

Senator Tyson declared the hearing on **SB 37** closed.

The last conferee was Clint Riley, Ks Dept. of Wildlife and Parks, who testified as a proponent of **SB 87**. He stated it was a department bill that merely cleaned up the language (Attachment 7).

Senator Tyson declared the hearing on **SB 87** closed.

Senator Tyson asked for a motion to act on **SB 87**. Senator Corbin moved that SB 87 be considered favorable for passage, seconded by Senator Schmidt. Motion passed.

Senator Tyson said **SB 37** would be worked at a later date.

The meeting adjourned at 9:23 a.m.

The next meeting is scheduled for February 2 at 8:30 a.m.

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: February 1, 2001

NAME	REPRESENTING
Chuck Layman	KDHE
JOSH TAPP	KDHE
Tom BRUND	GBBA
Edd Johnson	KLA
Constantine Cotsoctis	KDA
Tom PALACE	ANCA OF KS
Joe Liphan	KS Co-op Council
Jere White	KCGA-K6SPA
David Miller	DOB
Mike Beam	KS LUSTK. ASSN.
Jamie Clover Adams	KDA
GREG FOLEY	KDA
Clint Riley	KDWP
JOHN C. BOTTENBERG	KS ETHANOL PRODUCERS
Dorothy Cole	Sen. Tyson
Laguna Cole	Sen. Tyson Staff



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

**Waiver Explanation Presented to
Senate Committee on Natural Resources**

by

**Kansas Department of Health and Environment
Senate Bill 37**

Section 211(c)(4) of the federal Clean Air Act [42 USCA 7545(c)(4)] prohibits States from controlling or prohibiting any component or characteristic of a fuel or fuel additive that the U.S. Environmental Protection Agency (EPA) has addressed, unless a waiver is granted under Section 211(c)(4)(C). Section 211(c)(4)(C) authorizes a waiver only if the State demonstrates that control or prohibition of the fuel component or characteristic is necessary to achieve a National Ambient Air Quality Standard.

KDHE has discussed the fuel waiver issue with the US Environmental Protection Agency (EPA) staff in Region VII and at Headquarters in regard to MtBE. The EPA's current interpretation of section 211(c)(4) of the federal Clean Air Act [42 USCA 7545(c)(4)] prevents states from controlling or prohibiting the use of MtBE in gasoline unless a waiver is granted.

So far 10 states have initiated legislation or an executive order to ban or phase out MtBE. It is not clear what the EPA's position will be if any of these states go forward with an actual ban on MtBE.

California has a fuel waiver request pending before EPA seeking authorization to waive the 2% oxygenate requirement for reformulated gasoline. The oxygenate requirement is primarily met using MtBE. This waiver request is the means by which California seeks to implement the Governor's executive order banning MtBE in gasoline sold in California. A Canadian company that produces MtBE has filed an action under NAFTA in response to the California executive order. California has also been sued by the Oxygenated Fuels Association, an association promoting the use of MtBE.

The EPA is trying to ban MtBE through the TSCA program, but it is estimated that it will take 10 years for results. Senator Bob Smith, Chairman of the Environmental & Public Works Committee has set a goal to provide a MtBE ban bill this session. Congressman James C. Greenwood has introduced H.R. 20, "To amend section 211 of the Clean Air Act to modify the provisions regarding the oxygen content of reformulated gasoline and to improve the regulation of the fuel additive, methyl tertiary butyl ether (MTBE), and for other purposes."

Senate Natural Resources Committee

Date 2-1-01

DIVISION OF ENVIRONMENT
Bureau of Air and Radiation

Attachment # 1

STATE OF KANSAS

BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture

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KANSAS DEPARTMENT OF AGRICULTURE

Senate Natural Resources Committee

SB 37

February 1, 2001

Jamie Clover Adams, Secretary

Chairman Tyson and members of the Committee, I am Jamie Clover Adams, Secretary of the Kansas Department of Agriculture. I am here today to support Senate Bill 37 because it will protect the state's waters from further pollution and it also provides an opportunity for ethanol to become the oxygenate of choice, increasing domestic marketing opportunities for Kansas grain sorghum and corn.

Environmental Impacts of MTBE

Much has been said and written regarding the prevalence of MTBE in the nation's waters, including Kansas waters. You heard from the Kansas Department of Health and Environment (KDHE) during the 2000 Session that MTBE has been a chemical of concern for underground storage tank sites since 1991. KDHE analytical data from 818 sites reveals that MTBE contamination was present at 88 percent of the sites. They also report that MTBE plumes move much faster in groundwater than other gasoline constituents. In addition, in late 1999, an EPA blue ribbon panel recommended the phase-out of MTBE in the nation's fuel supply because of environmental concerns.

