

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 18, 2003 in Room 313-S of the Capitol.

All members were present except:

Representative Peggy Long - Excused
Representative Dan Williams - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Gordon Smith, Hutchinson Police Department
Ron Hein, Kansas Restaurant & Hospitality Association
Rebecca Rice, Kansas Clubs & Associates
Ron Pope, Kansas Trial Lawyers Association
Philip Bradley, Kansas License Beverage Association
Representative Doug Patterson
Jerry Gentry, Kansas Ignition Interlock
Sheila Walker, Director of Vehicles, Department of Revenue
Dan Russ, Milan, Kansas
Bary Tevington, Wellington, Kansas
Bob Krehbiel, Kansas Independent Oil & Gas Association

The hearings on **HB 2292- providing immunity from liability for licensee participating in the program that provides alcohol level indicators**, were opened

Gordon Smith, Hutchinson Police Department he played a video of several news casts showing that the Last Call Alcohol Level Indicator sticks work. The pilot program started in Hutchinson in 2001-2002. It was designed to educate the public about the amount of alcohol consumption which would put them over the legal limit and to reduce drinking and driving. The proposed bill is not suggesting that the driver receive immunity but that the bars that participate in the program receive it (Attachment 1).

Ron Hein, Kansas Restaurant & Hospitality Association, appreciated the intent of the bill but was concerned because he believes that there isn't any liability on restaurants that serve alcohol now and therefore the proposed bill is not needed. He suggested that the bill be amended to state to the court that there is no liability since liability never existed in the first place (Attachment 2)

Rebecca Rice, Kansas Clubs & Associates, was concerned that the bill infers that there is dram shop liability, holding a liquor licensee responsible for the liquor consumption of its customer (Attachment 3).

Ron Pope, Kansas Trial Lawyers Association, opposed the proposed legislation suggesting that bars would not care how much liquor they served because they would have immunity (Attachment 4).

Philip Bradley, Kansas License Beverage Association, commented that he would be happy to work with Mr. Smith to promote the program, but was concerned with the implied liability to the server (Attachment 5).

The hearings on **HB 2292** were closed.

The hearings on **HB 2217 - ignition interlock devices, certificate requirements**, were opened.

Representative Doug Patterson appeared before the committee as the sponsor of the proposed bill. He reminded the committee that legislation was passed several years ago which mandated interlock on a second & subsequent conviction. Due to the low number of interlocks on vehicles, he believes that the law is not being followed. The bill would provide that the licensee must provide a certificate showing that they had an

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 18, 2003 in Room 313-S of the Capitol.

interlock installed on their vehicle for a period of one years and have successfully completed the program.

Jerry Gentry, Kansas Ignition Interlock, had found that most of those convicted plea for another year of suspension instead of installing an interlock (Attachment 6).

Sheila Walker, Director of Vehicles, informed the committee that they only have six months worth of data to work with and that 1,500 should have interlocks on their automobiles. About 25% are complying with the law and installing them, the rest are either not driving or driving illegally (Attachment 7)

The hearings on HB 2217 were closed.

The hearings on HB 2081 - prohibiting operation of oil & gas wells in violation of certain standards, were opened.

Dan Russ, Milan, Kansas and Bary Tevington, Wellington, Kansas appeared as proponents to the bill. They requested the bill because of the noise coming from pumping jacks in and around their communities. They have tried to work with the oil companies suggesting that they install mufflers on the pumps but few have. The proposed bill would state that no person shall operate a oil or gas well which makes noise that is plainly audible beyond the property line of where the well is located. (Attachments 8 & 9)

Bob Krehbiel, Kansas Independent Oil & Gas Association, has worked with companies to place mufflers on pumps that have been rather noisy but believes that communication and cooperation between the neighbors is working well in most instances (Attachment 10)

Upon committee discussion, Chairman O'Neal suggested that Mr. Russ contact Kansas Department of Health & Environment because they have the authority to set rules & regulations for instances such as this.

Hearings on HB 2081 were closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for February 20,2003 at 3:30 p.m. in room 313-S.

PROJECT

LAST CALL

H. JUDICIARY

2-18-03

Attachment: 1

TABLE OF CONTENTS

Section A

Copy of house Bill # 2899 2292

Section B

Project Last Call

Letter to businesses

Press letter

Project Last call Instructions

Last Call Disclaimer

Section C

News Articles

Section D

Overview (organization that have tested breath sticks)

Breath Stick Studies

Section E

Tetrad Labs

Letter from President of TetRad Labs

Copy of GSA contract

Government Agencies sold to

SECTION

A

**COPY OF HOUSE BILL # ~~2899~~ 2292
AND RECOMMENDED ADMENDMENTS**

HOUSE BILL No. 2899 2292

By Representative O'Neal

2-13

9 AN ACT concerning civil procedure; relating to immunity from liability;
10 program that provides alcohol level indicators.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) Any party who agrees to participate in a program that
14 provides ready-to-use disposable units designed to test the alcohol con-
15 tent of exhaled air to persons free of charge in an effort to educate the
16 public on alcohol consumption limits shall not be liable to such person
17 or any party who is harmed in any way by the actions of such person.

18 (b) The immunity provided by this section shall include, but not be
19 limited to, liability under:

20 (1) The Kansas product liability act, K.S.A. 60-3301 *et seq.*, and
21 amendments thereto;

22 (2) a wrongful death action;

23 (3) a personal injury action;

24 (4) an action to recover costs of property damage; and

25 (5) the Kansas tort claims act, K.S.A. 75-6101 *et seq.*, and amend-
26 ments thereto.

27 Sec. 2. This act shall take effect and be in force from and after its
28 publication in the statute book.

Amendments

① ^{Licensee} LIABILITY Immunity to all parties, excluding
the consumer of an Alcoholic beverage

② ~~(LIABILITY Immunity only to parties interested in providing
devices to general public for purposes of education
only)~~

③ Training of Program handled by A.B.C (Alcoholic Beverage
Control)

④ Publication in the Register instead of Statute Book

SECTION B

“PROJECT LAST CALL”

LETTERS TO BUSINESSES

LETTER TO PRESS

PROJECT LAST CALL INSTRUCTIONS

LAST CALL DISCLAIMER



HUTCHINSON POLICE DEPARTMENT TRAFFIC UNIT

210 W. 1ST HUTCHINSON, KANSAS 67501

PHONE NUMBERS:

**OFFICE: (316) 694-2854 SEATBELT SAFETY: (316) 694-2853
FAX: (316) 694-2807**

PROJECT: "LAST CALL"

Dear Business Owner/Manager,

The Hutchinson Police Department, Budweiser Beer and Tetrad Labs (makers of Last Call Breath Sticks) will be sponsoring a new project in the City of Hutchinson. This will be a pilot program that will start Labor Day Weekend 2001 and last to Labor Day weekend 2002.


We are looking for establishments, such as yours, to participate in this program called "Project: Last Call." This is a Public Awareness Program, designed to educate the general public and reduce drinking and driving. Over half of all Car Crashes are alcohol related and over half of all people that drink and drive do not realize that they have consumed the limit or are over the legal limit allowed (0.08 % B.A.C.) in the State of Kansas. "PROJECT: LAST CALL" will place in your establishment disposable breath sticks, to be given to those persons that the program will target.

We will be meeting at the Law Enforcement Center (210 w.1st Hutchinson Kansas) in the auditorium on August 9th 2001 at 6pm. There will be a representative from the Hutchinson Police Department, Budweiser Beer and Tetrad Labs on hand to answer any questions you may have. Also there will be an Attorney present to answer any of your legal questions. We will also be conducting a demonstration of the proficiency of the breath sticks.

We would appreciate it if you would mark your calendar and plan on participating in this new program.

Please contact us at:
(620) 694-2853 or 2854 to advise whether you will be attending the meeting.

Thank you.

Sincerely,
PTLM. G.A. Smith
Hutchinson Police Department


HUTCHINSON POLICE DEPARTMENT TRAFFIC BUREAU

PRESS INFORMATION

Sir or madam,

I believe that we can gain positive support from our citizens in Hutchinson. By showing that we do care about stopping the drinking and driving by education. The Hutchinson Police Department in cooperation with Budweiser, Tetrad Labs (Makers of the Intoxilizer Stick). will be introducing a new program called PROJECT: "LAST CALL."

PROPOSAL: Create a public awareness program to help reduce drinking and driving in the City of Hutchinson and Reno County. This would be a Pilot Program that would run from the weekend of September 3, 2001 through the weekend of September 3, 2002 (Labor Day). A one year (1) program in which statistical information would be gathered to determine the impact of the program.

PURPOSE: To educate the owners of our local drinking establishments on how they can get their patrons to drink more responsibly and reduce the number of persons that would be leaving their establishment drinking and driving. We would also be educating the public on what their legal limit is.

SCOPE: Several drinking establishments in the City of Hutchinson will be asked to volunteer to participate in this project. Each of these establishments would be provided the materials and training at no cost to them for this project. They would be required to follow a set of guidelines established for the program. During the course of the year. Statistical data would be gathered and compared with past data to see if our target was met.

GOALS:

1. Evidence shows that a great number of people who drink do not know or realize that they are over the legal limit of liquor consumption. And if they knew they probably would choose not to drive. With the introduction of the Intoxilizer Stick into the drinking establishment and being made available to the patron. The patron would be made aware and would hopefully take the appropriate (responsible) action. Such as not drive home.
2. Evidence shows that over half of all traffic crashes are alcohol related. Reduce the number of person who drink and drive (the ones that we don't stop) by making these Intoxilizer Sticks available to the drinker.
3. After the pilot program. These Intoxilizer Sticks would be made available to all drinking establishments at a low cost to the owner.

PTLM. G.A. Smith
Hutchinson Police Department





HUTCHINSON POLICE DEPARTMENT TRAFFIC UNIT

210 W. 1ST HUTCHINSON, KANSAS 67501

PHONE NUMBERS:
OFFICE: (316) 694-2854 SEATBELT SAFETY: (316) 694-2853
FAX: (316) 694-2807

PROJECT: "LAST CALL"

LETTER OF INSTRUCTION

This Program is a Public awareness program to help reduce Drinking and Driving in the City of Hutchinson. DRIVERS only will be asked to participate in this program.

Procedural steps to be taken.

Posting of PROJECT: "Last Call" Poster.

Post(display) Poster in a prominent place. Where it's visible for customers to see coming and going.

Contacting Target patron. (Drinking in your establishment)

1. Establish how much your patron has had to drink (at least 5-7 drinks) by your sales.
2. Establish if the patron is driving or not (THIS PROGRAM IS FOR DRIVERS ONLY).
3. Advise the patron that you are participating in PROJECT: "Last CALL" with the City of Hutchinson. And ask if they would be willing to participate. (Example) "Hi. We are participating in PROJECT: "Last Call" sponsored by the City of Hutchinson. Would you be willing to assist us by your participation"? (If they say yes. Continue to next steps. If they say no thank them and leave).
4. Give them the Waiver and questionnaire and a glass of water.
5. Verbally explain how to use the Last Call Intoxilizer Stick. (Step-by-Step). Emphasizing drinking the water before using the stick.
6. Advise them to read the waiver.
7. Advise them to fill out the questionnaire before using the stick (Tell them that the questionnaire is totally CONFIDENTIAL) have them answer the first 3 questions in your presence.
8. Tell the patron to take the test (Watch them to make sure they do the test right). After he/she blows in the tube. Tell them to wait two (2) minutes for the results. And ADVISE them if the tube crystals turn whitish blue or green to please let someone else drive or let you call someone for them. Then you may leave. Tell the patron to leave the questionnaire on the table or bar before they leave.
9. **YOU DO NOT HAVE TO WITNESS THE COLOR OF THE TUBE.**

ntacting Target Patron (Intoxicated person entering your establishment wanting to order a drink)

1. Establish if the patron is driving or not. (If he/she answers yes continue on).
2. Advise the patron that your business is participating in PROJECT: "Last Call" sponsored by the City Of Hutchinson. Before you can serve him any liquor to drink. He has to participate in the program. (If he/she says yes then continue on).
3. If he/she says no. Refuse to serve that person any liquor.
4. Give them a glass of water. (advise them to drink it)
5. Give them the test (YOU MUST WITNESS THE COLOR CHANGE).
6. If the result is a whitish blue or green. Advise the patron that you cannot serve them any more liquor.

Unless the following conditions are met. DO NOT SERVE THEM LIQUOR.

1. The patron agrees to call someone to pick he/she up **OR** allows you to call someone for them. But in all cases agrees not to drive if you serve he/she.
6. If this patrons results come back negative and If you do serve this patron. When he/she is ready to leave. Give he/she another test accordingly.

If you have any questions. Please contact us at:
(620) 694-2853 or 2854 to advise whether you will be attending the meeting.

Thank you.

Sincerely,
PTLM. G.A. Smith
Hutchinson Police Department

Last Call™

Alcohol Level Indicators



LAST CALL is a ready-to-use disposable unit designed to test the alcohol content of exhaled air.

INSTRUCTIONS FOR USE

1. Wait 15 minutes after last alcoholic drink (alcohol takes about 15 minutes to have an effect on your system) OR drink a glass of water before taking the test.
2. Squeeze the middle of the outer plastic tube between thumb and forefinger to break inner glass ampule containing yellow crystals. Use tester immediately. SQUEEZE ONLY ONCE. DO NOT CRUSH OR BEND TUBE.
3. Take a deep breath and BLOW VERY HARD continuously through end of tube for 12 seconds. EXHALE HARD THROUGH TUBE – DO NOT INHALE
4. Shake tester to distribute crystals evenly in the viewing area. Lay tester flat for two (2) minutes. Identify color change of the majority of the crystals. A GREENISH color cast indicates alcohol is present. A BLUE cast indicates that the alcohol level is at or above the level being tested (.08).

NOTE : Accuracy of test results may not be reliable if the test is not conducted according to instructions. This detector contains indicator chemistry which will undergo a color change in the presence of alcohol contained in the breath of the subject. This product provides a reliable indication of alcohol present in the exhaled breath of the test subject when the instructions are rigidly followed. The manufacturer, suppliers, agents, distributors and retailers make no warranty, expressed or implied, as to the ability of this device to determine or detect intoxication of the subject or to accurately indicate the subject's blood alcohol level. Decisions and/or actions based on the use of this product by any person shall be at such person's own risk. The manufacturers, suppliers, agents, distributors and retailers assume no responsibility for consequences of subjects who test negative to this device but who later show that they are under the influence of, or their judgement has been impaired by, alcohol. Use immediately after breaking glass vessel. Do not use if glass vessel containing crystals is ruptured prematurely or if crystals are not yellow.

