

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

The meeting was called to order by Chairperson Derek Schmidt at 8:30 a.m. on February 28, 2001 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
 Jill Wolters, Revisor of Statutes
 Betty Bomar, Secretary

Conferees appearing before the committee:

Jamie Clover Adams, Secretary, Department of Agriculture
Todd Domer, Director of Communications, Kansas Livestock Association
Doug Wareham, Kansas Grain and Feed Association and the Kansas
 Fertilizer and Chemical Association
Jarold W. Boettcher, Chairman, Fertilizer & Pesticide Regulations Task
 Force

Others attending: See attached list

SB 334 - Commercial feeding stuffs; seizures thereof

Jamie Clover Adams, Secretary, Kansas Department of Agriculture (KDA), testified in support of **SB 334**, stating the legislation is the result of the stepped-up surveillance and prevention measures the KDA is taking as a result of the emerging issues in Europe regarding bovine spongiform encephalopathy (BSE). Feed is the first line of defense against BSE, and the KDA must do its part to protect Kansas consumers and the Kansas beef industry. The KDA enforcement plan includes the following: a memorandum outlining KDA's zero-tolerance policy regarding good manufacturing practices (GMP) inspections forwarded to renderers, feed mills and feedlots that mix feed; an increase in the KDA spending cap on the feeding stuffs fee fund to allow purchase of necessary laboratory equipment and implementation of increased surveillance measures; adoption of temporary emergency regulations adopting the most recent FDA regulations regarding GMPs and the ban on the use of mammal-derived protein byproducts in cattle and other ruminant feed; and inspections and reinspections which will commence as soon as the new laboratory equipment is installed.

SB 334 gives the Secretary of Agriculture the authority to levy a civil penalty of not more than \$1,000 per violation which provides an additional enforcement tool to effectively implement the stepped-up BSE surveillance strategy. The legislation gives the Secretary the authority to seize in place any commercial feeding stuffs misbranded, adulterated or suspected to contain any substance or substances injurious to public health or the health of livestock; and is subject to the Kansas Administrative Procedures Act and the district courts. Current Commercial Feeding Stuffs law makes willful or wanton violation of the act a criminal misdemeanor and provides monetary penalties of no more than \$100 for the first violation, and between \$100 and \$500 for each subsequent violation. Current law also gives the Secretary seizure authority and allows product to be condemned, disposed or, or sold as the court may direct.

Ms. Adams stated the KDA envisions using this proposed legislation when a product is not labeled with the required precautionary statement or when a product may be commingled and thus adulterated. Suspect feed will be held in place while tests are performed at the KDA laboratory. The civil penalties provided for by **SB 334** are essential to ensure the success of BSE surveillance. (Attachment 1)

Todd Domer, Director of Communications, Kansas Livestock Association (KLA), testified in support of **SB 334**, stating the KLA supports any legislation that strengthens the KDA's ability to police the Commercial Feed Stuffs law. Mr. Domer stated the KLA and the Kansas Beef Council have put in place an aggressive action plan at the onset of heavy BSE coverage in the U.S. media. The strategy is

CONTINUATION SHEET

centered around broad distribution of factual information with the ultimate goal of putting consumers at ease by assuring them beef sold in the U.S. continues to be a wholesome, safe food. (Attachment 2)

Doug Wareham, Kansas Grain and Feed Association (KGFA), testified in support of **SB 334**, stating the bill is necessary in order to provide KDA with the appropriate tool to ensure compliance with the law and protect both the industry and the consuming public. (Attachment 3)

Doug Wareham, Kansas Fertilizer and Chemical Association (KFCA), testified in support of **SB 334**, stating it provides the KDA with adequate enforcement tools such as civil penalties to ensure industry compliance, consumer protection and protection of the environment. The KFCA further request the Committee consider the KDA's need for civil penalty authority under the Kansas Commercial Fertilizer Law.

KFCA membership has grown increasingly concerned over the significant number of bulk liquid fertilizer storage tanks that require, but fail to be protected by, containment structures in Kansas. It is important to insure that products are not lost to ground or surface water from storage facilities. The technology to store and handle plant nutrient and crop protection products is continually improving and enabling users to do a better job of protecting the environment.