As you know, KDA routinely tests motor fuel quality in retail channels under the Kansas Weights and Measures law. KDA tests approximately 2000 motor fuel samples per year. These samples are analyzed for oxygenates, including MTBE. Between 1996 and February 1999, 34% of these samples contained MTBE with a detection rate ranging from 0.1 to 15.4 volume percentage. While this bill places enforcement authority with KDHE, KDA will continue to provide KDHE with retail sampling results to supplement any sampling done at the terminal to enforce the proposed MTBE prohibition.

Fuel Pump Labeling

Section 1(d) requires that fuel pumps which dispense motor vehicle fuel containing MTBE be labeled. This requirement is consistent with current Weights and Measures regulations which adopt the NIST H-130 fuels section requiring a pump be labeled with the predominate oxygenate if the fuel contains at least 1.5 mass percent oxygenate. In both instances, labeling

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allows the consumer to make the choice with her pocketbook or his wallet.

Ethanol – Fuel Additive of Choice

Removal of MTBE as an approved fuel additive enhances environmental protection and is also an opportunity for agriculture. For the past decade, ethanol has served well as the oxygenate of choice in certain parts of the United States, including Chicago and Milwaukee.

During calendar year 1999, Governor Graves served as Chairman of the 23-state Governors' Ethanol Coalition (GEC). In October 1999, the GEC completed a study, *The Fate and Transport of Ethanol-Blended Gasoline in the Environment*, that clearly shows ethanol's environmental friendliness. The study concludes that:

1. Because biodegradability decreases with increased chemical branching, highly branched oxygenated organic compounds, including MTBE, will have a higher residence time in the environment. In contrast, the structural characteristics of ethanol favor rapid biodegradation.
2. Microorganisms capable of metabolizing ethanol are widely distributed in the environment and relatively rapid rates of ethanol biodegradation have been measured under aerobic and anaerobic conditions.
3. Ethanol is a short-lived compound in surface waters and subsurface aquifers.

One of the primary purposes of this study was to include its results in a package submitted by the GEC to California state officials so that as Governor Gray Davis' phase-out of MTBE proceeded opportunities for ethanol use in California could expand. KDA staff represented Governor Graves in presenting this, and other information from the GEC, at the California Energy Commission hearings in Sacramento in November 1999. In January 2000, the California Environmental Policy Council gave ethanol a clean bill of health for the environment. Unfortunately, over the past year efforts to bring ethanol to the California market have not moved as quickly as KDA would have liked.

The California gasoline market holds the potential for using over 200 million bushels of feed grains for ethanol production, which some economists estimate could raise the price of corn by as much as 20 cents per bushel. Gasoline marketers in the northeastern United States have also started to substitute ethanol for MTBE with similar market opportunities available for expanded ethanol use.

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EPA Waiver

I respectfully ask the Committee to carefully consider Section 1(j) which delays implementation of SB 37 until the Environmental Protection Agency (EPA) grants Kansas a waiver to control or prohibit MTBE. I would submit the State of Kansas does not have to wait

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for action by EPA on this matter. The Clean Air Act requires motor vehicle fuel refiners to add an oxygenate to the fuel to improve air quality. It does not require the use of MTBE. As I have outlined above, there are other options, namely ethanol.

I appreciate the opportunity to appear in support of SB 37. I am available to answer questions at the appropriate time.



WRITTEN STATEMENT

TO: Kansas Senate Natural Resources Committee
FROM: Jere White, Executive Director
DATE: February 1, 2001
SUBJECT: Senate Bill No. 37

The Kansas Corn Growers Association and Kansas Grain Sorghum Producers wish to submit this testimony in support of S.B. 37, a bill that would eliminate the use of MTBE in Kansas.

We agree that MTBE appears to pose serious threats to the groundwater of Kansas. But there is the additional issue of consumer preference and their right to make informed decisions. For that reason, we support a change in the proposed language that would require labeling in 2001, rather than 2002.

We also believe that a threshold or tolerance might provide utility in providing for a level of minimal content of MTBE in fuel sold in Kansas, while the federal government sorts through its response to this issue. For instance, the small amounts that might be related to residues in pipelines should be considered.