WARNING - This product should be used only as a screening device and is only an indication of the possible presence of alcohol in the blood of the test subject. Correlation between breath alcohol and blood alcohol content depends on many variables, including altitude. The exact concentration of alcohol in the blood of the test subject cannot be accurately determined by using this device. This device is not intended to legally determine blood alcohol level. No inference of intoxication is to be made from a positive indication. This product is guaranteed to be free from manufacturer's defects. This warranty is expressly made in lieu of any and all other warranties expressed or implied including the warranties of merchantability and fitness for a particular purpose or use. There are no warranties expressed beyond the description of the product contained on this package. The warrantor expressly disclaims liability for incidental, special or consequential damages of any nature.

To the maximum extent permitted by law, the user of this product expressly waives any claims or causes of action against the manufacturer, supplier, distributor or retailer, their agents, employees, officers or directors, for any costs, expenses, damages, liabilities, civil or criminal penalties, personal injury or death or property damage arising from directly or indirectly out of the use of this product. KEEP OUT OF REACH OF CHILDREN. Do not immerse in liquid. Do not inject. If injected, induce vomiting and contact your physician.



Tetrad Labs LLC Westmont, IL 60559
www.lastcall.org

6 67488 19981 9

SECTION C

NEWS ARTICLES

SON AREA



DEBI ROBERTS/The Hutchinson News

lage Thursday with a John Deere
or storage at River Valley Farms

with courts

attorneys didn't please Taylor.

"Ah, so that's how you do it - divide and conquer," he said. "You do it so we won't point fingers at each other? I ain't pointing no finger at him."

"We do this for your benefit," Becker shot back.

Taylor also complained about the state's failure to file charges against Richardson. He alleged that Richardson struck the first blow in the incident, hitting Taylor on the back of his head with a pipe.

"Why not just come in and shoot me with a gun and be through with it?" he said. "This is going to come back to haunt somebody."

But Deputy District Attorney Tom Stanton said after the hearing that he has no proof of the Richardson attack save Taylor's allegation.

Taylor complained at length about the lack of action against Richardson.

"Do you know the message

Last Call appeals to some taverners

Product tells drinkers if they've had too much to drive safely

By JOHN HENDERSON

The Hutchinson News

All the time, people Gordon Smith pulls over on suspicion of drunk driving say they wouldn't have driven if they had realized they were over the legal limit.

"At the same time, I keep getting bar owners asking how they can know when their customers are too drunk," Smith said.

Smith, a Hutchinson Police officer, led a forum with local tavern owners and operators, along with fellow officer Ernie Underwood, Thursday evening at the Law Enforcement Center.

The purpose was to get some bar operators to offer their patrons Last Call, a product designed to quickly and cheaply determine if someone's blood alcohol level is above 0.08 percent, the legal impairment level in Kansas and most other states.

About 20 tavern operators, along with a handful of Coors executives and one from Kwik Shop all showed up.

At the end of the meeting, nine had signed up to receive a limited supply of Last Call. Smith said there will be another meeting a week before Labor Day, the proposed start date of the project.

Last Call is a plastic tube filled with sand that has been sterilized and treated with chemicals that react to alcohol by changing color. Someone suspected of being impaired cracks the tube open, then blows into it for 12 seconds. If the person is impaired, their breath should change the sand from yellow to pale blue.

These tubes are available for personal use over the Web at www.lastcall.org - packages of two cost \$4.95.

But to kick off Project Last Call in Hutchinson, the first such program started by a city, Smith and Underwood contacted a local Budweiser beer distributor to help fund the program.

Bob Bush, owner of City Beverage Co., said he was at first skeptical about Last Call.

"The more I learned about this, and the more I thought about it, I thought this was a good idea," he said.

Smith said the program is still looking for a full-time sponsor that could offer local bars Last Call at a reduced price, ideally less than \$1.

"That dollar could save someone's life, or keep your customers from getting a DUI," he said.

A few owners asked that if they can't keep someone Last Call identifies as drunk from driving, would the bar be liable if a wreck occurs?

Trish Rose, a local civil attorney, said there's no guarantee that someone won't file suit. But the law tends to protect those who volunteer to prevent harm, she said.

"You wouldn't increase anyone's risk by giving them this product," Rose said. "You wouldn't increase the risk of a third party that they might injure."

Kenny VonFeldt, manager of McGraw's, said he would give the project a try. He said he realizes the tubes won't do much for heavy drinkers.

"Those guys won't care," he said. "The ones who are more apt to care will have four to six beers over the course of an entire evening and don't know if they're over the limit."

Hospice makes plans for free-standing care center

KANSAS

Bars try for a safer last call

Plan to curb drunken driving unites Hutch police, Budweiser

By CLARA KILBOURN

The Hutchinson News

An alliance between the Hutchinson Police Department and a local beer distributor seems an unlikely partnership.

But officials from both hope that fewer people will drink and drive.

Hutchinson Police Officer Gordon Smith said the department will furnish free breath checks to bar patrons during a year-long pilot project, "Last Call," administered by the police department and funded by City Beverage Co., 311 South Kirby.

"How often have you heard of Budweiser and a police department getting together and getting along?" Smith asked.

Bar and restaurant owners have been invited to an information meeting at 6 p.m. Aug. 9 at the Reno County Law Enforcement Center, where they'll learn more about Last Call.

Smith came up with the idea of supplying local bars with breath-test sticks, made by Illinois-based Tetrad Labs, after he saw them advertised on television.

"We know that over half the accidents in this country are alcohol-related," Smith said. "We're never going to stop all the drunk drivers, but the person who doesn't intentionally go out and drink and drive, it's giving them another chance."

The sticks, about 4 inches in length, require a person who takes the test to wait 15 minutes after the last drink, or drink a glass of water, blow into the tube for 15 seconds, and then wait two minutes.

The .08 legal intoxication level shows up as a bluish green color, Smith said.

"If a patron is sitting there drinking, the waitress, waiter or bartender knows how much they've



SANDRA J. MILBURN/The Hutchinson News

Hutchinson Police Officer Gordon Smith holds some of the alcohol breath-test tubes that will be distributed to local bars as part of a year-long partnership between the Hutchinson Police Department and City Beverage Co. to cut down on drunken driving.

had," he said. "That's when they hand out the breath stick and then if it's positive, tell the person they would like them to find someone else to give them a ride home."

Bar owners can't stop people from driving, but they can suggest finding a ride, Smith said. The tube also will be available when someone comes into a place of business and the wait staff observes that they may already be over the limit.

There is no liability to bar owners because the test is a free service, Smith said, but an attorney will be available at the Aug. 9 meeting to address concerns.

City Beverage, a local beer distributor, has agreed to finance the pilot project at a cost of about \$1 per stick, manager Ann Bush said.

The program begins Labor Day weekend and extends through Labor Day 2002.

Smith has already talked to more than half of the city's 21 bar owners. He also will contact restaurant managers who sell alcohol.

Jay Gilley, who owns a bar on East 4th Avenue, said he likes the idea.

"I want to keep inebriated people off the road," he said. "It's not good for business."

Smith estimated that half the people who drink and drive don't know they're over the limit. They wouldn't drive if they knew it, he said.

Sandy Tull, owner of the Jack of Clubs bar on Whiteside, agreed.

"Right now most of our customers aren't really sure how much they can drink and be safe," she said.

Tetrad Labs spokesman Larry Hector said the breath tubes have been on the market for at least 10 years and are used mainly by human resource departments of companies that operate heavy construction equipment.

"It proved so accurate Tetrad Labs decided to make it available to the general public," Hector said.

Smith's hopes the program is successful enough to go statewide and perhaps nationwide.

"Imagine Budweiser, Tetrad Labs and the local law enforcement community joining together all over the U.S. and putting it to work," he said. "Imagine how big that would be."

For more information about the project, visit the Web site www.lastcall.org.

state
condition

ity man remains in
hospital after he lost
ing.
tensive facial trau-

Charles Armentrout
t was witnessed by
ch of a residence.
982 Chevrolet pick-
lephone phone pole

removed upward and
led out the driver's
e to rest on the pas-

atherine's Hospital,
ed to Via Christi
Francis Campus,

investigation.

ze in Meade

bble fire ignited by
pped by high winds,
later that evening.
George Martin said the
before it was extin-

oeral, Ingalls, Plains,
a., were called out at

ile south of Meade

oon for child

ed late this week in a
ose mother was mur-

District Court Judge
dy hearing for 5-year-
of Crystal Casey and

usto Casey's par-
ey, nson, since
arly M and charged
ey's death.

Up on the roof

Misperception
marks drop

SECTION D

OVERVIEW:

ORGANIZATION THAT HAVE TESTED BREATH STICKS

NHTSA (National Highway Traffic Safety Administration)

COLORADO DEPARTMENT OF HEALTH

DENVER POLICE DEPARTMENT

**DRUG CONTROL & TEACHING CENTER
KING'S COLLEGE, LONDON**

BREATH STICK LAB STUDIES:

TOXTRAP,INC. (1/03/00)

Overview

Alcohol plays an important and integral part in almost every society in the world. While not all alcohol usage is problematic, alcohol remains the most abused drug in history. In the United States, alcohol plays a part in half the automobile fatalities and nearly half of all industrial accidents. For employers, alcohol abuse accounts for two thirds of all substance abuse complaints and depletes a similar percentage from the health care benefit budgets of American companies. While the responsible, adult use of alcohol has its appropriate place in our society, an increasing number of public safety officials, corporate officers and small business managers are concerned about problems with alcohol abuse in the work place and in public places, particularly when the substance abuser is in control of a vehicle or heavy equipment. As a result, there is a demand for more effective detection of alcohol impairment, where possible, or of blood alcohol content (BAC) in individuals engaged in work or driving.

Traditional testing has centered on the testing of blood alcohol content rather than impairment, since impairment is significantly difficult to prove without highly specialized and specific evaluation of the subject. Generally, professionals in the testing field have found it advantageous and practical to test blood alcohol content and to rely on set levels of content in lieu of proof of impairment. Generally, .10% or .08% BAC levels have been used by legislators and jurists as the benchmark for the regulation of behaviors related to, or negatively affected by, alcohol. Unfortunately, these testing modalities (such as Breathalyzer) require highly specific and accurate instrumentation which is both expensive and immobile. As a result, alcohol testing has presented problems for testing professionals in both the public or private sectors. The high cost of sensitive equipment that cannot be transported has meant that most private sector needs for alcohol testing have gone unfilled until the introduction of disposable breath testing devices.

The BreathScan® Alcohol Detector

The BreathScan® Alcohol Detector is considered by many to be the best example of these devices. BreathScan® is a portable, disposable alcohol detector with an extremely low unit cost that makes it suitable for general use in the workplace or other remote locations. Various independent agencies have conducted validation studies that examined the BreathScan® instrument's accuracy and suitability as a preliminary screening device when used to determine probable cause for more extensive testing. The following is a survey of their findings.

U.S. Department of Transportation, National Highway Traffic Safety Administration

The NHTSA looked at the use of BreathScan® specifically as an aid to police officers in making an objective evaluation in drunk driving cases. While not intended as an evidentiary test, the NHTSA found BreathScan® suitable as a first line of BAC quantification. The NHTSA determined that the BreathScan® alcohol detector was able to accurately distinguish between alcohol levels below and above .10% BAC (or .08% BAC for BreathScan® units calibrated at the lower BAC level). Several tests at different room temperatures were performed in accordance with established methodology. Since evaluation specifications for preliminary test devices do not exist, the NHTSA used the guidelines "Specifications for Evidential Breath Testers", specifically the precision and accuracy tests, the blank reading test, the breath sampling test, the ambient temperature test and mobile test from existing NHTSA guidelines. Using standard aqueous alcohol solutions contained in 34-degree thermostats, researchers duplicated breath alcohol concentrations in controlled conditions. This breath sampling test was designed to yield maximum sampling consistency and efficiency. The BreathScan® alcohol detector contains a crystalline preparation which is hermetically sealed in a glass ampoule. The subject breathes through the tube so as to deliver approximately two liters of breath over the crystals. At .00% BAC (no alcohol present) the crystals remain uniformly yellow. At .05% BAC, some of the crystals turn green. Above .10% BAC, virtually all the indicators showed all the crystals turned green. At precisely .10% most of them were fully changed and a small number were partially changed with only a few yellow crystals remaining. This indicates a borderline situation and should be treated as a caution to the operator. The DOT testing was conducted with indicators calibrated for full crystal change at .10% BAC. BreathScan® alcohol testers are also available calibrated for the .08% BAC level, a figure becoming more widely adopted in many states as the legal limit for the operation of a motor vehicle. No difference in test results was noted when samples were compared under incandescent and fluorescent lighting.

W.R. Grace & Company

Fortune 500 company, W.R. Grace & Company conducted testing at their Davison Chemical Division and produced results that concurred with DOT findings. They found that small beds of the chemical agent in BreathScan® accurately distinguish between alcohol concentrations representing BAC levels of .00%, .05% and .10%. In their testing simulation, Grace used a Draeger Mark IIA Alcohol Breath Simulator. The simulator passes air through a constant temperature bubbler containing a predetermined concentration of alcohol and water. The alcohol laden air is then passed through the BreathScan® device for ten seconds, disconnected and allowed to sit for two minutes before evaluation. At .00% BAC, all the crystals retained their yellow coloration. As low as .02% BAC, some discoloration of crystals from yellow to blue-green occurred. At .06% BAC, substantial color change occurred to the entire sample, with yellow residue. At .08% BAC, there was less yellow remaining and at .10% BAC almost all the original yellow coloration had disappeared. Grace tested samples of the testing agent packed in both glass tubes and in BreathScan®'s patented glass ampoules with similar results except that the color change produced in the glass ampoules appeared to be slightly less intensive. They also noted a slight concentration of colored crystals near the intake end of the ampoule.

Colorado Department of Health

The Colorado Department of Health's Alcohol Test Program tested the BreathScan® device to determine its suitability for use by law enforcement personnel in traffic stops. They noted that the unique packaging provided by the BreathScan® ampoule effectively prohibits the contamination of the crystals until the device is ready to be used. They also noted that the BreathScan® alcohol detector was suitable for screening only, and should be backed up by confirmation testing of bodily fluids. Colorado's testing is significant in that it was conducted on live subjects for the .00% BAC benchmark. A SmithWesson Mark IIA breath alcohol simulator was used to test alcohol concentrations. Testing was conducted at 34-degree centigrade, as in the previous two tests, and results were checked using gas chromatography. Testing was conducted at .85% BAC and .108% BAC. At both levels significant discoloration of the crystals occurred, enough to indicate that a subject's BAC was in the impaired range and they found BreathScan® to be suitable for use as screening device prior to further testing. In fact, the chief of the testing program noted that BreathScan® was one of the better products they had evaluated and was well suited for the market it is intended to serve.

