

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Representative Joann Freeborn at 3:30 p.m. on February 18, 2003 in Room 231-N of the Capitol.

All members were present except: Representative Dan Thimesch - excused  
Representative Vaughn Flora - excused

Committee staff present: Raney Gilliland, Legislative Research  
Emalene Correll, Legislative Research  
Mary Torrence, Revisor of Statutes  
Mary Ann Graham, Secretary

Conferees appearing before the committee: Bill Bider, Director, Bureau of Waste Management, KS Department Health and Environment, 1000 SW Jackson Ste. 320, Topeka, KS 66612-1366  
Tom Whitaker, Exec. Director, KS Motor Carriers Assoc., 2900 SW Topeka Blvd. PO Box 1673, Topeka, KS 66601-1673  
Thomas Palace, Exec. Director, Petroleum Marketers & Convenience Store Assoc., 201 NW Highway 24, Ste 320, PO Box 8479, Topeka, KS 66608-0479  
Gary Blackburn, Director, Bureau of Environmental Remediation, KS Department Health and Environment, 1000 SW Jackson Ste. 410, Topeka, KS 66612

Others attending: See attached sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She reviewed the committee agenda for Thursday, February 20, possibly a sub-committee report will be given on **HB2197** - Assistance animals for handicapped and disabled persons. A hearing on **HB2247** - An act concerning environmental contamination of real property; providing for prohibition or restriction of activities on and use os such property. A bill similar to this one was worked in this committee in the past but was not worked by the Senate. Some changes have been made to the bill. Possible action on **HB2196** - Storage tanks; applicability of certain prohibitions.

The Chairperson opened public hearing on **HB2218**.

**HB2218:** Hazardous waste; unlawful acts, technical correction.

The Chairperson welcomed Bill Bider, Director, Bureau of Waste Management, KDHE, to the committee. He testified in support of the bill. This bill was introduced by the department to correct a statutory citation found in KSA 65-3441, which is part of the state hazardous waste law. To correct an error which has existed for years, this bill changes the reference to KSA 65-3431 in paragraph (a)(1) to KSA 65-3451. The need for this change was identified during a meeting of the Joint Committee on Administrative Rules and Regulations last year. While there is no history of problems caused by this error, it did result in confusion in the Rules and Regulations Committee when members were searching for the statutory provision which establishes the hazardous waste generation rates which trigger more stringent management standards. More serious problems could also result from this error. It is possible that the more flexible disposal standards for the smallest category of hazardous waste generators could be challenged because that flexibility is currently tied to the wrong statute. (See attachment 1) Committee questions and discussion followed.

The Chairperson closed the hearing on **HB2218** and asked if the committee wished to take action.

Rep. Dan Johnson made a motion the bill be passed favorably and placed on the consent calendar. Rep. Joshua Svaty seconded the motion. Motion carried. Rep. Lee Tafanelli will carry the bill on the House Floor if pulled from the consent calendar.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT at 3:30 p.m. on February 18, 2003 in Room 231-N of the Capitol.

Chairperson Freeborn opened the hearing on **HB2196**.

**HB2196: Storage tanks; applicability of certain prohibitions.**

Raney Gilliland, Legislative Research Department, explained the bill. Committee questions and discussion followed.

The Chairperson welcomed Tom Whitaker, Exec. Director, Kansas Motor Carriers Association, to the committee. He testified in support of the bill representing their 1,250 member firms and specifically, the for-hire tank truck carriers. This bill places total responsibility on the tank owner for depositing motor fuel in an unregistered storage tank. Kansas law requires the owner of a motor fuel storage tank to annually register such tank with the Kansas Department of Health and Environment prior to July 31 of each year. The registration fee is \$10 per tank. Recently, for-hire tank truck carriers have been fined in amounts up to \$2,000 for placing motor fuel in an unregistered storage tank. (See attachment 2)

Thomas Palace, Exec. Director, Petroleum Marketers and Convenience Store Association (PMCA), was welcomed to the committee. He testified in support of the bill on behalf PMCA, a statewide trade association representing over 360 independent petroleum companies and convenience stores throughout Kansas. This bill amends the Kansas Storage Tank Act, concerning unlawful acts related to dispensing of fuel in a storage tank that has not met the tank requirements set forth by the Kansas Department of Health and Environment. Tank owners are required to apply for or renew their tank permits annually with KDHE. The bill specifies that the tank owner shall be the only party liable (civil fines) if they have not been issued a permit from KDHE and consequently allow a non-permitted tank to receive fuel. To receive a permit a tank owner must provide, to KDHE, proof that they have: leak detection/inventory control, corrosion protection, paid the tank fee, and spill and overfill protection for their tanks. (The permit also allows access to the Underground Petroleum Storage Tank Trust Fund.) (See attachment 3)

Committee questions for proponents and discussion followed.