In previous discussions related to MTBE and the labeling of it on Kansas fuel pumps a few years back, the oil industry had tried to dismiss MTBE as a non-issue because it wasn't really used much in Kansas. Experience in other states would indicate that a failing storage tank leaking fuel with MTBE is a concern, regardless of the prominence in sales. The U.S. Geological Survey reports that MTBE has been detected in 27 percent of urban wells nationwide. Indeed, MTBE is now the second most commonly found chemical in groundwater, behind only chloroform. Leaking underground storage tanks, spills at the land surface (often the result of car wrecks), urban runoff, and motor watercraft are sources of MTBE water contamination. One gallon of MTBE is enough to pollute 26 million gallons of water. MTBE has a very unpleasant odor and taste

that can be detected in water at extremely low concentrations. And the fact is that we currently have groundwater detections of MTBE in Kansas.

MTBE should be of particular concern to our state in our metropolitan areas, such as Wyandotte and Johnson Counties. While the role that Reformulated Gasoline (RFG) will play in those markets is unsure, there likely will be a fuel issue that remains. MTBE has been used for both octane and oxygen. But ethanol can be used for the same purposes. Some would suggest that eliminating the oxygen requirement in RFG is a solution. However there is a sound reason why the federal Clean Air Act requires gasoline in some areas to be blended with an oxygenate such as MTBE or ethanol. The U.S. Environmental Protection Agency credits reformulated gasoline with significant clean air improvements in many of America's cities. Eliminating the oxygenate requirement is not the answer. Ethanol is.

Ethanol is a domestically produced, renewable resource made from corn, grain sorghum and other agricultural feedstocks. It provides the clean air benefits of an oxygenate without the negative environmental and health effects of petroleum-based MTBE. The State of California, the hotbed of MTBE controversy, confirmed last year that ethanol does not have negative environmental issues associated with its distribution and use.

Contrary to what some in the petroleum industry would have you believe, the U.S. Department of Agriculture and other sources indicate that ethanol could successfully replace MTBE nationwide by 2004 - with negligible effects on gasoline prices and no disruption in supply. Because of this tremendous potential, expanding the ethanol market is one of the top priorities of the KCGA, KGSPA and our national affiliates. Growing value-added markets such as ethanol is especially important at a time when farmers are facing near-record low commodity prices.

Replacing MTBE with ethanol is good for farmers, good for consumers, good for the environment and good for Kansas.



PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON NATURAL RESOURCES

RE: SB 37 – Prohibiting sales of motor-vehicle fuel containing MTBE.

**February 1, 2001
Topeka, Kansas**

**Presented by:
Bill R. Fuller, Associate Director
Public Policy Division
Kansas Farm Bureau**

Chairman Tyson and members of the Senate Committee on Natural Resources, we certainly appreciate this opportunity to express Kansas Farm Bureau support for SB 37. The bill prohibits sales in Kansas of motor-vehicle fuel containing methyl tertiary-butyl ether (MTBE).

My name is Bill Fuller. I serve as the Associate Director of the Public Policy Division for Kansas Farm Bureau.

Farm Bureau support for SB 37 is based on the commitment of our farm and ranch members to protect water quality and the desire of grain producers to increase the utilization of ethanol.

Kansas Farm Bureau member-adopted policy encourages additional efforts to prevent contamination of groundwater and surface water in Kansas. KFB policy contains statements calling for protecting, enhancing, improving and protecting water quality.

News reports have identified MTBE as a pollutant present in several groundwater sources in Kansas. MTBE is an octane enhancer and is used to make gasoline burn cleaner and produce less air pollution. It is very soluble in water and has been found in soil and groundwater near lead

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We are fortunate that the Kansas Department of Health and Environment is ahead of many states in detecting, monitoring and developing treatment systems to remove MTBE from public water supplies. However, the fact remains that MTBE pollutes water and has contaminated groundwater at a number of sites in Kansas.

We believe Kansas has a good alternative to MTBE. The grain-rich state of Kansas produces a significant supply of ethanol. The construction of additional ethanol production plants is under consideration. This source of renewable energy protects air quality, reduces a severe water quality risk and provides another market for Kansas grain.

Record low grain prices are causing economic stress in farm country. In fact, the Chairman of the Department of Agricultural Economics at K-State yesterday told the Senate Agriculture Committee that net farm income is declining. He projected, when all the data is collected and analyzed, net farm income of Kansas Farm Management Association members would fall 29 percent to \$30,000 in 2000 from \$42,000 in 1999. Additional grain marketing opportunities will not only result in stronger grain prices, but will also strengthen the Kansas economy.

The 435 farmers and ranchers serving as Voting Delegates representing the 105 county Farm Bureaus at the 82nd Annual Meeting of Kansas Farm Bureau strengthened and broadened the Farm Bureau policy resolution on "Agricultural Product Utilization:"

We support increased efforts to develop, promote and utilize traditional and alternative products derived from the crops and livestock produced by our state's farmers and ranchers.