Mr. Wareham submitted proposed language that would provide the KDA with civil authority under the Kansas Commercial Fertilizer Law. KFCA recognizes it is not appropriate to attached the proposed language to **SB 334**, however, would appreciate the Committee's consideration in attaching the language to an appropriate bill. (Attachment 4)

Jarold W. Boettcher, Chairman, Kansas Fertilizer and Chemical Association Fertilizer & Pesticide Regulations Task Force, testified in support of providing the KDA the authority to levy civil penalties for violations of the Fertilizer regulations. (Attachment 5)

The hearing was concluded.

The Committee commented on the incongruity of a \$1,000 civil penalty and a \$100 to \$500 criminal penalty. The Committee took no further action.

The meeting adjourned at 9:15 a.m.

The next meeting is scheduled for March 6, 2001.

STATE OF KANSAS

BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
Topeka, Kansas 66612-1280
(785) 296-3556
FAX: (785) 296-8389



KANSAS DEPARTMENT OF AGRICULTURE

Senate Agriculture Committee

February 28, 2001

Testimony Regarding SB 334

Jamie Clover Adams, Secretary of Agriculture

Chairman Schmidt and members of the committee, I am Jamie Clover Adams, Kansas Secretary of Agriculture. I am here today to talk to you about stepped-up surveillance and prevention measures the Kansas Department of Agriculture is taking in light of emerging issues in Europe regarding bovine spongiform encephalopathy (BSE). SB 334 is part of that effort.

In the past two months, BSE was found for the first time in cattle in Spain and Germany. Also capturing media attention were increased numbers of BSE cases in France, the processing and distribution of cattle from an infected herd to (but reportedly recalled from) French grocery stores, and a 19-year-old Frenchman dying of new variant Creutzfeldt-Jakob Disease.

BSE was first diagnosed in 1986 in the United Kingdom. Since that time, the United States has taken the following steps to prevent BSE from ever occurring here:

- The United States has not imported beef from the U.K. since before 1985.
- In 1989, the U.S. banned the import of live ruminant animals, and most ruminant products, from countries with confirmed BSE cases.
- In 1990, USDA initiated an active surveillance program to examine brains of U.S. cattle. More than 60 veterinary diagnostic laboratories throughout the U.S. participate in this surveillance. In ten years, USDA has tested more than 11,700 brain specimens from cattle displaying any neurological symptoms that might indicate BSE. No cases have been found.
- In 1997, the USDA prohibited the import of live ruminants, and most ruminant products, from all of Europe.
- Also in 1997, the Food and Drug Administration (FDA) promulgated regulations to prohibit the feeding of most mammalian proteins to ruminants. Approximately 10,000

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BSE feed inspections have been conducted, 80 percent of which were done by the states.

- In December 2000, the USDA banned the import of all rendered animal protein products, regardless of species, from Europe. The restriction applies to products that either originated in, were rendered or processed in, or otherwise associated with products from, Europe.

Feed is the first line of defense against BSE, and I want KDA to do its part to protect Kansas consumers and the Kansas beef industry. KDA's efforts, through the Agricultural Commodities Assurance Program (ACAP) and the Kansas Commercial Feeding Stuffs Law, are meant to supplement the efforts of the federal government. Our enforcement plan includes the following:

- A memorandum outlining KDA's zero-tolerance policy regarding good manufacturing practices (GMP) inspections was sent to renderers, feed mills and feedlots that mix feed. A copy of that memorandum is attached.
- KDA asked to increase its spending cap on the feeding stuffs fee fund to allow the purchase of necessary laboratory equipment and to implement increased surveillance measures. This was approved by the House Appropriations Committee.
- KDA has secured temporary emergency regulations, adopting the most recent FDA regulations regarding GMPs and the ban on the use of mammal-derived protein byproducts in cattle and other ruminant feed.
- KDA inspectors will begin inspections, and reinspections, after the new laboratory equipment is secured.