Denver Police Department

Field studies of BreathScan® were conducted by the Denver, Co. Police Department. Officers used BreathScan® at traffic stops as a screening for drunk drivers and found a 98% accuracy correlation. Of 200 tests of truck drivers, only four BreathScan® tests were inconclusive. The Department considered this an excellent rate of accuracy for a portable testing device.

Barbara Davis Center for Childhood Diabetes

Of concern to medical professionals is the possibility that physiological conditions not related to alcohol use might affect the test, particularly when testing diabetics. Diabetics produce breath ketones, but when tested on the largest degree of ketonemia on severely ill patients when admitted to intensive care, at no time did the ketones discolor the BreathScan® crystals. The testing at the Davis Center rules out the chance of a false positive for acetone or ketones when checking for breath alcohol.

Drug Control and Teaching Center, King's College, London

Results of the King's College study, conducted on .08% BAC testers, support manufacturers' claims that BreathScan® devices are capable of accurately detecting breath alcohol concentrations at .08% BAC.

In a recent study, using a test protocol similar to the one developed by Dr. David Cowan of King's College, London, an independent laboratory measured the effectiveness and reproducibility of the indicator color change at claimed alcohol concentration levels. Their evaluation conclusion supported the claim that BreathScan® testers are capable of detecting breath alcohol concentrations of .02%, .04%, .08% and .10%.

Evaluation of BreathScan® Alcohol Detector

January 3, 2000

**Donald R. Wilkinson, Ph.D.
Toxtrap, Inc.
1059 Horsepond Rd.
Dover, DE 19901**

**(302) 736-0202
FAX (302) 736-3662
toxtrap@aol.com**

Toxtrap, Inc.

1/03/00

BreathScan® is a disposable breath alcohol indicator intended to provide a reliable indication of alcohol present in exhaled breath of test subjects. The device is intended for use as a single, cost-effective breath alcohol screen and therefore need not meet the specifications expected of an evidential breath-testing device.

Twenty-five tubes from each of four batches were submitted for evaluation. Each batch was designed to test different breath-alcohol concentrations. The tubes were evaluated in groups of five on five individual occasions. The devices were evaluated at the value equivalent to the ethanol blood concentration stated on their label. (A concentration of 0.04% indicates an equivalent of 0.04 g. alcohol/100 mL blood, or 0.04 g alcohol/210 L breath.)

EXPERIMENTAL:

A simulator, thermostatically controlled at 34.0 +/- 0.1 °C, was used to produce constant samples of simulated breath alcohol concentrations of 0.02%, 0.04%, 0.08% and 0.10% (g alcohol/100 mL blood or g. alcohol/210 L breath) at a flow of 12 liters/minute. Standard simulator solutions were supplied by Toxtrap, Inc. Each device tested was attached to the simulator and the simulator's headspace blown through the device for ten seconds. The device was removed, shaken and observed one minute, two minutes and three minutes after exposure. The color of the crystals were recorded after each observation. Observations were made in white light.

KEY:

+++++	Approximately 95% of crystals had turned blue/green/white
++++	Approximately 80% of crystals had turned blue/green/white
+++	Approximately 60% of crystals had turned blue/green/white
++	Approximately 40% of crystals had turned blue/green/white
+	Approximately 20% of crystals had turned blue/green/white
?	No color change observed. Crystals remained yellow
NFC	No further color change observed

COMMENTS:

All readings are subjective. The color change was normally observed as a gradient along the tube. There were always some unchanged or more pale yellow crystals present in the device.

The tests described in this document are not intended to imply approval of Toxtrap, Inc. of the application of BreathScan® devices for blood ethanol determination

**Toxtrap, Inc.
1/03/00**

Evaluation of BreathScan® Alcohol Detector

At the request of Mr. J. Robert Zettl, Forensic Consultants, Inc. 1500 East Mineral Place, Littleton, Co, Toxtrap, Inc. completed an evaluation of four batches of BreathScan® alcohol detectors consisting of twenty five tubes per batch. Each batch was designed to indicate a different alcohol level (0.02%, 0.04%, 0.08% and 0.10%). The test protocol used was similar to the protocol developed by Dr. David Cowan of Kings College London and used in a previous evaluation by Duo Research, Inc. in April 1992. This evaluation was carried out on December 22, 1999 and December 29, 1999.

The purpose of the evaluation was to measure effectiveness and reproducibility of the indicator color change at claimed alcohol concentration levels. On five separate occasions, five randomly selected tubes from each batch were exposed to its corresponding simulated breath containing either 0.02%, 0.04%, 0.08% or 0.10% alcohol. Readings were taken in one, two and three minutes following exposure.

Four different tube batches were evaluated:

- A. Batch A081699 (0.02%)
- B. Batch B040899 (0.04%)
- C. Batch C061699 (0.08%)
- D. Batch D060899 (0.10%)

SUMMARY OF RESULTS AFTER TWO MINUTES OF EXPOSURE:

	95% change		80% change	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Device A. Batch A081699 (0.02%)	16	64%	9	36%
Device B. Batch B040899 (0.04%)	13	52%	12	48%
Device C. Batch C061699 (0.08%)	6	24%	19	76%
Device D. Batch D060899 (0.10%)	13	52%	12	48%

In all cases 80% or more of indicator crystals produced a color change. At this level there is an obvious color change indicating presence of alcohol concentration no lower than the level tested.

Toxtrap, Inc.

1/03/00

CONCLUSIONS:

From this evaluation it was observed that each batch of breath alcohol detectors produced a maximum (95%) or near maximum (80%) color change within the prescribed two minutes of exposure to simulated breath alcohol concentrations at their labeled detection levels. These results support the manufacturer's claim that these devices are capable of detecting breath alcohol concentrations of 0.02% (Device A), 0.04% (Device B), 0.08% (Device C) and 0.10% (Device D).

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	++	++++	NFC
2	+++	++++	NFC
3	+++++	+++++	NFC
4	+++++	+++++	NFC
5	+++	++++	NFC

Table D5: Batch D060899 (0.10%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	++++	+++++	NFC
2	++++	+++++	NFC
3	+++++	NFC	NFC
4	+++++	NFC	NFC
5	+++	++++	NFC

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	+++++	+++++	NFC
2	++++	++++	NFC
3	++++	++++	NFC
4	++++	+++++	NFC
5	++++	++++	NFC

Table D2: Batch D060899 (0.10%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	+++	++++	NFC
2	+++	++++	NFC
3	+++++	NFC	NFC
4	++++	++++	NFC
5	+++++	NFC	NFC

Table D3: Batch D060899 (0.10%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	+++	++++	NFC
2	+++	++++	NFC
3	++++	+++++	NFC
4	++++	+++++	NFC
5	+++	++++	NFC

Table D4: Batch D060899 (0.10%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	+++	++++	NFC
2	++++	++++	NFC
3	++++	NFC	NFC
4	++++	++++	NFC
5	++++	++++	NFC

Table C4: Batch C061699 (0.08%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	+++	++++	NFC
2	+++	++++	NFC
3	++++	NFC	NFC
4	+++	++++	NFC
5	++++	NFC	NFC

Table C5: Batch C061699 (0.08%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	+++++	+++++	NFC
2	+++++	NFC	NFC
3	++++	++++	NFC
4	++++	NFC	NFC
5	++++	++++	NFC

Table D1: Batch D060899 (0.10%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	+++	++++	NFC
2	+++	++++	NFC
3	+++	++++	NFC
4	+++++	NFC	NFC
5	++++	+++++	NFC

Table C1: Batch C061699 (0.08%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	++++	++++	NFC
2	+++	++++	NFC
3	+++++	+++++	NFC
4	+++++	NFC	NFC
5	+++++	NFC	NFC

Table C2: Batch C061699 (0.08%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	++++	++++	NFC
2	++++	+++++	NFC
3	++++	++++	NFC
4	+++	++++	NFC
5	+++	++++	NFC

Table C3: Batch C061699 (0.08%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	++++	++++	NFC
2	+++++	+++++	NFC
3	+++++	+++++	NFC
4	++++	++++	NFC
5	+++++	+++++	NFC

Table B3: Batch B040899 (0.04%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	+++++	+++++	NFC
2	+++++	NFC	NFC
3	++++	+++++	NFC
4	++++	+++++	NFC
5	+++++	NFC	NFC

Table B4: Batch B040899 (0.04%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	+++	++++	NFC
2	+++	++++	NFC
3	+++	++++	NFC
4	++++	NFC	NFC
5	++++	NFC	NFC

Table B5: Batch B040899 (0.04%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	+++++	NFC	NFC
2	+++	++++	NFC
3	+++++	+++++	NFC
4	+++++	+++++	NFC
5	++++	NFC	NFC

Table A5: Batch A081699 (0.02%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	++++	+++++	NFC
2	+++++	NFC	NFC
3	++++	+++++	NFC
4	+++++	NFC	NFC
5	+++	++++	NFC

Table B1: Batch B040899 (0.04%)*

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	++++	++++	NFC
2	++++	++++	NFC
3	+++++	+++++	NFC
4	++++	+++++	NFC
5	+++++	+++++	NFC

Table B2: Batch B040899 (0.04%)*

Table A1: Batch A081699 (0.02%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	+++++	+++++	NFC
2	+++++	+++++	NFC
3	++++	++++	NFC
4	++++	++++	++++
5	+++++	+++++	NFC

Table A2: Batch A081699 (0.02%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	++++	++++	NFC
2	++++	+++++	NFC
3	+++	++++	NFC
4	++++	++++	NFC
5	+++	++++	NFC

Table A3: Batch A081699 (0.02%)

TUBE NUMBER	ONE MINUTE	TWO MINUTES	THREE MINUTES
1	++	++++	NFC
2	+++	+++++	NFC
3	++++	++++	NFC
4	++++	++++	NFC
5	+++++	NFC	NFC

Table A4: Batch A081699 (0.02%)

SECTION E

**TETRAD LABS:
(LAST CALL BREATH STICKS)**

LETTER FROM PRESIDENT OF TETRAD LABS

COPY OF GSA CONTRACT TO TETRAD LABS

**LIST OF GOVERNMENT AGENCIES BUYING
LAST CALL BREATH STICKS**



Mr. Gordon Smith,

Thank you for your continued effort to provide a product that will help reduce alcohol related accidents and death on our nations highways.

Most persons that receive a DUI or are involved in alcohol related automobile accidents, thought " I'm OK to drive ". Virtually all persons that put the keys in the ignition after consuming alcohol might think they are OK, but have no idea or measurement of what their BAC level is at that moment. This guess work is not working. Annually there are approximately 16,000 deaths on our Nations highways as a direct result of alcohol.

In October 2000, as part of the FY 2001 DOT Appropriations Act, Congress passed, and the President signed into law, a provision making .08 the national standard for impaired driving. That is all well and good but how do we know what a .08 BAC level is?

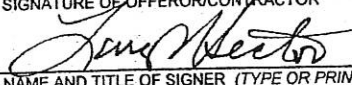
We needed a simple, low-cost and accurate product to allow for the testing of that level. Last Call is a product that can help drivers adhere to the law.

Last Call is recognized by the Department of Defense and the GSA [General Services Administration] as a product available for that purpose.

Last Call is committed to supporting the law and reducing the accidents and fatalities on our highways.

Thank you and the Officials in the State of Kansas for helping persons adhere to the laws and to promote safer highways.

Larry F. Hector
President
Tetrad Labs - Exclusive Makers of Last Call

STATEMENT/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, & 30				1. REQUISITION NUMBER N/A		PAGE 1 OF					
2. CONTRACT NO. Upon execution, number will appear on Page 1A.		3. AWARD/EFFECTIVE DATE Upon execution, date will appear on Page 1A.		4. ORDER NUMBER N/A		5. SOLICITATION NUMBER Refresh Number 2 7FXP-D4-01-0539-B		6. SOLICITATION ISSUE DATE April 1, 2001			
7. FOR SOLICITATION INFORMATION CALL →		a. NAME Frank Lioce, 7FXPM-D4 Cheryl Goff, 7FXPI-S5				b. TELEPHONE NUMBER (No collect calls) 817-978-4544 817-978-8608		8. OFFER DUE DATE/ LOCAL TIME N/A			
9. ISSUED BY GSA, General Products Center Schedule Contracting Division (7FXP) 819 Taylor Street, Room 6A24 Fort Worth, TX 76102-6114 Address offers to the address above. Complete shaded boxes on this page.				10. THIS ACQUISITION IS See Attachments <input type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: % FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV. BUSINESS <input type="checkbox"/> 8 (A) SIC: See Attachments SIZE STANDARD: See Attachments		11. DOMESTIC DELIVERY: See Attachments INTERNATIONAL DELIVERY: See Attachments <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP		12. DISCOUNT TERMS Minimum: Net 30 Days Other: / % / 0 Days			
15. DELIVER TO CODE To be shown on each order issued under any contract resulting from this solicitation.				16. ADMINISTERED BY CODE See attached Page 1A of any contract resulting from this solicitation.							
17a. CONTRACTOR/ OFFEROR NAME AND ADDRESS TETRAD LABS LLC 104 W. CHESTNUT ST #222 HINSDALE, IL 60521 630-850-7700 630-655-0427 123776143 TELEPHONE NO. FAX NO. DUNS				18a. PAYMENT WILL BE MADE BY CODE See Block 15.							
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM							
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY		22. UNIT		23. UNIT PRICE		24. AMOUNT	
Do not complete Blocks 19 through 24, see schedule of supplies/items/services in the products/services attachments. (Attach Additional Sheets as Necessary)											
25. ACCOUNTING AND APPROPRIATION DATA See Block 15								26. TOTAL AWARD AMOUNT (For Govt. Use Only) Indefinite			
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED. <input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.											
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.								29. AWARD OF CONTRACT: REFERENCE _____ OFFER DATED _____, YOUR OFFER ON SOLICITATION (BLOCK 5) <input checked="" type="checkbox"/> INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS: See attached continuation page(s) beginning on Page 1A.			
30a. SIGNATURE OF OFFEROR/CONTRACTOR 						31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) Upon execution, signature will appear on Page 1A.					
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT) LARRY F HECTOR - PRESIDENT				30c. DATE SIGNED 5-14-01		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)				31c. DATE SIGNED	
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED AND CONFORMS TO THE CONTRACT. EXCEPT AS NOTED				33. SHIP NUMBER PARTIAL FINAL		34. VOUCHER NUMBER		35. AMOUNT VERIFIED CORRECT FOR			
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE				32c. DATE		36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		37. CHECK NUMBER			
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				42a. RECEIVED BY (Print)		38. S/R ACCOUNT NUMBER		39. S/R VOUCHER NUMBER		40. PAID BY	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER				41c. DATE		42b. RECEIVED AT (Location)		42c. DATE REC'D (YY/MM/DD)			
						42d. TOTAL CONTAINERS					



TETRAD
Exclusive Makers of Last Call™

Following is a list of **Last Call** Purchases by the various branches of the Armed Forces of The United States.

