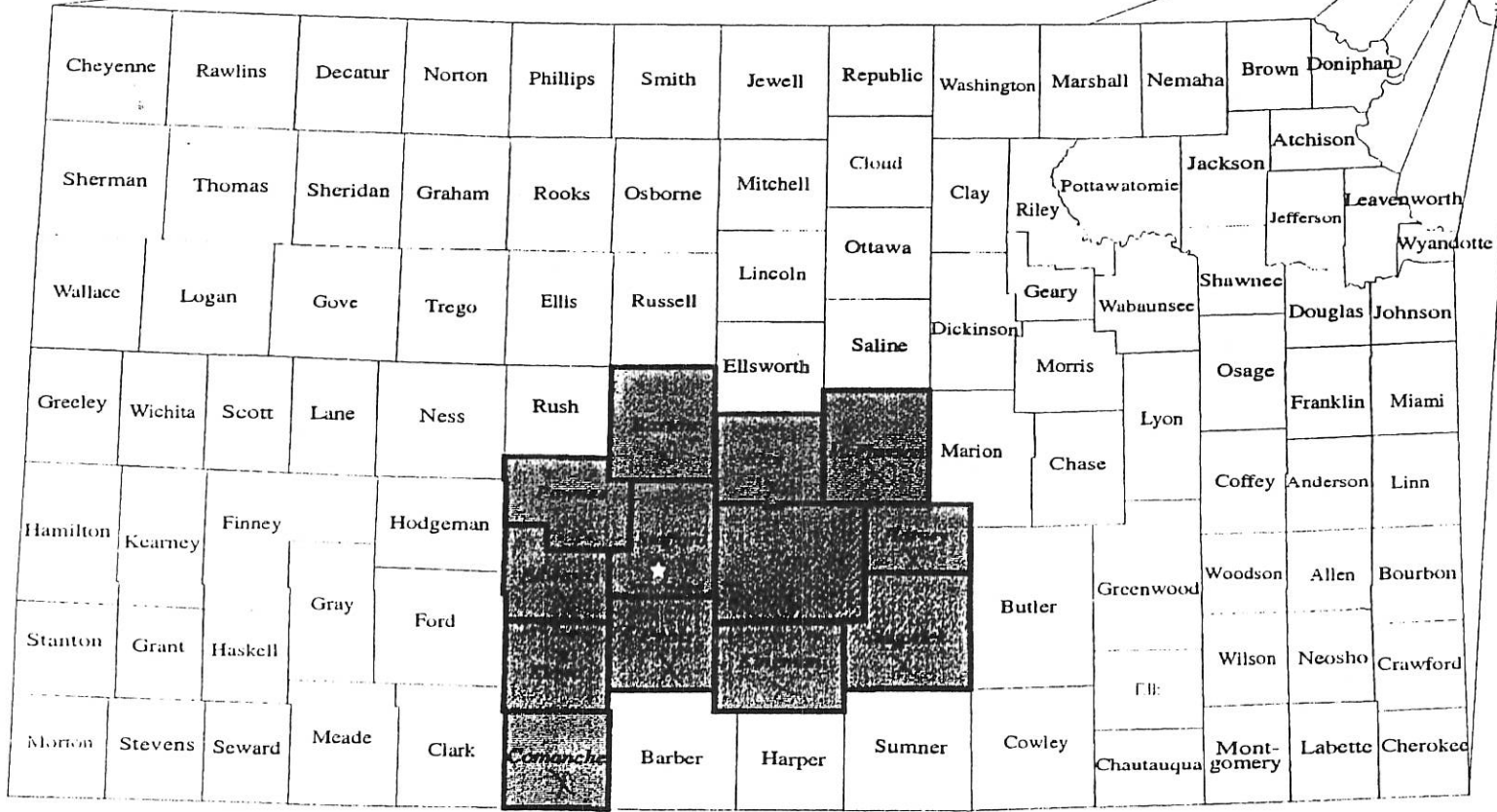
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“When the well’s dry, we know the worth of water.”