SB 334 provides the necessary enforcement tools KDA needs to effectively implement our stepped-up BSE surveillance strategy under the Kansas Commercial Feeding Stuffs law. Specifically, the bill gives the Secretary of Agriculture civil penalty authority of not more than \$1,000 per violation, which parallels penalties under the Federal Food, Drug and Cosmetic Act (FFDCA) for adulterated feed. It also provides for review of agency actions by the district court. Further, it gives the Secretary the authority to seize in place any commercial feeding stuffs misbranded, adulterated or suspected to contain any substance or substances injurious to public health or the health of livestock. Again, this action is subject to the Kansas Administrative Procedures Act and the district courts. I envision using it when KDA believes product is not labeled with the required precautionary statement or when a product may be commingled and thus adulterated. Suspect feed will be held in place while tests are performed at the KDA laboratory.

While no case of BSE has ever been found in the United States, it has upped the ante for the Kansas Commercial Feeding Stuffs law. Feed manufacturing is our first line of defense to prevent BSE from surfacing in the United States. KDA needs to be able to act quickly to protect

the Kansas beef industry. Further, human health is now a potential issue. If necessary, we need to be able to assure the public that quick and effective action is being taken to protect the food supply.

The current Commercial Feeding Stuffs law does not provide the tools we need to accomplish this task. The primary available tool is the stop sale order. While it prohibits further sale and movement of a product until there is evidence that the law, and rules and regulations, have been complied with, there is nothing to deter an individual from ignoring the stop sale order and moving the adulterated product into channels of trade. Current law also makes willful or wanton violation of the act a criminal misdemeanor and provides monetary penalties of no more than \$100 for the first violation, and between \$100 and \$500 for each subsequent violation. The monetary penalty will be determined by the county district court. Current law also gives the Secretary seizure authority and allows product to be condemned, disposed of, or sold as the court may direct.

KDA believes that civil penalties are essential to ensure that our stepped-up BSE surveillance is successful. It will provide a deterrent for those who need it, and it will give KDA the efficient, effective tools it needs to implement the Commercial Feedings Stuffs law. Everyone in agriculture will benefit from the effectiveness of this type of program.

I appreciate the opportunity to appear in support of SB 334. I will be glad to answer your questions at the appropriate time.

STATE OF KANSAS

BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
Topeka, Kansas 66612-1280
(785) 296-3556
FAX: (785) 296-8389



KANSAS DEPARTMENT OF AGRICULTURE

MEMORANDUM

TO: Rendering Plants, Feed Mills and Other Interested Parties
FROM: Jamie Clover Adams, Secretary of Agriculture
SUBJECT: Good Manufacturing Practices and Prohibited Material
DATE: January 31, 2001

This memorandum is to inform all interested parties of the Kansas Department of Agriculture's (KDA) zero-tolerance enforcement policy with regard to Good Manufacturing Practices (GMP) inspections.

Background

KDA routinely conducts GMP inspections at FDA-licensed and non-licensed feed mills. These inspections include verifying that firms handle prohibited material following established procedures to prevent feed containing prohibited materials from being fed to cattle and other ruminants.

Due to recent events here and in Europe, we reexamined our GMP inspection program and decided to redirect some of our resources to place greater emphasis on the BSE portion of the GMP inspection. Also, we will better utilize some of the enforcement measures available to us to prevent from entering the food chain feed that has not been produced according to established procedures.

Policy

KDA will immediately conduct GMP inspections at rendering plants producing feed and will also reinspect feed mills with a focus on:

- 1) Ensuring that feed containing prohibited material is properly labeled with a caution statement indicating that the feed is not to be fed to cattle or other ruminants.
- 2) Guaranteeing that procedures are in place to prevent commingling prohibited materials with other feed products.
- 3) Verifying proper record keeping.

Product found to contain prohibited material and not properly labeled may be seized and destroyed. Firms without established procedures to prevent commingling of prohibited materials with other feed products will be told to correct the problem immediately. These firms will be reinspected and, if deficiencies have not been corrected, feed produced between the initial inspection and reinspection may be seized and destroyed. I realize these enforcement measures may seem severe, but I believe that the potential risk to human health and the Kansas economy are adequate justification.