- **MAG 12 (Marine Air Group) JAPAN**
- **3RD MARINE DIV OKINAWA**
- **MARINE CORP BASE HAWAII**
- **MAG 11 CALIFORNIA**
- **MARINE SAFETY DIVISION WASHINGTON DC**
- **MARINE FORCES RESERVE NEW ORLEANS LA**
- **MARINE COMMAND MIRAMAR SAN DIEGO CA**
- **MATSG 23 NAS LEMOORE CA**
- **U S ARMY KOREA**

Some purchases were made direct from the internet website at lastcall.org
Others were purchases from the information found on our GSA listing.

HEIN LAW FIRM, CHARTERED

5845 SW 29th Street, Topeka, KS 66614-2462

Phone: (785) 273-1441

Fax: (785) 273-9243

Ronald R. Hein

Attorney-at-Law

Email: rhein@heinlaw.com

**Testimony Re: HB 2292
House Judiciary Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
February 18, 2003**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association. The KRHA is the Kansas professional association for restaurant, hotel, lodging and hospitality businesses in Kansas.

The KRHA in many ways understands and appreciates the intent of HB 2292, which we understand is to create a mechanism by which restaurants and other entities which retail alcoholic beverages may minimize or negate any potential liability that someone might try to impose on them. However, the KRHA also has numerous concerns and questions regarding the proposed legislation.

First of all, KRHA believes there is no liability presently existing regarding restaurants that serve alcohol because of subsequent acts committed by customers. We understand it is already contrary to law to serve alcohol to inebriated customers. Legislation or court opinions that provide liability for restaurants represent, in our opinion, bad social policy and are imposing liability not where it belongs, with the responsible person, but with a neutral third party. Such impositions of liability fail to recognize the evidentiary and other problems facing individuals or businesses when lawsuits are brought for damages incurred by others as a result of a person under the influence of alcohol or other drugs. When attempts are made to impose liability on anyone or any business who might have sold the alcohol to the person in a lawful manner, there is often no mechanism for properly ascertaining all of the relevant facts.

Oftentimes, such threats of liability ignore intervening causes, subsequent drinking, subsequent consumption of drugs, and numerous other issues which often times are difficult to prove, and which must be proved by the defendant as a means of avoiding liability.

With that said, it is the belief of the KRHA that currently no liability exists for lawful sales of alcohol by our members to their customers.

H. JUDICIARY

2-18-03

Attachment: 2

This brings us to HB 2292, which grants immunity from liability if voluntary blood alcohol content tests are conducted by a restaurant on their customers. One must first ask why our members need immunity from liability if they have no liability in the first place. Would the passage of this legislation mean that the legislature assumes that there is liability for lawful sales of alcohol? Would the passage of this legislation result in a court ruling that, the legislature, by implication, has impliedly stated that there is liability on restaurants that sell alcohol lawfully, because otherwise a grant of immunity such as proposed here would not have been necessary?

We want the record to be clear that we believe that Kansas law places no liability currently on restaurants for actions of customers who cause injury to others. If this legislation were to be worked by the committee, we would strongly urge this committee to amend this legislation to add language making it clear that this legislation should not be interpreted as assigning any liability upon restaurants or other establishments which sell alcohol. I would not presume to be able to draft such language better than this committee's own revisors, but we would certainly offer to assist your staff in drafting such an amendment if you are in agreement with our suggestion.

There are numerous other practical issues which need to be resolved with this legislation. Many of our members believe that this type of pro-active testing activity would be helpful at minimizing any potential liability that someone might argue does exist. We also believe that testing would be helpful in establishing education for the public with a view towards fewer alcohol related accidents or harm to the public.

Yet, with that said, we are confused as to how these tests would be administered, especially at restaurants. I have heard hallway conversation that, in a club or drinking establishment, it might be possible to utilize this testing at a time of "last call". In a high end restaurant, or any other restaurant, how is it contemplated that the tests would be conducted? Would we be asked to stop customers as they are leaving the business? Should we be going to any table where alcohol has been ordered? Should we go only to those tables where a number of drinks have been previously delivered?

If we are to confront our clientele, how will they react to our approach? Will they be insulted that we think they are drunk? Or will they be happy to comply and view this as a positive educational program and an effort at protection of the public effort? If our customers are affronted by the behavior, will they take their business to other restaurants where the proprietor does not choose to exercise such a voluntary procedure? And, if they do go to another restaurant for that reason, will they ever notify us, or will they simply stop showing up until the business sees its sales falling off, and is forced to close its doors?

These are very real and serious concerns, not just speculative questions. This legislation may have been tried in other states, and we may be able to determine the answer to some

of these questions, but as of yet, we have not been able to do so.

We appreciate the sponsor of this legislation for suggesting such an unusual approach to attempting to resolve a real dilemma which exists in our society, that being the tragedy that results from accidents caused by driving while under the influence of alcohol or drugs. Although this legislation does not address the drug component, it certainly is a valid effort at attempting to solve the alcohol related accident situation.

It is possible that, after this hearing, many of our questions will have been answered. If not, we would look forward to working with the sponsor and this committee to attempt to resolve some of the concerns we have, in hopes that a program such as this, if it proves to be workable, might be utilized as a voluntary effort to try to reduce alcohol related accidents and fatalities.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.



REBECCA RICE

ATTORNEY AT LAW

P.O. BOX 4108
TOPEKA, KANSAS 66604

PHONE: 785/271-5462

CELL: 785/249-3487

FAX: 785/273-3705

KSLobbyist@ksable.com

TESTIMONY PRESENTED

TO

THE HOUSE JUDICIARY COMMITTEE

on HB 2292

February 18, 2003

by: Rebecca Rice, Legislative Counsel
Kansas Clubs and Associates

Mr. Chairman and members of the committee, my name is Rebecca Rice and I appear before you today on behalf of the Kansas Clubs and Associates an organization of drinking establishment and private club licensees. We appear in opposition to HB 2292.

Although opposed to the legislation, we could become proponents with a simple amendment clarifying that the legislation could not be used to infer an underlying common law liability most commonly referred to as *dram shop* liability. A general definition of *dram shop* liability is holding a liquor licensee responsible for the liquor consumption of customers thus alleviating the individual consumer of personal responsibility. As this committee knows, there is no statutory imposition of *dram shop* liability and the Supreme Court has ruled that *dram shop* liability will not be imposed using common law as the basis for the imposition by the Court.

While HB 2292 appears well-intended, we think the committee should clarify the bill so the legislation does not impact a Wichita lawsuit that asserts in part a claim of *dram shop* liability. We feel certain that - if adopted - this legislation will be used to add weight to plaintiff's argument that the liquor licensee is at least partially responsible for damages sustained by their client. We oppose this legislation because it may be used to influence a current lawsuit - an act traditionally rejected by the Legislature.

However, if the committee were to amend the legislation to include a statement that HB 2292 **is not inferring** responsibility to the licensee for the consumption of its customers, we would be pleased to support the bill. Alternatively, if the Kansas Supreme Court decides to reverse its previous decision and legislate *dram shop* liability whether through the Wichita lawsuit or another, we will readily support legislation of this type as a method to protect licensees from liability when the licensee is attempting to educate and assist customers.

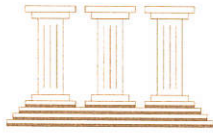
However, until individuals are relieved of personal responsibility and liability is imposed on licensees either through legislation or court decision, we respectfully request the committee defeat HB 2292 and any similar legislation.

Thank you, Mr. Chairman and members of the committee.

H. JUDICIARY

2-18-03

Attachment: 3



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the House Judiciary Committee
FROM: Ron Pope, President-Elect, Kansas Trial Lawyers Association
DATE: February 18, 2003
RE: 2003 HB 2292

Chairman O'Neal and members of the committee, I am Ron Pope, president-elect of the Kansas Trial Lawyers Association (KTLA). KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to appear before you today in opposition to 2003 HB 2292. Speaking on behalf of the Kansas Trial Lawyers Association, I can assure you that no organization believes more strongly that drunk drivers must be held accountable for their actions.

In fact, we believe that accountability is essential to maintaining our free society and a fair and just system of laws. Those who seek immunity, seek freedom from responsibility and accountability. Unfortunately, freedom from accountability is exactly what HB 2292 proposes. Under this bill, any program or its members that provide disposable breathalyzers for the purpose of educating the public about alcohol consumption cannot be held liable for the actions of its program participants. That means that persons who provide the device and/or who instruct participants on its use cannot be held accountable. Nor can the manufacturer or distributor who supplied the breathalyzers – even if the device is defective and contributes to the injury or death of an innocent third party.

I cannot think of another industry or organization that has such blanket immunity. Drug companies whose products are tested and approved are not immune. Doctors, pharmacists, even lawyers are not immune from liability. Yet, HB 2292 proposes immunity for anyone who provides free, disposable breathalyzers as part of a so-called education program.

The reasons proponents of HB 2292 seek such immunity becomes abundantly clear on closer examination of the breathalyzers they want to distribute to the public. The "Last Call™" disposable breathalyzers is a good example. It consists of a small tube containing crystals that are supposed to change color based on the alcohol content of your breath. It is marketed as a "breakthrough product which can give you an objective answer to your question: Am I okay to drive?" It also claims to "prevent drunk driving and DUI arrests." But its packaging includes the following disclaimer:

H. JUDICIARY

Terry Humphrey, Executive Director

Fire Station No. 2 • 719 SW Van Buren Street, Suite 100 • Topeka, Ks 66603-3715 •

E-Mail: triallaw@ink.org

Attachment: 4

2-18-03

“Accuracy of test results may not be reliable if the test is not conducted according to instructions...The manufacturer, suppliers, agents, distributors and retailers make no warranty, expressed or implied, as to the ability of this device to determine or detect intoxication of the subject or to accurately indicate the subject’s blood alcohol level.”

The instructions for using “Last Call™” device offer little reassurance. To follow the instructions involves a multi-step process that even a sober user might have difficulty completing correctly, let alone someone who has been drinking.

It is the inherent unreliability of disposable breathalyzers such as “Last Call™” that proponents of HB 2292 seek to distance themselves from. Rather than establish strict guidelines for their program, intensive training for program participants or high standards for the breathalyzers they dispense, they seek to hide behind a shield of immunity. It is possible that a person who is drunk could use one of these breathalyzers and, because he failed to follow the instructions or the device is defective, be misled into believing he is sober enough to drive. On his drive home, he has an accident that injures or kills an innocent driver or pedestrian. This is the scenario proponent of HB 2292 most fear. In such a case, we believe that the drunk drivers should be held accountable. But it is also reasonable to determine whether the manufacturer of the breathalyzer or the program participants who distributed the device may share some responsibility for the innocent injured party. That determination should be made by our civil justice system, and neither the manufacturer nor the program should be exempt.

Given the unreliability of disposable breathalyzers, it is difficult to understand how devices like “Last Call™” can be considered tools to educate the public. Moreover, by granting immunity to the manufacturers of such devices and to the programs that promote them, HB 2292 reduces their incentive to improve the quality and reliability of breathalyzers. Why should they, if they can’t be held accountable for the consequences? Ultimately, we believe HB 2292 undermines both safety and accountability, and we strongly urge the committee to reject it.



*Kansas
Licensed
Beverage
Association*

*President
Tom Intfen*

*Secretary/Treasurer
Tammy Davis*

*District Vice Presidents
Kelly Driscoll
Monte Shanks
Rob Farha
Glenda Dewey
Scott Van Gorden*

*Executive Director
Philip Bradley*

*KLBA
745 New Hampshire,
Suite 4
P.O. Box 442066
Lawrence, KS 66044*

*Voice/Fax:
785.331.4282
Email: phil@klba.org
www.klba.org*



*Testimony on HB-2292 on February 18, 2003
House Judiciary Committee
Mr. Chairman and Representatives,*

I am Philip Bradley of the Kansas Licensed Beverage Assn. representing your constituents in the hospitality industry who own and manage and work in bars, clubs, restaurants, hotels and catering services where beverage alcohol is served.

Thank you for the opportunity to speak. I recognize the value of your time and will be brief.

We appreciate the effort by this bill to promote education and responsibility but believe that the exact opposite will occur. While implying that this will encourage personal responsibility it actually places that responsibility outside them, giving the opportunity for one to point the finger elsewhere. We will be encouraging complacency in behavior by consumers and encouraging dependence on "devices" that are unspecified and possibly inaccurate. When one can point to a device and say "It told me I was ok to drive" we will be giving them permission to push the decision to the machine and not the individual. This is and should be about an individual making a good choice and shouldn't shift the locus of responsibility to others so there is less or no responsibility on that person.

Our industry already works extensively to educate the public on responsible choices. We have programs and materials to reduce underage access and consumption. We help parents learn how to have conversations with their children about choices. We work with local, state and federal programs. We conduct hundreds of seminars and classes to make sure that those that supply and serve know their responsibility and have the tools to serve safely while complying with all laws & regulations.

Our industry continually uses the latest technologies and methods to educate and actively promote responsible choices and eliminate underage drinking.

We are not in favor of passage of this measure.

Thank you ,

Philip Bradley
Executive Director

Continued on back

H. JUDICIARY

2. 18. 03

Attachment: *5*

In addition some of our specific concerns include:

What program?

Consisting of what and administered by whom, at what cost & borne by whom?

Are employees also given immunity?

What do these devices cost?

Are they accurate and who is responsible when they fail?

Are they available, are their choices, multiply suppliers?

Shouldn't we test impairment or reaction time not breath levels?

Does line 17 include the individual themselves?

What is the required action if you witnesses a failed test?

What is the standard now and how is it not working?

What training for use will their be and by what or whom?

Who is responsible for misuse?

What is required if one refuses to take a test?