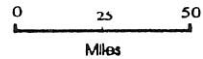
-- Benjamin Franklin



*Kansas State University*  
*Water Protection Association of Central Kansas*  
**Irrigation Water Management Project**



 Primary Counties Benefiting from Sandyland



Testimony of Maurice L. Korphage  
Director  
Kansas Corporation Commission  
Conservation Division  
before the  
House Committee on Environment  
January 27, 1998

Good afternoon, I am Maurice L. Korphage, Director of the Conservation Division of the State Corporation Commission. I am here today to comment on amendments recommended by the Kansas Corporation Commission, Conservation Division to K.S.A. 55-708, 904, 1004 and 1005 contained in House Bill No. 2419.

The amendment to K.S.A. 55-708 would increase the existing fine from not exceeding \$500 to not exceeding \$5,000 but reduces imprisonment in the county jail from not exceeding six months to not exceeding 30 days. K.S.A. 55-708 establishes the penalties for violating K.S.A. 55-701 to K.S.A. 55-713. All of these statutes pertain to the production and conservation of natural gas. The amendment would make the criminal penalty for violation of the gas statutes the same as the penalty for violations of the oil statutes contained in K.S.A. 55-607.

The amendments to K.S.A. 55-904, 1004 and 1005 all raise what are currently misdemeanors to severity level 9 nonperson felonies. These statutes all pertain to injection or disposal of saltwater and other oil field wastes. The Conservation Division believes that the increases in the criminal penalties for violation of these statutes is justified because of the environmental damage that could be caused by injecting or disposing of non-approved or hazardous substances or by exceeding approved injection pressures that could cause injected substances to move into fresh or usable water zones or producing oil and gas zones.

A level 9 nonperson felony carries a sentence of from 7 to 9 months. There is however a presumption of probation for a first offense. Under Federal law, the same types of violations are classified as a class E felony and carry a sentence of up to 3 years in prison.

In 1995 there was a case in the Coffeyville, Kansas area where a company was disposing of waste machine oil from Missouri into a Class II disposal well. This violation was discovered by the State Corporation Commission but was prosecuted by the U.S. Attorney under federal statutes because of the stiffer criminal penalties and because Kansas statutory foundation for criminal prosecution was questionable.

*House Environment  
1-27-98  
Attachment 2*

The Class II disposal and injection well program operated by the Kansas Corporation Commission is delegated from the Environmental Protection Agency to the State. Each year our program is evaluated to determine if it is comparable to the Federal program. By raising the level of criminal penalties associated with Class II wells, we are keeping the State program in line with the Federal criminal penalties.

We are also recommending three additional amendments to K.S.A. 55-904. The first amendment would prohibit the disposal of non-exempt substances in Class II disposal or injection wells. Although we believe this is currently prohibited under our rules and regulations, the amendment makes the statutory foundation clear. It would also give the State clear statutory authority to criminally prosecute cases similar to the case referred to earlier.

The second amendment would amend the definition of "saltwater" in Section (b) of K.S.A. 55-904 to make it clear that, only saltwater produced in conjunction with oil or gas production can be disposed of in Class II wells.

The third is amending subsection (d)(2) to provide for a severity level 8, nonperson felony for a second or subsequent violation of subsection (a). The penalty for a second violation should be more severe. The seriousness of a felony goes from a level 1 (most serious) to a level 10 (least serious).

Thank you. If you have any questions, I will be glad to answer them.

# HOUSE BILL No. 2419

By Committee on Environment

2-14

9 AN ACT concerning oil and gas; relating to penalties for certain violations  
10 of law; amending K.S.A. 55-708, 55-904, 55-1004 and 55-1005 and  
11 repealing the existing sections.  
12

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

14 Section 1. K.S.A. 55-708 is hereby amended to read as follows: 55-  
15 708. In addition to any penalty that may be imposed by the state corpo-  
16 ration commission, any person, firm or corporation, or any officer, agent  
17 or employee thereof, violating the provisions of this act, or any valid order,  
18 or rules or regulations of the commission, shall be guilty of a mis-  
19 demeanor; and, upon conviction thereof, shall be punished by a fine in  
20 any sum not exceeding ~~\$500~~ \$5,000, or by imprisonment in the county  
21 jail not exceeding ~~six months~~ 30 days, or by both fine and imprisonment.  
22