The increased utilization of crop-based fuels will reduce U.S. reliance on foreign oil, expand grain markets, improve air quality and protect water quality. We support consumer education, promotion efforts and tax credits to expand the production and use of crop-based alternative fuels. We encourage development of an ethanol blend that has the same octane rating as unleaded gasoline in order to improve price competition at the pump and more fully meet the needs of all consumers All fuel marketers, including farmer cooperatives,

should make ethanol blend fuel and bio-diesel available to consumers. We encourage agricultural producers to take the lead in utilizing crop-based fuels in their vehicles and machinery. Vehicles operated by the State of Kansas should utilize fuel that contains ethanol. Wherever available, machinery and equipment owned by the state should be powered with bio-diesel.

We appreciate this opportunity to express our support for SB 37 that would achieve the desirable goals of protecting water quality, increasing net farm income and strengthening the Kansas economy.

Thank you!



MEMO TO: Senate Committee on Natural Resources
FROM: Thomas M. Palace, Executive Director of the Petroleum Marketers and
Convenience Store Association of Kansas
DATE: February 5, 2001
RE: Comments on SB 37

Mr. Chairman and members of the Senate Natural Resources Committee, I appreciate the opportunity to offer my comments regarding SB 37, which deals with the ban of MTBE.

I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), a statewide trade association that represents over 360 independent petroleum marketers and convenience stores throughout Kansas.

PMCA has a number of concerns with SB 37. They are:

Penalties

Under the penalties of the bill, a petroleum retailer could be fined up to \$10,000 if more than 0.5% of MTBE is found in a tank through the testing by the Department of Agriculture Weights and Measures Division. PMCA finds this troublesome due to the fact that a petroleum marketer sells only what is purchased at the terminal from a supplier (i.e., Phillips, Amoco etc.). The supplier determines what components make up motor fuel. The marketer is simply the selling agent. The marketer has no control as to what components make up motor fuel and yet, could be penalized because the fuel blend has too much MTBE.

Economic Impact

There is an economic impact that petroleum marketers and consumers could anticipate should this bill become law. As an example, potentially, if a marketer orders a load of product (semi-load) and the bill of lading states that the MTBE content is over the allowed limit (0.5%) he would not, by statute, be permitted to receive the load of fuel and thus be without product until another load could be delivered. In this scenario, a location could be potentially shut down for a couple of days. Also, if this should occur in a community where there is only one filling station, the entire community would suffer as well.

Quality and Quantity Testing

In 1996 the petroleum industry initiated SB 704, a bill that provides for quality and quantity testing of motor fuel. Our industry wanted to police itself to make sure that when a consumer purchased 5 gallons of gas, that they were actually getting 5 gallons of gas. When testing quality, the Weights and Measures Division tests fuel to make sure that when a consumer buys mid-grade or premium fuel, the pumps are accurate. The fiscal note to provide this service is 1/2 of one cent per barrel (50 gallons) paid by the marketer. The state takes in \$850,000, of which \$250,000 goes directly into the general fund, and Weights and Measures gets \$600,000 to do the testing. Realistically, due to the fact that PMCA started the testing program and is paying for it, under this bill marketers could be severely penalized, using a program that they developed.

Using the same philosophy, PMCA would suggest that the state use a portion of the money that goes into the State General Fund or look to the terminal owner/operator or the suppliers to pay for the testing

devices that could prevent MTBE from leaving the terminal, thus avoiding the problem of petroleum marketers having more than the 0.5% amount of MTBE in their tanks,

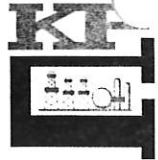
Labeling

The bill also calls for labeling requirements that would require labeling on pumps, indicating that “this fuel contains MTBE.” Suppliers frown upon decals on gas pumps and may even have language in their contracts addressing this issue. This could be a contractual issue and perhaps the committee should seek legal council on this issue.

Waiver

I understand that in section (i) of the bill the state may need to obtain a waiver from the EPA before the state can ban MTBE. I am not an attorney, but I have heard from my colleagues in other states that a waiver requirement is needed to ban MTBE.

Mr. Chairman, and committee members, I appreciate the opportunity to discuss PMCA’s concerns regarding SB 37, and if you need any further information please don’t hesitate to call me.



TO: Members of the Senate Natural Resources Committee
FROM: Ken Peterson, executive director
DATE: February 5, 2001
RE: Senate Bill 37, legislation to ban MTBE in gasoline

I appreciate the opportunity to offer these comments on Senate Bill 37, a resurrected version of legislation introduced last session to ban MTBE in gasoline. Senate Bill 37 is the final version of a conference committee report killed last year in the House by a 36-86 vote. Earlier in the 2000 session, the House Environment Committee tabled the bill.