The Chairperson welcomed Gary Blackburn, Director, Bureau of Environmental Remediation, KDHE, to the committee. He testified in opposition to the bill and believes the proposed legislation will remove the responsibilities placed on the fuel suppliers. The provision proposed for deletion assists the agency in enforcing underground tank program requirements and ensures the safest possible storage of this material. Petroleum is a regulated substance because of the substantial risk of harm to the public and the environment posed by releases of petroleum into the environment. As a regulated substance, petroleum products should be managed carefully from production through distribution to limit the risks of release. Many of the chemical components contained in petroleum products are toxic, some are known carcinogens, along with the fire and explosion hazards with which we are familiar. We should attempt to use any tools available that assists us with preventing releases that may bring the public into contact with these chemicals. Current law requires that fuel suppliers do not place fuel in un-permitted tanks. This reduces the likelihood that tanks not meeting requirements will be used an that leaks will occur. In addition, this provision aids the department by reducing the burden of numerous inspections to ensure that fuel is not being put into these tanks. (See attachment 4)

Committee questions of the opponent and discussion followed. Tom Winn, Section Chief, Storage Tank Section, Bureau of Environmental Remediation, Kansas Department of Health and Environment, was in attendance to answer questions.

The Chairperson closed the hearing on **HB2196** and appointed a sub-committee to discuss **HB2196**, Rep. Lee Tafari, chair, Rep. Gary Hayzlett and Rep. James Miller.

The meeting adjourned at 4:50 p.m. The next meeting is scheduled for Thursday, February 20, 2003.

# HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 18, 2003

NAME	REPRESENTING
<del>John Prather</del>	Groendyke Transport
Tom Whitaker	Ks Motor Carriers Assn
Andy Shaw	PMCA of Kansas
Wendy M. Burns	KAPA - KRMCA
Mary Jane Stattelman	KGFPA/ KARA
Gwen Appone	KSI Agency Assoc.
Kerrie J. Bacon	KCDc
Kristen Wheeler	KU Student observing
David Sexson	observing



K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

**Testimony on House Bill 2218**  
presented to  
**House Environment Committee**  
by

Bill Bider, Director, Bureau of Waste Management  
February 18, 2003

The Department of Health and Environment appreciates this opportunity to provide testimony in support of House Bill 2218. This bill was introduced by the department to correct a statutory citation found in K.S.A. 65-3441, which is part of the state hazardous waste law. To correct an error which has existed for years, this bill changes the reference to K.S.A. 65-3431 in paragraph (a)(1) to K.S.A. 65-3451. The need for this change was identified during a meeting of the Joint Committee on Administrative Rules and Regulations last year.

While there is no history of problems caused by this error, it did result in confusion in the Rules and Regulations Committee when members were searching for the statutory provision which establishes the hazardous waste generation rates which trigger more stringent management standards. More serious problems could also result from this error. It is possible that the more flexible disposal standards for the smallest category of hazardous waste generators could be challenged because that flexibility is currently tied to the wrong statute.

"Small quantity hazardous waste generators" (companies that generate less than 25 kilograms of hazardous waste per month) may dispose of their waste in municipal solid waste landfills or at other permitted solid waste facilities, such as household hazardous waste facilities. Larger generators must send their waste to permitted hazardous waste treatment, storage, or disposal facilities at significantly higher costs.

Thank you for your time and consideration in passing this bill to avoid future confusion and to protect the disposal flexibility available to small quantity generators.





# KANSAS MOTOR CARRIERS ASSOCIATION

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TOM WHITAKER  
Executive Director

## Legislative Testimony

Presented by the Kansas Motor Carriers Association  
Before the House Environment Committee  
Representative Joann Freeborn, Chairman  
February 18, 2003

### In Support of House Bill No. 2196

#### MADAM CHAIRMAN AND MEMBERS OF THE HOUSE ENVIRONMENT COMMITTEE:

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this afternoon representing our 1,250 member firms and specifically, the for-hire tank truck carriers. KMCA supports House Bill No. 2196.