23 Sec. 2. K.S.A. 55-904 is hereby amended to read as follows: 55-904.

24 (a) It shall be unlawful for any person, firm, corporation, partnership or  
25 other association of persons:

26 (1) To dispose of or cause the disposal of salt water produced in  
27 conjunction with the production of oil or natural gas except in the manner  
28 and locations prescribed by K.S.A. 55-901 and 55-1003, and amendments  
29 thereto, and rules and regulations adopted pursuant to such sections;

30 ~~(2)~~ to knowingly contract for the transportation of such salt water with  
31 a person, firm, corporation, partnership or other association of persons  
32 who is not licensed under the provisions of K.S.A. 66-1,114, and amend-  
33 ments thereto; or

34 ~~(3)~~ to own or operate any motor vehicle which, while being used for  
35 the transportation of such salt water, contains an operable "trip-lever" or  
36 similar device which is installed in such manner as to allow access to any  
37 person while riding in the passenger compartment of such vehicle.

38 (b) As used in this section "salt water" means water containing more  
39 than 5,000 milligrams per liter chlorides,

40 (c) This section shall not be construed to prohibit the spreading of  
41 salt water on road beds under construction or maintenance if such spread-  
42 ing of salt water is performed in compliance with rules and regulations  
43 adopted by the secretary of the department of health and environment.  
The secretary shall be responsible for enforcing, by appropriate proceed-

(2) to dispose of any substance  
not exempt under 40 C.F.R.261.4(b)  
(5) in a CLASS II disposal or  
injection well;

(3)

(4)

and produced in conjunction  
with the production of oil or  
natural gas.

1 ings, such rules and regulations and shall immediately notify the appro-  
2 priate county or district attorney of any actual or suspected violation of  
3 this section.

4 (d) Any person, firm, corporation, partnership or other association of  
5 persons who violates any provision of subsection (a) shall be guilty of:

6 (1) ~~A class A nonperson misdemeanor and, upon conviction thereof,~~  
7 ~~shall be fined not less than \$500 nor more than \$5,000 severity level 9,~~  
8 ~~nonperson felony; and~~

9 (2) a severity level ~~10~~, nonperson felony on a second or subsequent  
10 violation of ~~paragraph (1)~~ of subsection (a).

8

strike

11 Sec. 3. K.S.A. 55-1004 is hereby amended to read as follows: 55-  
12 1004. It shall be unlawful for any person having possession, control or  
13 the use of any oil-field waste disposal well wherein salt water, mineralized  
14 brine, oil or refuse produced from any oil well is disposed of below the  
15 surface of the earth to inject such salt water, mineralized brine, oil or  
16 refuse from any oil well therein at a pressure in excess of the maximum  
17 pressure established by the state corporation commission and contained  
18 in the permit issued thereby. The state corporation commission shall  
19 maintain a permanent record of the maximum pressure established by it  
20 on each such oil-field waste disposal well.

21 Any person violating any of the provisions of this section shall be guilty  
22 of a misdemeanor, and upon conviction thereof, shall be punished by a  
23 fine of not exceeding \$1,000, or by imprisonment not exceeding six  
24 months, or by both such fine and imprisonment, and severity level 9,  
25 nonperson felony. Each day any such violation continues shall be deemed  
26 a separate offense.

27 Sec. 4. K.S.A. 55-1005 is hereby amended to read as follows: 55-  
28 1005. disposal of salt brines or other oil field wastes which do not meet  
29 the requirements for minimum depth established by the rules and reg-  
30 ulations of the corporation commission. The state corporation commission  
31 shall inspect such wells to ascertain whether they meet such requirements  
32 for minimum depth. Any person, firm, partnership, association or cor-  
33 poration violating the provisions of this act, shall be deemed guilty of a  
34 misdemeanor and upon conviction, shall be punished by a fine of not less  
35 than \$50 nor more than \$500 severity level 9, nonperson felony. Each day  
36 of violation shall be considered to constitute a separate offense.