What education materials will be provided?

These summarize the areas that would we feel would need to be addressed if it was to advance. Again we urge you to not advance this bill. Thank You!

What is the KLBA?

The Kansas Licensed Beverage Association is a non-profit organization representing small business owners who formed to educate ourselves about this industry and in the process help the public to understand as well. We represent the interests of over 2000 establishments, the men and women who as a part of their business hold a license for on premise alcohol service. We are the restaurants, hotels, clubs, bars, and caterers you frequent and enjoy.

We are in the hospitality business. Our customers come to us for service an fun. We advocate safe responsible consumption and are training our servers to practice these principals.

We work with the ABC to educate, train and promote compliance and responsible practices. We are one of only three server-training programs certified by the ABC in Kansas. We also would like to let you know that we are thankful for the cooperation and assistance in the education programs. We believe that education is the single most useful tool in reducing alcohol-related incidents. With the support of the Director we are certified to conduct voluntary server training in our state. We have acquired the rights to use an established nationally recognized program, TAM; Techniques in Alcohol Management developed in 1983 and updated regularly. TAM is designed to teach effective problem solving techniques in a clear and concise manner. By having experienced, trained and certified real life servers training those faced with the same real life problems daily, we have been able to have a positive effect on our industries challenges. Our instructors **are** licensees or managers of establishments. The "been there done that" credibility has proven effective in reaching the daily server and keeping their attention

Our founder and immediate past president is Rita Madl (The Sandbar, Lawrence & The Lodge of Baldwin City). Our current president in Tom Intfen (Paddy O'Quigley's; Lenexa & KC and Pat's Blue Ribbon Bar-B-Q; KC, Manhattan, Lawrence, MO, NE and Cofounder of Tanners, Wichita and KC)

Tuesday, 02/18/03

Chairperson O'Neal and members of the Judiciary committee, I would like to thank you for letting me testify today on HB 2217

My name is Jerry Gentry I have been involved in the Ignition Interlock Industry in Kansas for the past fourteen years.

As you know the ignition interlock consists of a hand-held device that attaches a breath alcohol analyzer to a vehicle's ignition system. The vehicle operator must complete a breath test measuring BrAC (breath alcohol concentration) below a predetermined lock-out point before the vehicle can be started.

A law was passed two years ago mandating when a person has completed the one year suspension pursuant to subsection (b) (2) of K.S.A. 8-1014. The division **shall** restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device. The legislative intent was not to give a person the option to be suspended an additional year, making it a two year suspension, but to mandate a one year hard suspension, and a one year driving only a vehicle equipped with an ignition interlock device.

HB 2217 would ensure legislative intent, the person would have to show a certificate of completion issued by an approved interlock company, verifying the completion of driving only a motor vehicle equipped with an ignition interlock device for one year, so the person could apply to the division for a new license, or if that person does not have a certificate of completion the division can not issue a new license.

The cost or impact of HB 2217 will be little to none, there could be some additional paper handling.

I would again like to thank chairperson O'Neal and members of the judiciary committee for their time.

H. JUDICIARY

2-18-03

Attachment: 6



K A N S A S

JOAN WAGNON, ACTING SECRETARY

DEPARTMENT OF REVENUE
DIVISION OF VEHICLES

KATHLEEN SEBELIUS, GOVERNOR

TO: Chairman Mike O'Neal
Members of the House Judiciary Committee

FROM: Sheila J. Walker, Director of Vehicles *Sheila J. Walker*

DATE: February 18, 2003

SUBJECT: House Bill 2217 – Ignition Interlock Certificate

Mr. Chairman, members of the committee, I am Sheila Walker, Director of the Kansas Department of Revenue's Division of Vehicles. Thank you for allowing me to testify on House Bill 2217.

This bill requires anyone with a second or subsequent conviction of driving under the influence (DUI) or a second or subsequent chemical test failure to only drive a vehicle equipped with an ignition interlock device for a period of one year (which is current law) *and* to obtain a certificate of completion from an approved interlock company before applying for reinstatement of driving privileges.

State law currently requires the Division of Vehicles to restrict driving a vehicle equipped with an ignition interlock device for one year for a second and subsequent chemical test failure or DUI conviction. About 1,500 drivers a year have been restricted to driving a vehicle with an ignition interlock device since this law went into effect. Based on annual reports we require from the state's approved ignition interlock companies, not all of these drivers are equipping their vehicles with the devices – only about 25% are installing ignition interlock devices. Those who are not, are either driving illegally (outside of their ignition interlock restriction) or they are choosing not to drive during their one-year ignition interlock restriction.

With this proposed change, some of the Division's standard letters would have to be amended. In addition, system changes would have to be made to accommodate an "indefinite" interlock restriction. Right now, the system is automatically set up to expire the ignition interlock restriction one year following the suspension period. This change would make the ignition interlock restriction indefinite, until a certificate of completion is presented. These one-time changes could be absorbed with existing resources.

H. JUDICIARY

DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOF
Voice 785-296- 3601 Fax 785-291-3755 <http://www.ksr>

Attachment: 2. 18. 03
7

February 18, 2003

However, we also anticipate needing one additional customer service representative (at an annual cost of \$35,610) to accommodate the expected increase in the number of phone calls that we will receive as a result of this change. Customer service representatives are already at their peak, each handling 80 – 120 calls per day for a total of nearly 1,000 calls to the bureau every day. In addition, about 2,500 additional pieces of mail would also have to be processed.

As drafted, we note that House Bill 2217 does not address persons restricted due to an alcohol-related occurrence, but they do not own a motor vehicle themselves. Are they expected to install an ignition interlock device on a vehicle they do not own? The likely answer is “no.” But how would they then obtain a certificate of completion?

The Kansas Department of Revenue’s Division of Vehicles respectfully brings these issues to the attention of the committee, and will implement the changes in this bill if the Legislature so desires.

Hello my name is Dan Russ and I am writing this letter to request your assistance in solving a problematic situation for many Kansans. Noise pollution from oil pumping jacks around my community have been on going for 25 years. From the first week that the first well was brought into production our community has actively searched for a resolve from the inescapable, obnoxious nuisance.

Night and day the noise form these units are a nuisance and disturb the peace, conditions which should be recognized as a violation of both our basic rights and common law. However that is why I am writing you as we need specific legislation to prevent this unacceptable behavior. The noise form these wells has severely impacted the usability of our yard and homes.

We have tried to resolve this noise pollution at every possible level. After nearly 20 years of unsuccessful communication with the oil companies to more recently working with local county government. Under the leadership of commissioner Robert Courtney our commissioners have actively pursued a solution to this nose nuisance. But in a state without noise rules and regulations our new county noise codes are relatively ineffective.

The Scientific literature is full of papers that detail the physiological, biochemical, and psychological impacts of noise on other wise healthy people. This problem is easily solved no matter what anyone may testify otherwise. A hospital grade muffler can be purchases on the wholesale market for \$150 per diameter inch of exhaust.

From one oil patch of the several around our community that has produced nearly 600,000 barrels of oil is it to much to ask to protect my fellow Kansans and I from a public nuisance which deprives us of our house, heath and sleep. Since 1978 we have endured this noise which is now 25 years. Please give us the relief that we deserve. Please help me and all the other impacted Kansans reclaim our property and our lives

Dan Russ

Dan Russ

H. JUDICIARY

2-18-03

Attachment:

8

Rutgers Noise Technical Assistance Center



Air and Noise Training Programs

THE RUTGERS NOISE TECHNICAL ASSISTANCE CENTER (RNTAC) is part of the Air and Noise Training Program in the Department of Environmental Sciences at Rutgers - The State University of New Jersey.

The Rutgers Noise Center has trained thousands of enforcement officers from all across the United States in sound level measurement for the purposes of enforcing a municipal noise code. The certification conferred by our courses, Community Noise Enforcement, and Vehicular Noise Enforcement are recognized by courts from coast to coast, and beyond. Our training is specifically designed to help officers to become comfortable with the techniques, strategies and technology of sound level measurement and investigation for evidentiary purposes.

Vehicular Noise Enforcement are recognized by courts from coast to coast, and beyond. Our training is specifically designed to help officers to become comfortable with the techniques, strategies and technology of sound level measurement and investigation for evidentiary purposes.



The RNTAC has been providing noise assistance for over 35 years. We are the only remaining Noise Technical Assistance Center originally contracted by the United States Environmental Protection Agency's Office of Noise Abatement and Control. Since the closure of ONAC in the early 1980's, all other regional centers have closed. The RNTAC continues to serve the country as a reference source on a wide range of noise pollution issues.

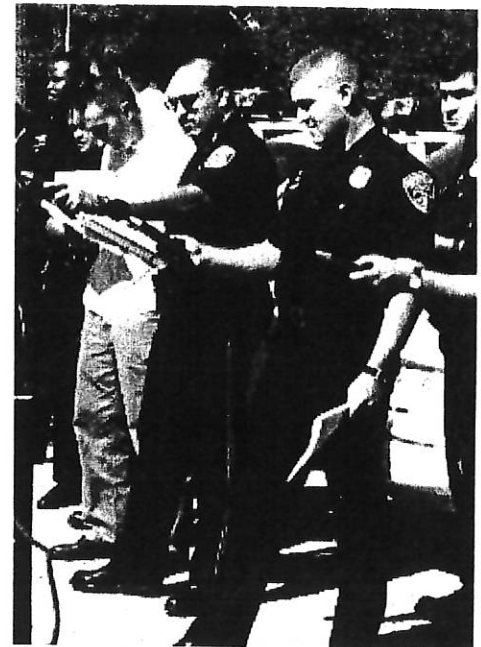
The RNTAC has served as the agent of training for the New Jersey Department of Environmental Protection for many years; our certification course is required by law for every noise enforcement officer in the state. People from all over New Jersey have attended our courses, as have people from

Colorado, Rhode Island, Texas, New York, Washington State, California, Pennsylvania, Florida, Hawaii, Bolivia, etc., all of which recognize our certification. Recently, we have presented on-site courses in the following cities: Jacksonville, FL; Lafayette, LA; Traverse City, MI; Honolulu, HI; Seattle, WA, and Anchorage, AK.

As far as we know, we are the only certification program in the United States.

Aside from training, in the past year alone we have assisted hundreds of individuals, townships, police departments, corporations, health departments, etc. Recently, we've helped the following cities to write and adopt noise ordinances: Long Beach, NY, Farmers Branch, TX and St. Augustine Beach, FL. We have assisted people from Idaho to Canada to New Zealand.

Eric Zwerling, Director of the RNTAC is widely published in the field, most recently presenting the invited paper "Characteristics of a Successful Local Noise Enforcement Program," at the conference entitled: First Pan-American/Iberian Meeting on Acoustics, which was jointly sponsored by: Acoustical Society of America; the Iberoamerican Federation of Acoustics; and the Mexican Institute of Acoustics, in Cancun, Mexico, December 2002. Other recent papers include: "Regulation of Amplified Sound Sources," "Turning Down the Volume: Effective Strategies for Community Noise Enforcement," "Community Noise Enforcement: Reviving a Moribund Program or Developing One Anew," and "Local Noise Enforcement Options and Model Noise Ordinance With Pre-Approved language for the State of New Jersey." These papers have helped impacted communities to understand that sound level measurement for enforcement purposes is as mature and admissible as breathalyzer and radar.



We have we presented invited papers at conferences for: American Association of Code Enforcement; Acoustical Society of

http://www.envsci.rutgers.edu/estc/rntac/index_m.htm

2/16/2003

8-2

of these parameters, deterrence is minimal.

An alternative enforcement standard is required to address this specific sound source, if enforcement is to be regular and predictable, thus providing the desired deterrence. When the deterrent is not successful, the enforcement standard must lead to successful prosecution. After a careful review of precedents and challenges in other jurisdictions, it was clear that any successful standard would have to be objective, specific and easily understood. A "plainly audible" standard has been applied in numerous jurisdictions across the United States, and this standard has been held to be neither vague nor overbroad (*State v. Ewing*, 914 P.2d 549, Haw. 1996). It is also clearly understandable to those it is intended to regulate. Using this standard, subjective value judgments associated with ordinances that rely on finding a noise "disturbing" or "loud and raucous" are avoided.

A "plainly audible" standard has been applied in numerous jurisdictions across the United States, and this standard has been held to be neither vague nor overbroad

CODE PROVISIONS

Definition

"Plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the enforcement officer need not determine the title of a song, specific words, or the artist performing the song. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound.

Restricted Uses And Activities

1. Personal or commercial music amplification or reproduction equipment shall not be operated in such a manner that it is plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m. Between the hours of 10:00 p.m. and 8:00 a.m., sound from such equipment shall not be plainly audible at a distance of 25 feet in any direction from the operator.
2. Self-contained, portable, hand-held music or sound amplification or reproduction equipment shall not be operated on a public space or public right-of-way in such a manner as to be plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m. Between the hours of 10:00 p.m. and 8:00 a.m., sound from such equipment shall not be plainly audible by any person other than the operator.

These code recommendations come from Eric Zwerling, President of the Noise Consultancy, which specializes in helping communities write enforceable noise ordinances. For a full discussion of this topic, see the paper "Regulation of Amplified Sound Sources" which originally appeared in the Proceedings of Noise-Con 2000. For a copy contact the Noise Pollution Clearinghouse.

Full-Color Insert -- [Click here](#) for the PDF version.

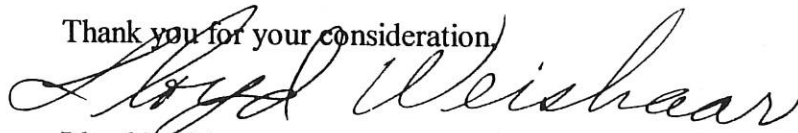
June 7, 1999

Sumner County Zoning
P.O Box 326
Wellinton, Kansas 67152

Dear Marvin Simonton,

We have lived 2 miles west of Milan, Kansas for more than 60 years. We hear the Phillips Oil wells southwest of Milan and on certain conditions the noise is very constant and consistent. A simple solution to remedy this problem would be to add mufflers to the oil well engines.

Thank you for your consideration.


Lloyd Weishaar

July 17, 2000

Dear Sumner County Zoning Commission:

I am concerned about the noise level of the oil well fields that are located across the Chickaski River. Our farm is 1 1/4 west and 1 mile north of the oil well field. The noise level is distracting and sounds like someone is stuck and trying to get out of the mud by revving up their engine. Then I realize that it is the oil well pumps. Also the popping noise is distracting. I am concerned that when it gets cooler in the fall and winter that the sound level will increase.