The bill places total responsibility on the tank owner for depositing motor fuel in an unregistered storage tank. Kansas law requires the owner of a motor fuel storage tank to annually register such tank with the Kansas Department of Health and Environment prior to July 31 of each year. The registration fee is \$10 per tank. Recently, for-hire tank truck carriers have been fined in amounts up to \$2,000 for placing motor fuel in an unregistered storage tank.

Tank truck carriers receive a bill-of-lading telling the carrier to pick up fuel at a pipeline rack or a refinery and transport the fuel to a certain location for delivery. All shipments of motor fuel are tracked from origin to destination for motor fuel tax purposes by the Kansas Department of Revenue. Nothing on the bill-of-lading states whether the tank is registered or not. It is the truck driver's responsibility to make sure the location is displaying the proper registration certificate before unloading the fuel. KDHE uses the truck driver to enforce the tank registration requirements.

KMCA believes it is solely the responsibility of the tank owner to make sure that the fuel ordered is being delivered to a registered tank. KDHE can readily identify those tank owners who fail to register by the July 31 deadline and take appropriate action against them.

The trucking industry is already overwhelmed by new requirements on hazardous material transporters because of the threats of terrorism against our country. Truck drivers have enough to worry about just making sure the load of fuel arrives at its destination in a safe and timely manner. KMCA believes elimination of possible penalties on the truck driver and placing the responsibility squarely on the tank owner is the fair and common sense direction in which we should move.

KMCA respectfully requests the House Environment Committee act favorably on House Bill No. 2196. We thank you for the opportunity to appear before you today and would be pleased to respond to any questions you may have.

*House Environment  
2-18-03  
Attachment 2*



Testimony: House Environment Committee  
From: Thomas M. Palace  
Date: February 18, 2003  
RE: House Bill 2196

Madam Chairman, and Members of the House Environment Committee:

My name is Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 360 independent petroleum companies and convenience stores throughout Kansas.

We appreciate the opportunity to appear before you in support of HB 2196.

HB 2196 amends the Kansas Storage Tank Act, concerning unlawful acts related to dispensing of fuel in a storage tank that has not met the tank requirements set forth by the Kansas Department of Health and Environment (KDHE). Tank owners are required to apply for or renew their tank permits annually with KDHE. The bill specifies that the tank owner shall be the only party liable (civil fines) if they have not been issued a permit from KDHE and consequently allow a non-permitted tank to receive fuel. To receive a permit a tank owner must provide, to KDHE, proof that they have: leak detection/inventory control, corrosion protection, paid the tank fee, and spill and overfill protection for their tanks. (The permit also allows access to the Underground Petroleum Storage Tank Trust Fund.)

Currently, KDHE can issue civil penalties to all parties involved in dropping fuel in non-permitted tanks. All parties includes; the tank owners, truck driver, distributor, transportation company and the operator of the location. We feel the tank owner, not "any person" as it states in statute 65-34,109, should be solely responsible for civil penalties incurred when KDHE requirements are not met. They own the tank and know whether or not they have a valid permit or not. To force the "other parties" involved in the transaction to act as the police or the enforcer of the statute goes too far.

Petroleum marketers believe the current language in the statute places undue burden on the "other parties." For common carriers it is difficult, if not impossible, to determine whether a tank is permitted or not. Also, if the common carrier delivers fuel to a tank and then finds out that the tank is out of compliance, there is a fiscal impact as well as a physical impact...what to do with the 8-10 thousand gallons of product?

PMCA believes that KDHE needs to be the enforcer of this statute. They know on each registration deadline of July 31, the tank owners that are not in compliance. With 6 district offices around the state, we believe that KDHE can report the location of the noncompliant tanks to the district office, and have a representative check the tanks and take the necessary steps to correct the problem.

Thank You.