As I told the Committee on February 1, I had not planned to testify on the bill since Senate Bill 37, as introduced, was one our industry could live with. While we regard the legislation as unnecessary, we took the position to neither support nor oppose the bill if it remained intact.

In light of comments by witnesses at the February 1 hearing seeking to change the bill, I make the following points to counter their remarks and, I hope, put the issue in perspective.

The Kansas Petroleum Council is a trade association that represents several refiners who supply motor fuel to all parts of our state. Members include Phillips, Conoco, BP (Amoco), and Texaco.

My goal is to make this legislation as palatable as possible to our membership.

BACKGROUND: MTBE, a derivative of natural gas, is an oxygenate. It is used as a component in Reformulated Gasoline that is required in parts of the nation with serious air quality problems. RFG is not used in Kansas because the state – other than metropolitan Kansas City where a new cleaner-burning fuel will be introduced this spring – has no air quality problems.

Our trade association is neutral on the issue of oxygenates.

Since many members of the Committee are new to the issue this year, some points we made last year should be restated:

1. An EPA waiver is necessary for Kansas to enact an MTBE ban. Senator Vratil, a member of last year's Environment Committee, succeeded in adding the EPA waiver requirement (i) after he checked provisions of the Clean Air Act. EPA has imposed controls applicable to oxygenates for Reformulated Gasoline and

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Kansas Petroleum Council
Comments on Senate Bill 37, MTBE Legislation
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conventional fuel. The Oxygenated Fuels Association has filed legal action in some areas where bans have been implemented, including California, New York state and Chicago.

2. A decision on MTBE should be a uniform and national policy. Information given to the committees last year was an accurate assessment of events – that the EPA was close to a decision on a national MTBE phase-out. Election-year politics intervened between Congress and the Administration, however, and nothing happened. This year, congressional committees with jurisdiction over MTBE and the oxygenate mandate have made a decision their first priority. The debate continues. Discussions and decisions about MTBE are going on right now within the refining industry as well. Kansas should not make itself an island, but instead should wait until a decision on MTBE is made at the national level.
3. The pump labeling requirements (d) in the bill are unnecessary, onerous and would be inaccurate. The labeling requirements contain penalties that are far too severe for the perceived infraction. The term “in excess of the detection limit” is too broad and could prove especially burdensome if standards change, i.e., to parts per million or parts per billion. The labeling provisions in the bill should be stricken.

Thank you for your attention to our concerns about Senate Bill 37.



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

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SENATE BILL NO. 87

**Testimony Provided to
Senate Committee on Natural Resources
February 1, 2001**

Senate Bill No. 87 would amend current furharvester license requirements so that a person may attest to possession of a valid furharvester education certificate at the time of purchase of a furharvester license. Any person born after July 1, 1966 is required to complete furharvester education in order to furharvest in this state. An Attorney General's Opinion released in January 2000 addressed language in the hunter education requirement similar to the current furharvester law, and stated that the law would require the hunting license buyer to physically produce the actual hunter education certificate at the time of purchase of a hunting license. HB 2103, passed during the 2000 Legislative Session, amended the law to explicitly allow a person to attest to completion of hunter education when purchasing a hunting license. SB 87 would do the same for furharvester licenses.

As with hunting licenses, the department has allowed individuals to attest to completion of furharvester education for several years, and the practice has come into question largely because of the A.G. Opinion. The department supports SB 87 for a number of reasons. First, the department believes it is inappropriate to require private vendors to enforce the state law in this instance by refusing to sell a furharvester license to an individual. We have concerns about what, if any, action would be appropriate if the department discovered that a vendor had sold a license without the furharvester education certificate being shown. Instead, the department believes responsibility for checking furharvester education compliance should rest with department employees, in the same manner as with furharvester licenses and other required issuances of the department.

Also, allowing a person to attest to completion of furharvester education would enable the sale of furharvester licenses over the phone or over the internet. Thus, SB 87 would be consistent with the department's efforts to remove unnecessary barriers from participation in the sport of furharvesting.

Perhaps most important, SB 87 would make furharvesting law consistent with the hunter education law as approved by the Legislature during the 2000 Session. Both hunting and furharvesting have consistently been shown to be very safe sports, and compliance rates for education requirements are consistent with the compliance rates for other department rules and regulations. Therefore, we respectfully request approval of SB 87.

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Senate Natural Resources Committee

Date 2-1-01

Attachment # 7