My expectation is that feed product manufacturers understand the requirements for manufacturing feed containing prohibited material, the seriousness of this issue and the potential impact manufacturer's actions have on Kansas industry. Consequently, rendering plants and feed mills should already be in compliance. We appreciate that the industry has cooperated in the past, and we look forward to continued cooperation as we address this very serious issue.

We will gladly provide any information or assistance anyone needs to comply with the rules governing Good Management Practices. For more information or assistance, please call Constantine Cotsoradis, ACAP program manager, (785) 862-2415.

FACT SHEET

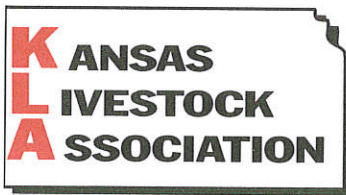
Good Manufacturing Practices

There are three important elements to Good Manufacturing Practices that relate to handling prohibited materials:

1. Label any feed product containing prohibited material with a caution statement stating that the product is not to be fed to cattle or other ruminants.
2. Provide for measures to avoid commingling or cross-contamination of prohibited and non-prohibited materials, and maintain written procedures that document these preventive measures.
3. Maintain sufficient records to track materials through their receipt, processing and distribution.

Prohibited Materials		
Meat	Leather Hydrolysate	Meat Byproducts
Dried Meat Solubles	Meat Meal Tankage	Fleshings Hydrolysate
Meat and Bone Meal	Glandular Meal and Extracted Glandular Meal	Animal Byproduct Meal
Meat and Bone Meal Tankage	Mechanically Separated Bone Marrow	Hydrolyzed Leather Meal
Animal Digest	Hydrolyzed Hair	Cooked Bone Marrow
Meat Protein Isolate	Bone Meal Cooked	Unborn Calf Carcasses
Bone Meal Steamed	Animal Liver	Meat Meal

For more information, please contact Constantine Cotsoradis, Kansas Department of Agriculture, at (785) 862-2415, or by email at ccotsora@kda.state.ks.us.



Since 1894

February 28, 2001

TO: Members of the Kansas Senate Ag Committee
FROM: Todd Domer, KLA Director of Communications
RE: Actions to avert negative BSE publicity

Thank you Mr. Chairman and members of the committee for the opportunity to update you on an issue that, I want to make as a point of emphasis, does not exist in Kansas or the U.S. and there has never been a confirmed case. For starters, I refuse to use the imaginative term initially given to this serious disease by the European media. I hope you will join me in referring to it as BSE, short for Bovine Spongiform Encephalopathy, and avoid the street name.

The Kansas Livestock Association and Kansas Beef Council put in place an aggressive action plan at the onset of heavy BSE coverage in the U.S. media. Our strategy was centered around broad distribution of factual information, with the ultimate goal of putting consumers at ease by reassuring them beef sold in the U.S. continues to be a wholesome, safe food.

In taking this message to the public, we assembled an Issue Management Team to discuss media strategies and other issues associated with BSE. The team includes representatives from the Kansas Department of Agriculture, Kansas Veterinary Medical Association, USDA Animal and Plant Health Inspection Service, Kansas Animal Health Department, Kansas State University other Kansas ag groups, KLA and the Kansas Beef Council. Each group has a sincere stake in this issue and the cattle industry. Members of the team are serving as credible spokespersons when the media calls, delivering a loud and clear message that BSE does not exist in this country, and government and the beef industry are determined to keep it out. These facts have been repeated over and over during interviews with reporters who reach millions of consumers each day.

I won't take the time to go line by line through the fact sheet each of you have received, but I encourage you, as a thought leader, to read it and be conversant on the subject. The dissemination of factual information, through the media or person to person, is key to managing this issue.

Much of the prevention strategy here in the U.S. is based on mistakes made in Europe, the only place where the problem exists. Preliminary results of a USDA-funded study at Harvard University show the risk of BSE occurring in the U.S. is almost non-existent due to the effectiveness of prevention measures in place. Final results of this important study are expected early this spring. It would be naive to believe BSE can absolutely, positively never enter the U.S., but we're about as close as a country can get without being able to make the claim. If a case were diagnosed here, firewalls are in place to prevent its spread and eradicate it quickly and effectively.