A concerned Citizen,

Dale Weishaar
Dale Weishaar
1407 W 20th St S
Argonia, KS 67004

pc: Sumner County Commissioners

To Whom It May Concern:

Oil wells are a necessity. They are a part of the economy and a fixture everywhere in rural Kansas. Oil wells that run 24 for hours a day without mufflers are not.

I'm writing this letter as a plea for help and request action to be taken to quiet some oil wells that can be heard running constantly from my brother in law, Rick Pontious's, property.

Rick has built 2 beautiful cabins along the high banks of the Chikaskia River near Milan, Kansas. The cabins are magnificent, built to be used by hunters, fisherman, guests of Rick's visiting from the city.

The cabins are built without plumbing or electricity, so you get the true pioneer spirit when staying there.

During the day you can watch and listen to the river flow by. You watch the deer cross the river, stopping for water along the way and the ducks flying and landing on the river after feeding in the fields nearby. You can hear the wind in the trees shaking the leaves to the ground. It's a very peaceful place to be.

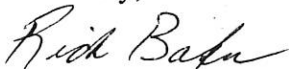
The other sound you hear during the day are the oils wells pumping their gold from the ground. Their sound during the day gets mixed up with all the other sounds of the country and doesn't offer much of a distraction. At night when the sun goes down and we have built a fire, the sounds of the oil well constantly pumping become a strain on the ears and a sound that destroys the serenity of the campfire, the conversation, and the night.

As I understand the problem, these oil wells need a muffler installed to quiet them down. Cars need mufflers, motorcycles and lawn mowers need mufflers, and there are laws saying so.

This would seem a simple fix to a problem that is very annoying to all the residents in the area that listen to the methodical pumping that can be quite maddening.

Please forward this letter to anyone who will be able to take some action on this matter.

Sincerely,



Rick Baker
3911 Woodridge
Lee's Summit, MO 64064
816-350-1388

February 15, 2003

To Honorable Chairman Mike O'Neil and Committee Members:

We, Ron and Kelly Rucker of Attica, Kansas, would like to share our experiences with oil well noise pollution.

Shortly after our marriage in June of 1996, we moved to a rental house in rural Barber County. The house was located on 160 acres of grass and farm ground on which we raised horses and cattle. The land was within 10 miles of family. There were several oil wells within the area which were noisy, at times, but the closest well caused the most frustration. It sat approximately $\frac{1}{4}$ mile from our home. During the next year-and-six-months we listened to a constant moan from this well. It sound like a semi-truck was driving through our yard... starting and stopping, over and over again. There were nights when our bedroom windows shook! The noise never stopped. While living in

this home I knew that, no matter how much money that well was making, I would turn it OFF, if it were mine! During pregnancy it was causing great stress and lack of sleep.

Fortunately, after a brief conversation, the oil well was fixed! The oil company tried mufflers which helped for various lengths of time, but continued working until the problem was completely taken care of! We didn't know the well was there once the right muffler was found! We enjoyed our home, our yard and our new baby!

We urge you to approve House Bill 2081.

Kelly Rucker

Ron Rucker

February 14, 2003

To Whom It Concerns:

In November 2000, we bought a house in a rural setting in Harper County, Kansas. At night when the wind blows a certain direction we hear a popping noise from an oil well. We didn't have any idea where it was coming from- it sounded like it was southwest. After learning the neighborhood, it is actually about a quarter mile north and three-quarter miles east of our house. We couldn't even see it from our yard.

It is really irritating when you are trying to fall asleep at night so you can be productive at work the next day and all you can hear out your bedroom window is this obnoxious noise. This is even when the windows are closed. Your next day is basically non-productive because of lack of sleep.

There could be more wells in the area creating the noise, as we are not aware of where they all are.



Debbie Augustyn
1389 NE 30 Ave
Harper, KS 67058

CITY OF MILAN
P.O. Box 66
Milan, Kansas 67105

Mayor - Boyd Jones
City Clerk - Roxy Gallardo
Treasurer - Pat Tracy

Council - Michelle Norris
Council - Roger Koster
Council - Carol Paisley
Council - Chris Gallardo
Council - Larry Golden

February 16, 2003

Honorable Chairmen Mike O'Neal:

I am writing in reference to Bill 2081 that has to do with the noise levels from the lack of or poor quality of mufflers on oil wells.

I am particularly referring to the noise level of the pumps around the Milan Kansas area. I have been a life long resident of the city for 33 almost 34 years. I live several miles away from the oil wells, but can hear them when I go outside. On given days I can hear them inside the house, especially when all is quite and I try to go to sleep at night. Recently, a new well was put up close to 160 highway. The noise coming from that particular pump sounded like choppers flying over at close range. Before I knew where the sound was coming from I was always looking in the sky to see if I could see the chopper. Each of the pumps in the area has it's own distinct noise. The sounds are extremely annoying. It is like an unwelcome and very bad concert that one has to listen to if they choose to go outside to enjoy a beautiful evening. At least If your neighbor has their music up too loud - I say "if" because that rarely happens in Milan - there are LAWS in place to solve that problem. These pumps are a disturbance to the peace. It is mine understanding that there is a variety of technological solutions to redeem or resolve this problem. Well, what is the hold up? Please pass this bill, and help turn our city and others like it back to the quite, peaceful and enjoyable places they once were.

Thanks,



Michele Norris
President of Council



Oil Well Problems

We live within one quarter mile of two oil wells. They were run by electric motors at first, they were switched to gas. The gas motors popped so loud our company + grandchildren thought people were shooting them. Even at night they popped so loud they would wake us. They have now put mufflers on them + sound like people are target practicing further down the road.

D. D. Dlum

2-14-03

Conway Springs, Ks
Summer County

February 15, 2003

To the Honorable Mike O'Neal; Chairperson

We, Rick, Tammy, and Dallas Pontious of Milan, Ks., would like to complain about the oil well noise pollution.

We have lived in this community for 45 years. We own property along the Chikaskia River where the wells are loud and irritating. Over the past 25 years, this condition has been obnoxious and intolerable! The noise has noticeably improved over the past 2 years; however, this problem is still a constant, continuous, distracting, frustrating, nuisance keeping us from enjoying our property.

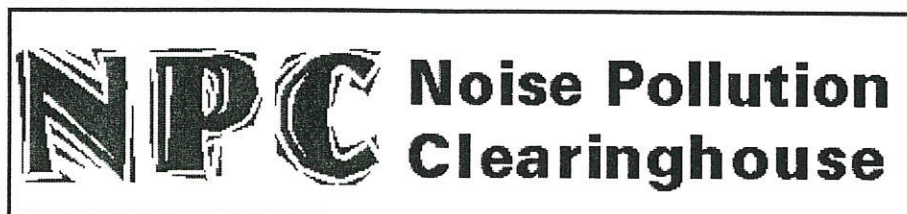
These wells pop, groan, moan, hum, vibrate, and bang with intensity from the north and south, rarely giving any relief.

Please, we urge you for a unanimous approval of House Bill 2081.

Sincerely,

Rick Tammy Dallas

Rick, Tammy and Dallas Pontious

Barry Tev on
Wellington

Protecting the Commons:

Our effort to control second-hand noise is part of a greater effort to protect that which is held in common by the public from exploitation, abuse, and degradation. Other efforts to protect the commons are concerned with protecting our public lands and parks; air, airways, water, and waterways; habitat, species, and bio-diversity. What these efforts share is the recognition that our well-being is enhanced when the commons is used to maximize opportunities for everyone, and degraded when the commons is used to maximize profits or opportunities for a few, or to maximize only a few opportunities.

Some individuals and businesses feel that they have a right or the freedom to use a common resource in any way they see fit. Perhaps these people are mistakenly extending their own private property rights to that which is publicly owned or cared for and not exclusively their own. Perhaps they do not realize what most of us learned on the school yard years ago: "that my right to swing my fist ends at your nose." Or, perhaps they do not recognize the soundness of our parallel claim "that my right to create noise ends at your ear." In any case, these people are acting as bullies, claiming rights and freedoms that are not theirs while degrading resources that are ours.

Polluting the commons is not a right. Our effort to reduce noise pollution is similar to other efforts to reduce pollution and reassert our collective stewardship over the commons. Whether the issue is second-hand smoke, elevated mercury levels, or ground level ozone, the strategy is to protect the environment and our health and well-being by creating an ethic of the commons.

In seeking to advance an ethic of the commons, we first need to recognize that competing uses that exclude other uses of the commons or damaging uses that detract from other uses are not wise uses of a public good. The commons should be used in as many non-competing, non-damaging ways as possible. Noise, like many other pollutants, precludes many enjoyable uses of the commons and is not a wise use of the commons: loud late night parties, early morning garbage pick-up, or aircraft take-offs trump sleeping, reading, working, or listening to music.

We are seeking to improve human well-being by establishing an ethic for the commons that allows for as many non-consumptive and non-rival uses of the commons as possible. Human well-being is enhanced when individuals or groups such as the Noise Pollution Clearinghouse succeed in two ways: first, by minimizing damaging uses of the commons, and second, by maximizing the opportunities for non-competing uses. With respect to noise, help us by spreading the message that good neighbors keep their noise to themselves.

[Home Top](#)

H. JUDICIARY

2-18-03

Attachment: 9



About Noise, Noise Pollution, and the Clearinghouse

Noise is unwanted sound; it is derived from the Latin word "nausea," meaning seasickness. Noise is among the most pervasive pollutants today. Noise from road traffic, jet planes, jet skis, garbage trucks, construction equipment, manufacturing processes, lawn mowers, leaf blowers, and boom boxes, to name a few, are among the unwanted sounds that are routinely broadcast into the air.

The problem with noise is not only that it is unwanted, but also that it negatively affects human health and well-being. Problems related to noise include hearing loss, stress, high blood pressure, sleep loss, distraction and lost productivity, and a general reduction in the quality of life and opportunities for tranquillity.

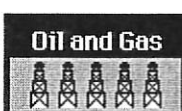
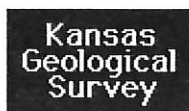
We experience noise in a number of ways. On some occasions, we can be both the cause and the victim of noise, such as when we are operating noisy appliances or equipment. There are also instances when we experience noise generated by others just as people experience second-hand smoke. While in both instances, noises are equally damaging, second-hand noise is more troubling because it has negative impacts on us but is put into the environment by others, without our consent.

The air into which second-hand noise is emitted and on which it travels is a "commons," a public good. It belongs to no one person or group, but to everyone. People, businesses, and organizations, therefore, do not have unlimited rights to broadcast noise as they please, as if the effects of noise were limited only to their private property. On the contrary, they have an obligation to use the commons in ways that are compatible with or do not detract from other uses.

People, businesses, and organizations that disregard the obligation to not interfere with others' use and enjoyment of the commons by producing noise pollution are, in many ways, acting like a bully in a school yard. Although perhaps unknowingly, they nevertheless disregard the rights of others and claim for themselves rights that are not theirs.

We have organized to raise awareness of noise pollution and help communities take back the commons from those acting like bullies. Our efforts include building a library of resources and tools concerning noise pollution, establishing links to other groups that have similar collections, establishing networks among local noise activists, assisting communities and activists who are working to reduce noise pollution, and monitoring and advocating for stronger noise controls.

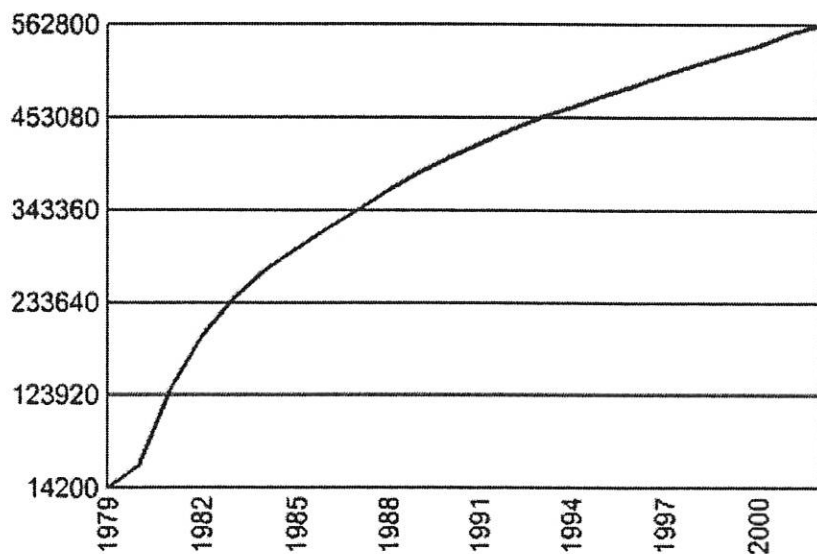
[Home Top](#)



KGS--Oil and Gas Production Chart

LAKEY Field

Cum. oil prod., LAKEY (bbl)



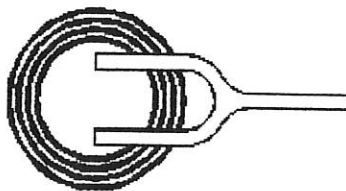
Kansas Geological Survey

Comments to webadmin@kgs.ku.edu

URL=<http://magellan.kgs.ku.edu/Field/index.html>

Programs Updated Feb. 2002.

Data from Kansas Dept. of Revenue files quarterly.



VANEC



Home

Vacuum Pump Separators

Engine Silencers

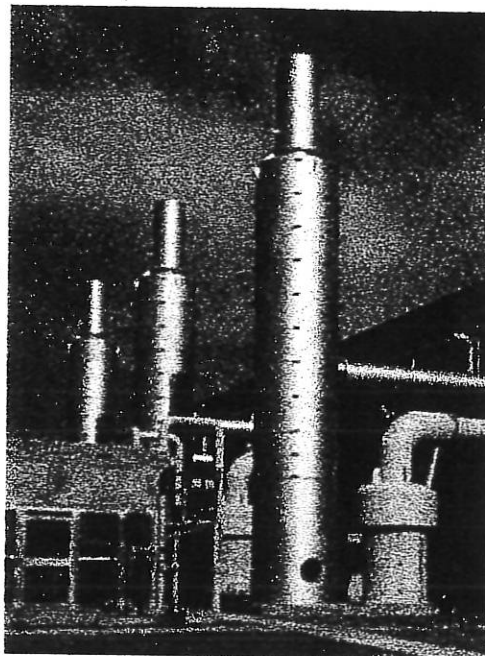
Vent Silencers

Gas Turbine Silencers

More!