Petroleum Marketers and Convenience Store Association of Kansas  
201 NW Highway 24 • Suite 320 • PO Box 8479  
Topeka, KS 66608-0479  
785-233-9655 Fax: 785-354-4374

*House Environment  
2-18-03  
Attachment 3*



**K A N S A S**

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

**Testimony on House Bill 2196  
to  
House Environment Committee  
Presented by Gary Blackburn**

**February 18, 2003**

Chairperson Freeborn and members of the House Environment Committee, I am pleased to appear before you today in opposition to the House Bill 2196. The proposed legislation will remove the responsibilities placed on the fuel suppliers. The provision proposed for deletion assists the agency in enforcing underground tank program requirements and ensures the safest possible storage of this material. Petroleum is a regulated substance because of the substantial risk of harm to the public and the environment posed by releases of petroleum into the environment. As a regulated substance, petroleum products should be managed carefully from production through distribution to limit the risks of release. Many of the chemical components contained in petroleum products are toxic, some are known carcinogens, along with the fire and explosion hazards with which we are familiar. We should attempt to use any tools available that assists us with preventing releases that may bring the public into contact with these chemicals. Current law requires that fuel suppliers do not place fuel in un-permitted tanks. This reduces the likelihood that tanks not meeting requirements will be used and that leaks will occur. In addition, this provision aids the department by reducing the burden of numerous inspections to ensure that fuel is not being put into these tanks.

If House Bill 2196 is passed, KDHE will have to perform thousands of additional inspections to maintain current levels of compliance. Many of the enforcement efforts would require months of staff time and many inspections to document violations, collect the fines and convince the tank owner that they should bring their tanks into compliance. Under the present statutory structure, the fuel supplier is notified they are delivering fuel to an unpermitted tank while enforcement actions are taking place against the tank owner. In most cases, the fuel supplier will inform the tank owner that their tanks must be permitted before more fuel will be delivered to them. This provides more motivation for the tank owner to comply with the regulations than fines alone.

DIVISION OF ENVIRONMENT  
Bureau of Environmental Remediation

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*House Environment  
2-18-03  
Attachment 4*



KDHE has developed a number of ways to help the fuel suppliers comply with the existing provisions. First, all tanks are permitted on the same cycle from August 1 to July 31 of the following year, so that the permits can be confirmed once a year for their regular customers. A list of all of the permitted tanks is available on the agency's website for easy access. Department staff answer many calls each year from fuel suppliers who review their list of customers to make sure that each is permitted. An 800 number has been provided to limit calling expense to the fuel supplier. Some fuel suppliers request that new customers fax them a copy of their permit before fuel will be delivered.

Over several years, KDHE has worked hard to establish a program that is efficient and meets the needs of the regulated community while protecting the public. The agency has partnered with key associations and other interested groups to minimize the impact these requirements posed to the industry. Over the years, very few formal enforcement actions have been taken by the agency. During the last two years KDHE has begun to step up enforcement actions because many of the same operators have failed to meet program requirements each year. Information has been provided to the regulated community that enforcement efforts would be increased.

The UST fund expends over \$10 million dollars each year responding to contamination that has occurred from UST releases. Most of this expense is for ongoing corrective action from about 1500 past releases. If House Bill 2196 is passed, it is likely that more releases will occur as a result of the change and UST fund expenses will increase. The fuel suppliers may indicate their efforts to assist the state with this enforcement costs them business. Their assistance is needed to prevent additional releases from threatening the financial solvency of the UST fund. Many fuel suppliers obtain reimbursements from the UST and AST funds for the cost of their remedial efforts resulting from the operation of their tanks. The benefit they derive from their ability to access the funds should offset the cost and inconvenience they incur. The public is the ultimate party who benefits from the success of the program through a cleaner environment.

The existing provisions have allowed the state of Kansas to operate a very effective program on limited resources. The department permits about 6,600 tanks each year and obtains nearly 100% compliance with the tank regulations with a total revenue of about \$260,000. Most of the revenue for this program is supplied by a grant from the Environmental Protection Agency (EPA). The agency deposits fees collected from program operations to the State General Fund (SGF) to support appropriations from SGF to match the federal grant. The Kansas program has the lowest annual tank registration fee of \$10 per year, of any state in the country.

If House Bill 2196 is passed, KDHE will need additional resources to enforce the notification and permitting requirements of this program. Additional releases will also be expected because many of the USTs that have been abandoned over the last few years may well be brought back into use. Even with stepped up enforcement, it will likely take the agency months to enforce the rules and remove these unsafe tanks from service. During this time, releases will undoubtedly occur. The estimated financial impact of this statute change will be about \$800,000 per year. With about \$300,000 being needed from SGF or a fee increase to \$50 per tank per year for additional staffing.