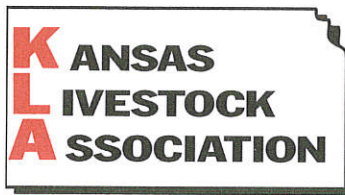
Publicity surrounding BSE has created a situation in which public fear exceeds actual risk. The National Cattlemen's Beef Association, KLA and the Kansas team are serious about rectifying the problem by providing the positive story about beef safety.

Again, thank you for this opportunity.

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Attachment # 2-1 thru 2-2



Since 1894

BSE FACT SHEET

- ❑ BSE does not exist here and there has never been a confirmed case in the U.S.
- ❑ The U.S. beef industry and government are serious about keeping it out of this country. Over the past decade, the U.S. has developed one of the most stringent, comprehensive BSE prevention plans in the world.
- ❑ The U.S. has taken aggressive steps to protect consumers and prevent the disease from entering or occurring, including the following:
 - * 1985 – U.S. banned beef imports from the United Kingdom.
 - * 1989 – U.S. banned imports of ruminant animals and ruminant products from countries with confirmed BSE cases.
 - * 1991 – U.S. banned imports of ruminant meat and edible products and most by products of ruminant origin from countries with confirmed BSE cases.
 - * 1997 – U.S. banned imports of all live ruminants and most ruminant products from all European countries, regardless of BSE status. Any products excluded from the ban have been scientifically determined not to have a risk of carrying the BSE infectious agent.
 - * 1997 – U.S. banned the use of meat and bone meal in cattle feed.
 - * 2000 – U.S. banned imports of all rendered animal protein products, regardless of species, from all European countries.
- ❑ Active surveillance has been ongoing since 1990. Food Safety and Inspection Service personnel condemn and test any animal suspected of having a central nervous system disorder. As part of the diagnostic effort, veterinary practitioners have been trained to spot clinical signs of the disease. More than 10 years of extensive testing has never turned up BSE in the U.S.
- ❑ Preliminary results of a USDA-funded study at Harvard University show the risk of BSE occurring in the U.S. is almost non-existent due to the prevention steps taken. The comprehensive final report is expected during the spring of 2001.
- ❑ Officials with the Council for Agricultural Science and Technology (CAST) recently released a report indicating prevention and control measures have been effective in keeping the disease from entering the U.S. CAST is an organization dedicated to communicating science-based information to decision makers and the general public.

KANSAS GRAIN AND FEED ASSOCIATION

STATEMENT PRESENTED BY:

KANSAS GRAIN AND FEED ASSOCIATION

PRESENTED TO:

SENATE AGRICULTURE COMMITTEE

REGARDING:

SENATE BILL 334

SENATOR DEREK SCHMIDT, CHAIR

FEBRUARY 28, 2001

KGFA, PROMOTING A VIABLE BUSINESS CLIMATE THROUGH

SOUND PUBLIC POLICY FOR MORE THAN A CEN



Senate Agriculture Committee

Date *2-28-01*

Attachment # *3-1 thru 3-2*

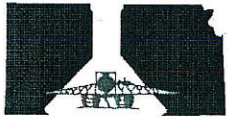
Chairman Schmidt and members of the Senate Agriculture Committee, my name is Doug Wareham and I am Vice President, Government Affairs for the Kansas Grain and Feed Association (KGFA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain and feed industry in the state of Kansas and includes over 1,100 Kansas business locations.

Thank you for the opportunity to appear in support of Senate Bill 334, which will accomplish the following:

- Provide KDA with civil penalty authority under the Kansas Commercial Feeding Stuffs Law.
- Updates the provisions of the Feeding Stuffs Law that relate to product seizure.

We concur with the Kansas Department of Agriculture that Senate Bill 334 is necessary. We believe this bill will provide KDA with an appropriate tool to ensure compliance with the law and protect both the industry and the consuming public.