Representatives

VANEC, Vibration And Noise Engineering Corporation, is a designer-manufacturer of industrial silencers, separators, intake filters and pulsation dampeners. Founded in 1969 we have over 30 years experience supplying quality products throughout the world.



A Leader in Silencing for Industry



Contact Information

Telephone

972-243-1951

FAX

972-243-1954

Postal address

2655 Villa Creek Drive, Suite 103, Dallas, Texas 75234

Electronic mail

info@vanec.com

UNIVERSAL SILENCER

[HOME](#)
[SITE MAP](#)
[SEARCH](#)
[E-MAIL](#)
[INDEX](#)

PRODUCTS

We design and manufacture noise control and air filtration equipment for these products:

- [ROTARY POSITIVE BLOWERS](#)
- [COMPRESSORS](#)
- [VACUUM PUMP LIQUID SEPARATORS](#)
- [INDUSTRIAL FANS](#)
- [VENTS](#)
- [ENGINES](#)
- [GAS TURBINES](#)
- [AIR FILTERS](#)
- [ABOUT US](#)
 - [Applications](#)
 - [Order a Catalog](#)
 - [Representatives](#)
 - [Distributors](#)
 - [Test Facilities](#)
 - [Headquarters](#)
 - [Manufacturing](#)
 - [Corporate Profile](#)
 - [Jobs](#)
- [LINKS](#)
 - [More Noise Control Sites](#)

Universal Silencer Products for Engines



We manufacture high-quality, fully welded reactive silencers to reduce exhaust noise on all types of internal combustion engines. Each engine and each operating location requires a unique combination of silencer properties. For this reason, many different silencer models are cataloged to cover most silencing problems. In cases where standard silencers do not meet a particular need, special silencers can be designed.

Multi-chamber Silencers

For the majority of engines and operating conditions, multi-chamber silencers provide maximum noise attenuation within acceptable back pressure limits. Most naturally aspirated and supercharged engines need this type of silencer, and many turbocharged engines are best silenced with this design. Factors that influence the choice of silencer design include engine exhaust flow in cubic feet per minute, exhaust temperature in degrees F., and maximum allowable back pressure, in inches of H₂O.

Straight-through Silencers

Some engines require very low exhaust system back pressures for maximum engine performance. Many turbocharged engines and some naturally aspirated engines fall into this category. For these engines, straight-through, reactive silencers are available to provide adequate silencing while imposing negligible restriction on the flow of exhaust gas.

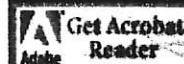
Spark-arresting Silencers

Operating locations exist where fire hazards and safety codes require removal of sparks from exhaust gases. Our spark arrestor silencers are engineered to perform the dual function of spark arrest and silencing for all internal combustion engines.

A variety of accessories are available, including:

FAST FIND

■ [Installation, Operation, and Maintenance Instructions for EN Series Engine Silencers](#)

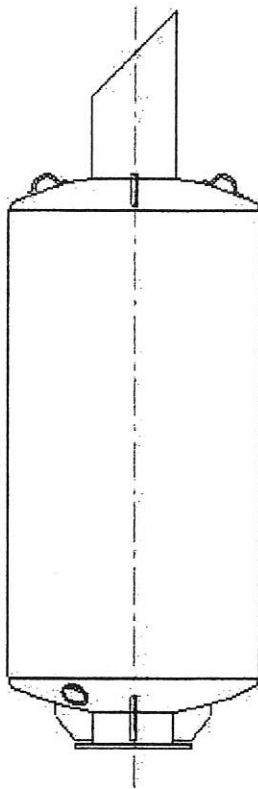


For more information please send e-mail to

use our [e-mail](#) or call us at 608-873-4272 and ask for Industrial Sales.



Engine Exhaust Silencer - Model 141



Standard Features:

- ◆ All Steel Welded Construction
- ◆ Quality Fabrication Techniques
- ◆ Condensate Drain
- ◆ Shell Constructed with Integral Damping
- ◆ Plate Flanges to Match ASA 125# Template
- ◆ Iron Oxide Primer Finish

Optional Features:

- ◆ Inlet Nozzle can be Installed in a Choice of Locations
- ◆ Finish as Specified
- ◆ Materials as Specified – Including Most Grades of Stainless Steel
- ◆ Mounting as Specified
- ◆ Discharge as Specified
- ◆ Handholes or Man-Ways

Applications:

The **VANEC** Model 141 Exhaust Quieter is designed for use in suppressing the exhaust noise of any internal combustion engine.

The Model 141 Exhaust Quieter, when properly applied, will reduce engine exhaust noise to a community acceptable level for dwellings located further than 200 ft. from the exhaust tail pipe.

Pressure drop on the **VANEC** Model 141 will normally be between 2.50 in. W.G. and 10 in. W.G. for exhaust velocities between 3,730 fpm and 7,430 fpm at an exhaust temperature of 750° F. These figures include exit loss to atmosphere.

The **VANEC** Model 141 Exhaust Quieter may be mounted either vertically or horizontally.

Below is part of a transcript of a conversation between a CEO and myself. He worked for a leading manufacturer of silencers for gas and oil well engines. I had contacted him to learn more about the muffler technology:

This gentleman advised that a properly installed silencer should give you no audible noise level within several feet from the engine. The only noise that should be heard is the movement of the mechanical parts in the engine and the fan itself.

There is a variance in application of silencers. Some engines will require a broadband silencer capable of containing both high and low frequencies. He said that some of your low frequencies engines, such as an Ajax, aren't really audibly detectable with meters but they are the ones in which you are going to feel the vibration and they will shake the windows.

I was informed that the website Universalsilencer.com has a lot of technical data. They have an Industrial Silencing Application Handbook with useful knowledge, which they will send upon request.

“Keeping these units quiet is not rocket scientist stuff, he said. It's all very old technology. For as long as they have been making engines, they've been making very good muffler devices. It's not pioneering technology, its all existing technology.”

I told this CEO that my state representative has informed me that any new laws involving money are going to be tough to pass.. But like he said," it's the owner that has to provide the device. They think it's a \$100,000 problem and in all reality it's a \$600.00 problem in most cases. It's not that big of an investment and the mufflers are going to outlive the engine."

He told me that the recommended requirements for an overall level, like a rural residence area where I am, have a data point called Ldn. Ldn is an average noise level over a 24 hour period. And for a rural residence it should be 40 dba. So if they are measuring the noise for 24 hours, the average of all the readings should not exceed 40 dba, which is very quiet. An airport is 86 dba. If you can feel and hear the noise where you are at, you're probably well over 70 dba. This is a noise prevailing level that they will normally permit at an airport, not in a rural area. When the wind blows, the wind should be louder than the noise."

Well it's not.

He spoke of the concept of different acceptable sound levels for day and night. This concept determines the energy average equivalent a weighted sound level and then applies a 10 dba penalty for nighttime operation. In other words, it should be quieter in the night than the daytime and no more than 10 dba.

They should be able to achieve an overall noise level low enough so if they're taking a 24-hour continuous measurement, the average of all of those measurements is

40 dba and that is not a difficult level to attain with the properly sized exhaust silencers.

He informed me that Cooper in Oklahoma City, OK makes the Ajax's motors at they have done a lot of things with their intake and discharge to make those very quiet. He said, "If you buy an Ajax from the factory, you get a machine that's very very quiet" I told him these are old units and he said, " They are old, but there is technology available that can be applied to those engines that work very well. We supply a lot of silencers. Also if you were to talk to the Cooper customer service tech people, they'd advise you that it's not a problem to make the engines inaudible at the property." He said, " The customer service and application engineering department sends guidelines when they ship a package out of the factory for the prevailing noise levels they like to have on their machines and it's very minimal."

He told me that Cooper people want a good reputation and they want those engines to be quiet and an environmentally acceptable product. Their engines run a long time because they are low speed.

They have worked hard on the technology to have the new ones quiet and they never have to send an engine back to the factory. They have provided recommendations for all of their problems to be serviced right on the field.

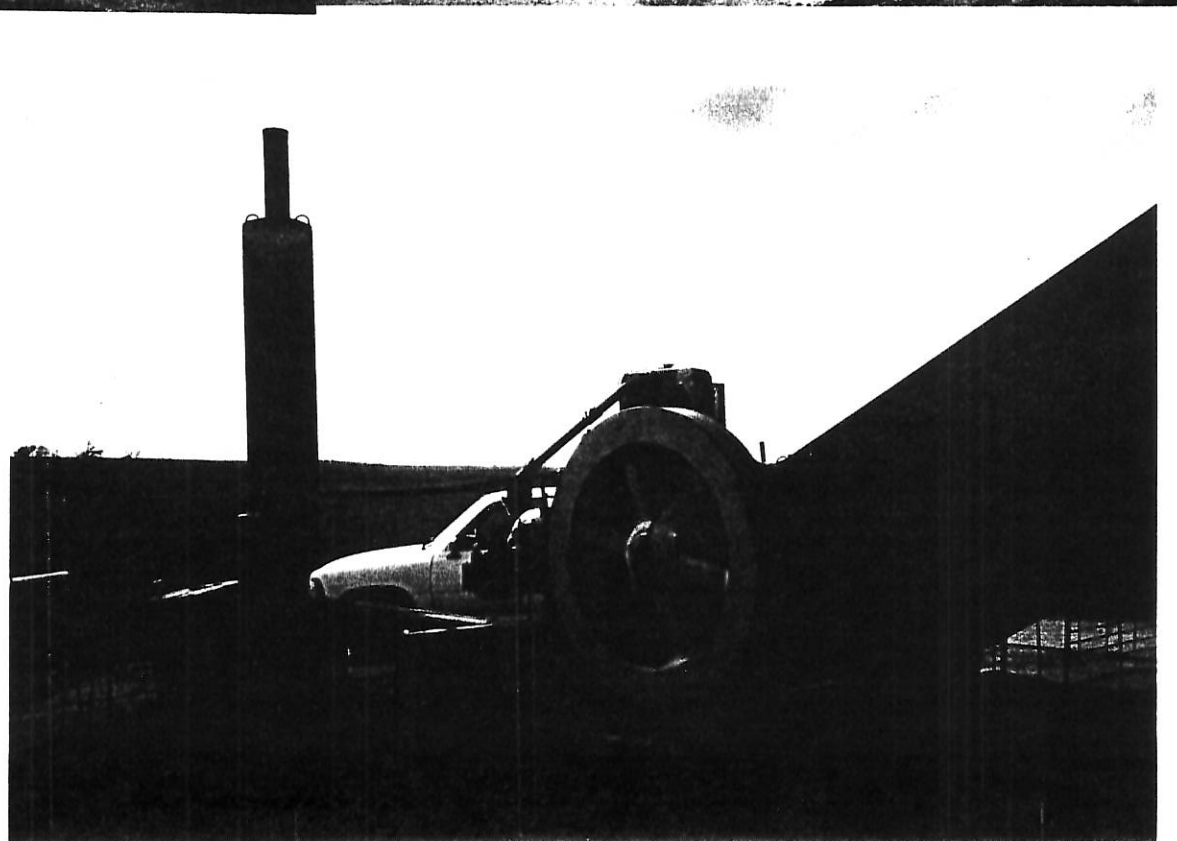
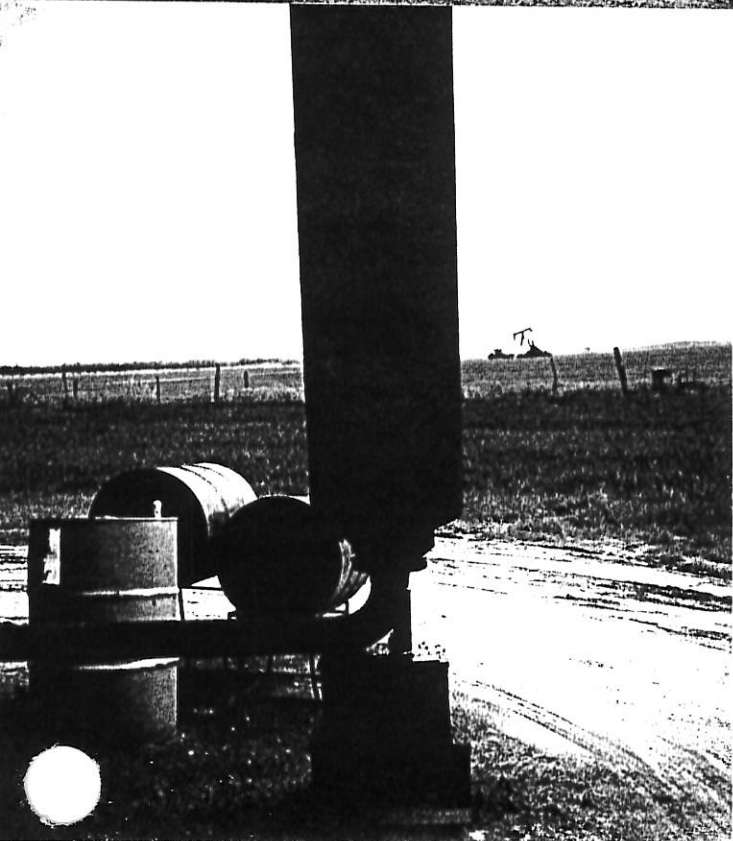
He said the smallest Ajax engine, the EA 22 and the EA 30, with a typical 4-inch exhaust is approximately \$600.00. With the silencer called the 'hospital grade' you should be