37 Sec. 5. K.S.A. 55-708, 55-904, 55-1004 and 55-1005 are hereby re-  
38 pealed.

39 Sec. 6. This act shall take effect and be in force from and after its  
40 publication in the statute book.



## KANSAS INDEPENDENT OIL & GAS ASSOCIATION

105 S. BROADWAY • SUITE 500 • WICHITA, KANSAS 67202-4262  
(316) 263-7297 • FAX (316) 263-3021  
800 S.W. JACKSON • SUITE 1400 • TOPEKA, KANSAS 66612-1216  
(913) 232-7772 • FAX (913) 232-0917

January 27, 1998

Before the House Committee on Environment  
Statement of Donald P. Schnacke  
Kansas Independent Oil & Gas Association

RE: HB 2419 Penalties relating to the regulation of the Oil & Gas Industry.

My name is Don Schnacke, representing the Kansas Independent Oil & Gas Association. We are appearing in opposition to the passage of HB 2419.

Naturally, we look very carefully at legislation and rules and regulations that impose more restrictions and penalties on Kansas oil and gas operators. This bill imposes substantially increased fines and imprisonment for the violation of certain statutes in Chapter 55, of the K.S.A. which regulate our industry and rules and regulations of the KCC.

KIOGA serves on the KCC Oil & Gas Advisory Committee, which was created by the legislature at our suggestion several years ago. During these deliberations of that committee we have learned of only nine to ten operators who do not comply with Commission orders or pay fines which are levied against them. It is our understanding that HB 2419 is aimed at these nine to ten operators. There are nearly 3,000 Kansas operators licensed by the KCC. Obviously, those nine to ten operators represent a minuscule percentage of all Kansas oil and gas operators.

We do not believe that there is any dispute that compliance is obtained from virtually all Kansas operators on regulatory issues pertaining to the disposal of salt water, without resort to criminal prosecution. Of course there are, and always will be a few operators who do not comply with the law. The imposition of more severe penalties will not change that fact.

*House Environment  
1-27-98  
Attachment 3*

P. 2- Statement of Donald P. Schnacke

It is our understanding that a first-time severity level IX non-person felony carries recommended imprisonment from seven months to nine months, with a presumption favoring probation, and a maximum fine of \$100,000. If HB 2419 was intended to be confined to the intentional disposal of other than Class II injection wells, these penalties could perhaps be justified. However, HB 2419 is not so confined. Any violation substantially endangers the environment or is merely a violation of a technical reporting requirement can result in substantial jail time and a back-breaking fine for the offender.

Therefore, as it is written, HB 2419 does not give fair warning to those persons potentially subject to it, for as broadly as it is written, any operator (whether good or otherwise) could inadvertently or unknowingly violate KCC rules and regulations pertaining to the disposal of salt water. Moreover, HB 2419 does not have adequate guards against arbitrary or discriminatory enforcement.

Raising fines to \$5,000.00 up from \$500.00 and imposing a felony crime liability is harsh, and a threat over the heads of all operators, and a tool that could be used by some overzealous county attorney.

It costs \$100.00 to become a licensed operator. We have talked to several who were seeking to be licensed in Kansas. We warned them that a license was a privilege granted by KCC and that they must comply with Kansas law and the rules and regulations. Despite this there is always a so called rotten apple in the barrel the refuses to comply. The issue is what to do and what effect does it have on all the remaining responsible operators.

We think there is a better solution-- that being to enforce all laws, rules and regulations as they are, and in the event there is no compliance or refusal to pay fines, the Commission should take away the privilege it granted to an operator, and revoke the license. That is the biggest threat the KCC can impose and serves as a warning to all operators; the KCC will not tolerate non-compliance with its rules.

Therefore, KIOGA opposes the enactment of HB 2419, and suggests that if felony penalties are to be made available that the violations of law to which these penalties will apply be confined to substantial and intentional endangerment of our environment. We believe it to be essential to fundamental fairness that the existence of a criminal intent should be required before felony penalties can be imposed upon a person.

Donald P. Schnacke

DPS:sm