KANSAS FERTILIZER AND CHEMICAL ASSOCIATION



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

Statement of the

Kansas Fertilizer and Chemical Association

Presented to the

Senate Agriculture Committee

Senator Derek Schmidt, Chairman

Regarding Senate Bill 334

February 28, 2001

Senate Agriculture Committee

Date 2-28-01

Attachment # 4-1 thru 4-4

Chairman Schmidt and members of the Senate Agriculture Committee, my name is Doug Wareham and I serve as Vice President, Government Affairs for the Kansas Fertilizer and Chemical Association (KFCA). KFCA is the professional trade association for the state's plant nutrient and crop protection industry. KFCA's over 550 members are primarily retail dealers scattered across Kansas which sell and custom apply crop protection chemicals and fertilizers for Kansas producers.

While the Kansas Fertilizer and Chemical Association does not have specific policy regarding the Kansas Commercial Feeding Stuffs Law, our organization does believe it is imperative that the Kansas Department of Agriculture be equipped with adequate enforcement tools to enforce the laws and regulations they are charged with, whether they relate to weights and measures, pesticide use, water use, feed manufacturing or fertilizer use. It should be noted, that the Kansas Department of Agriculture (KDA) currently has civil penalty authority to ensure laws and regulations relating to weights and measures and pesticide use are enforced in Kansas. It should also be noted that during this very session, the Kansas Legislature is considering two important pieces of legislation, which will enable KDA to utilize civil penalties to better enforce existing laws and regulations. House Bill 2316, which was recently adopted by the Kansas House on a vote of 112 to 12 provides civil penalty authority under the Kansas Water Appropriation Act and the bill you are considering this morning Senate Bill 334, will strengthen the Department's ability to enforcement the Kansas Commercial Feeding Stuffs Law by also providing civil penalty authority.

As I indicated earlier, the Kansas Fertilizer and Chemical Association supports providing KDA with adequate enforcement tools such as civil penalties to ensure industry compliance, consumer protection and protection of the environment. Therefore, we do appear as a proponent to Senate Bill 334, but respectfully request that this committee also consider the Kansas Department of Agriculture's need for civil penalty authority under the Kansas Commercial Fertilizer Law.

During the past few years, our membership has grown increasingly concerned over the significant number of bulk liquid fertilizer storage tanks that require, but fail to be protected by, containment structures in Kansas. During the past year, I've heard terms such as "epidemic", "accident waiting to happen" and "outrage" used by retail dealers who do comply with the Fertilizer Law when they describe those individuals that consistently and knowingly skirt the law.

The Kansas Fertilizer and Chemical Association was instrumental in the passage of the bulk fertilizer containment law and regulations and is currently working with the Department and other agricultural organizations to develop 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 ground or surface water from storage facilities. The technology to store and handle plant nutrient and crop protection products is continually improving and enabling our members to do an even better job of protecting the environment.

KFCA has and will continue to take the business of containing bulk fertilizer and pesticides very seriously. We believe our successful efforts last year to create an industry supported environmental clean-up fund to address contamination further shows our resolve to protect the Kansas environment. Furthermore, we believe providing the Kansas Department of Agriculture with appropriate enforcement tools to enforce the provisions of the Fertilizer Law and subsequent regulations will ensure future cases of ground or soil contamination are caused by fertilizers are minimized.

Attached with my statement is draft language that would provide the Kansas Department of Agriculture with civil penalty authority under the Kansas Commercial Fertilizer Law. This language is similar, in fact almost identical, to the authority the Department is currently provided under the Kansas Pesticide Law. After visiting with Chairman Schmidt, I understand and appreciate his desire to keep Senate Bill 334 clean. We agree it is an important issue that deserves your focused attention. We simply ask that you consider our request regarding the need for better enforcement of the provisions and regulations of the Kansas Commercial Fertilizer Law and hope an opportunity will arise where this committee can take action on this important matter as well.

At this time, Mr. Chairman I would like to introduce Mr. Jerry Boettcher of Boettcher Enterprises who I've asked to also comment on this issue. Mr. Boettcher serves as Chairman of our organization's Fertilizer and Pesticide Regulations Task Force and can provide you with a practical perspective on this issue. Once again, I thank you for the opportunity to appear in support of this issue and I would be happy to respond to questions at the appropriate time.

Civil Penalty Language for Fertilizer Violations

New Sec. 3. K.S.A. 2-1201b is hereby amended to read as follows: 2-1201b. (a) It shall be deemed a violation of this act for any person to sell or distribute in this state any custom blended fertilizer who does not hold a valid license as required by this act; or fail to comply with the requirements of K.S.A. 2-1201a hereof, and the provisions of K.S.A. 2-1208, except subsection (1) (a), and the penalties as provided therein shall apply.

(b) Any person or custom blender who violates any provision of article 12 of chapter 2 of the Kansas Statutes Annotated and amendments thereto or the rules and regulations adopted, may incur a civil penalty in an amount not more than \$5,000 per violation, and in the case of a continuing violation every day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. Any civil penalty assessed pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

Senate Agriculture Committee
Senator Derek Schmidt, Chairman
February 28, 2001

Testimony of Jarold W. Boettcher, President
Boettcher Enterprises, Inc., Beloit, Kansas
Kansas Fertilizer and Chemical Association
Fertilizer & Pesticide Regulations Task Force Chairman

Civil Penalties for Violation of Kansas Department of Agriculture Fertilizer Regulations

Thank you Mr. Chairman and members of the Senate Agriculture Committee. I appreciate the opportunity to testify today and would simply state that personal experience has taught me that regulations, whether they apply to commercial feeding stuffs or other programs administered by the Kansas Department of Agriculture, must be supported by adequate enforcement mechanisms.

Our company is heavily regulated by the Kansas Department of Agriculture, Kansas Department of Transportation, and the Kansas Department of Health and Environment. We have considerable and on-going contact with people in these agencies regarding our business conduct and operations. Today, we ask that in addition to adding significant new enforcement power to the commercial feeding stuffs law that you also consider providing much need enforcement power for the Kansas Commercial Fertilizer Law. Under current law, the Department of Agriculture must use largely an administrative process and depend upon the willingness of the County Attorney to file charges to correct violations or to get the immediate attention of a fertilizer dealer, for example, who might be in violation of Department regulations.

In previous discussions with members of the Department, we have discussed the need for some additional enforcement measures. Some months ago, I expressed concern in such a meeting regarding the ability of the Department to effectively enforce fertilizer regulations under current law. Specifically, I would draw your attention to what I believe to be a growing problem for our industry and our State. Current law is specific as to the circumstances under which the containment and load pad regulations apply. With the best of intentions at the time, however, this law was drafted in 1991 to enable the continued use of temporary, small storage for irrigation purposes at the wellhead. Over time, varying interpretation of this part of the regulations has led to a proliferation

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of the use of temporary storage tanks which are, by any objective measure, not temporary storage. In my opinion, the unregulated and uncontrolled expansion of the use of temporary or portable tanks to store fertilizer is on the threshold of being a serious problem for our industry and potentially creates environmental exposures not anticipated under current law. Should current trends continue, I would expect to see more and more of these tanks in use as even responsible dealers bow to competitive pressures and engage in unlawful practices.

The Department of Agriculture is limited in its ability to enforce the law by simple logistics. Many of these tanks are in remote locations. Some are moved from time to time. Some are not. I have been asked by officials of the Department to help them locate such tanks. So far, I have declined to give directions. Virtually any fertilizer dealer in the State of Kansas could tell you about unregulated tanks, but they will be reluctant to report their neighbor or competitor. Regrettably, some dealers have promoted the use of such tanks in order to gain an economic advantage. In my judgment, increasing the potential penalty for violations of the fertilizer regulations will get the attention of industry participants. Self-enforcement will be more effective and actual use of the civil penalty might be used rarely. To give the Department of Agriculture more ability to better enforce the law will only benefit all citizens of the State of Kansas and provide additional protective measures for the environment.

Mr. Chairman, I appreciate your willingness to allow me to bring this issue to your attention today. S.B. 334 seems appropriate and will strengthen the Kansas Department of Agriculture's ability to enforce the Kansas Commercial Feeding Stuffs Law. I respectfully ask for the same consideration with regards to the Kansas Commercial Fertilizer Law and subsequent regulations on behalf of the Kansas fertilizer and chemical industry. I would be happy to stand for questions.