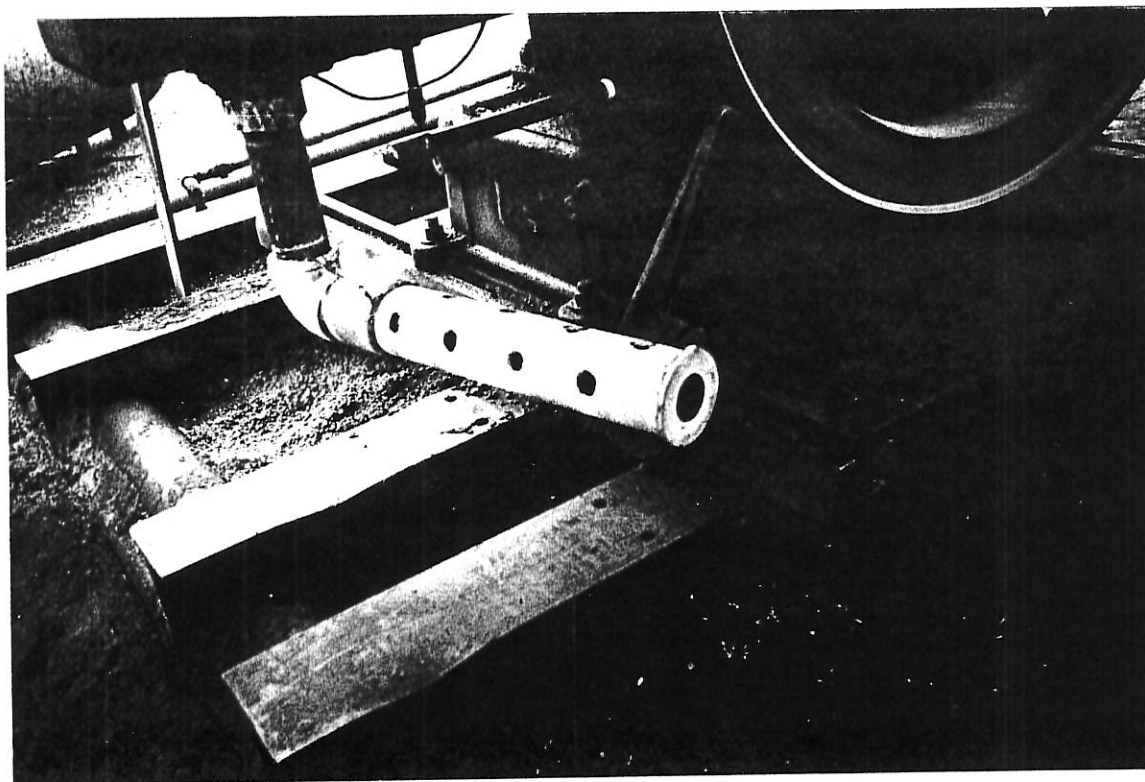
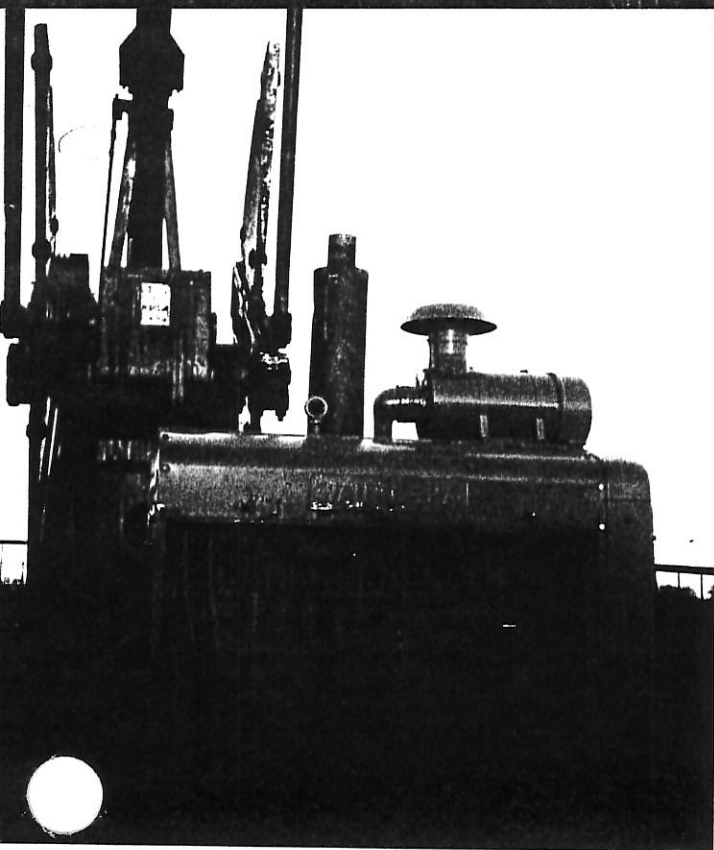
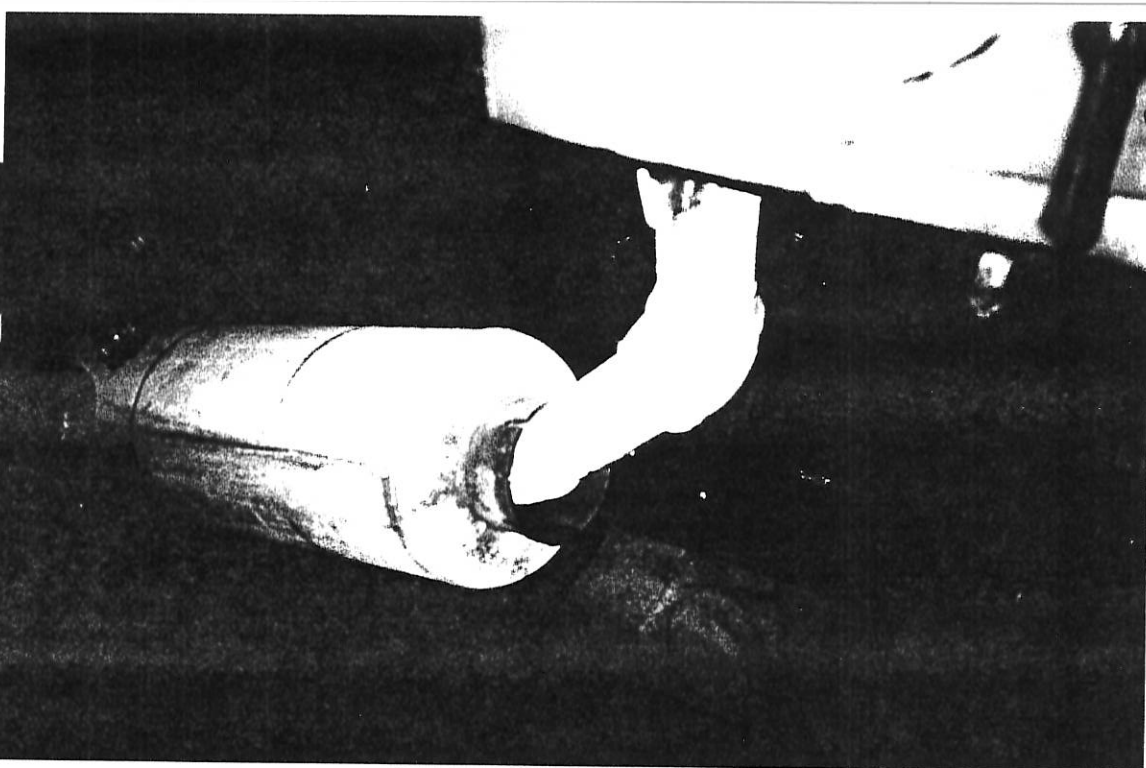
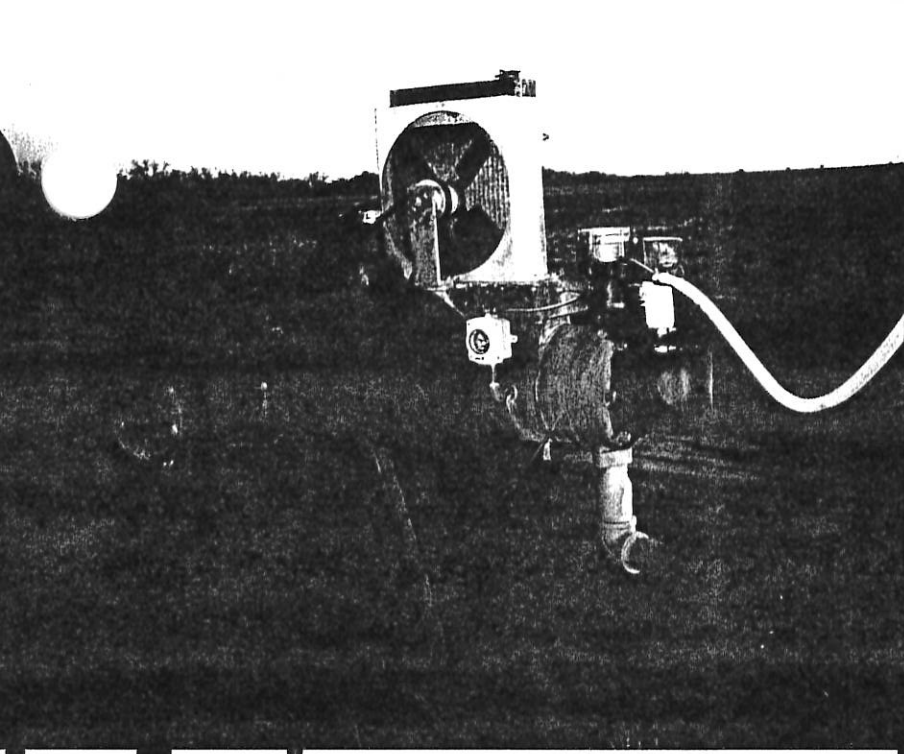
able to stand 50 feet from the unit and not tell it's running except to see the little exhaust flumes coming out. Loud Ajax's are a very fixable problem. In fact, he told me that an engine with the correct super imposed backpressure will run cleaner and run better. There's actually a benefit for them tuning their exhausts, they are not only going to have happier neighbors but their engines are going to have more horse power with much less fuel and less emissions output! He said, "Here's what the Cooper folks will tell you: If it's a Cooper machine and it's loud, then it's putting out a lot more emissions than it should and it's polluting the environment and they want to correct this!" "Engines and emissions in the past 10 years have been really been cracked down on. It would be wise to look into those issues also."

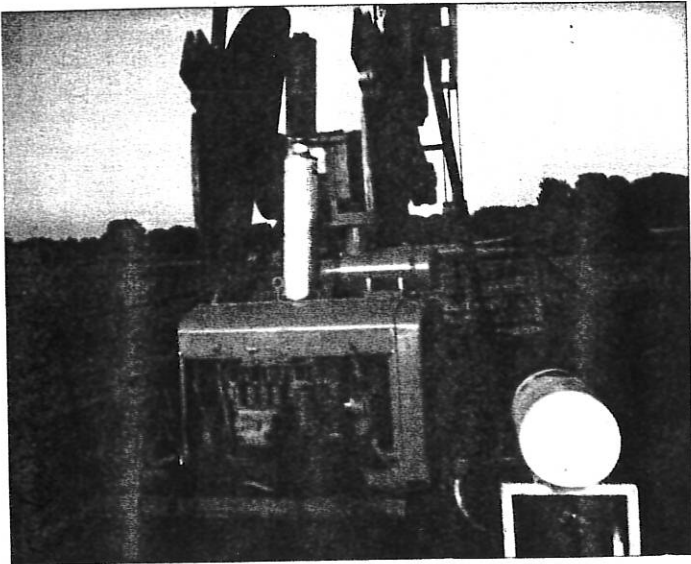
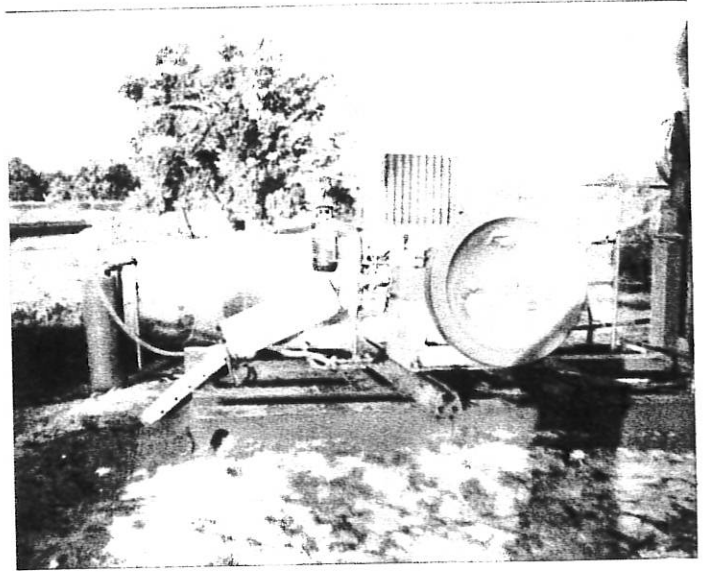
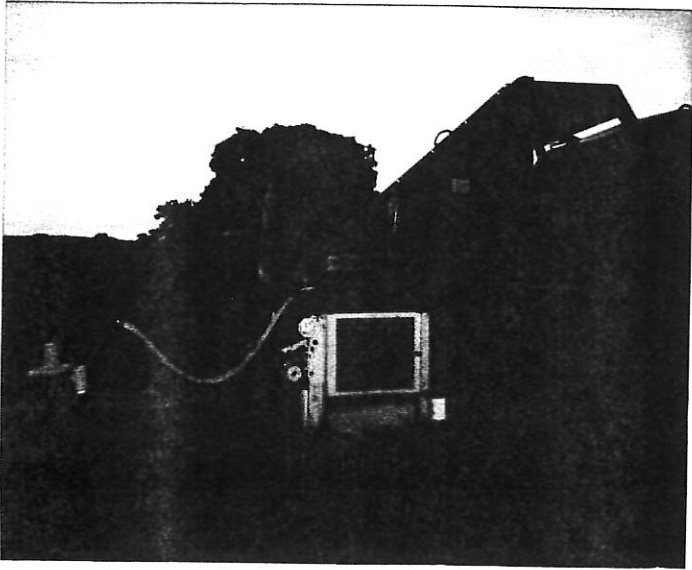
I asked about the engine called a Centennial and asked if they were similar to the Ajax? He said they aren't made anymore but that they were similar to an automotive engine. They are high speed. I asked about one in my area running called the Gemini Twin. He said they are very much like the high speed Centennial.

He informed me what's unique about the Ajax is that they are a very low speed and they produce a very high amplitude, low frequency output that carries a long long ways. That's one of which I'm hearing. He said they have very easy affordable fixes for that. When Ajax ships a machine from their factory, they don't get any complaints. So the machine I'm hearing probably has no intake sounds.

If you put one of those glass packs silencer on an Ajax, it totally opaques the noise. There's not even any noise at all!







STATE OF KANSAS
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

HEARING ON HB 2081
FEBRUARY 18, 2003

TESTIMONY OF
ROBERT E. KREHBIEL, EXECUTIVE VICE-PRESIDENT
KANSAS INDEPENDENT OIL & GAS ASSOCIATION

H. JUDICIARY

2. 18. 03

Attachment:

10

Testimony of
Robert E. Krehbiel, Exec V.P.
Kansas Independent Oil & Gas Association
In Opposition to
HB 2081
February 18, 2003

Mr. Chairman and members of the Committee, my name is Robert E. Krehbiel. I am appearing on behalf of the Kansas Independent Oil & Gas Association in opposition to HB 2081.

The Kansas Independent Oil & Gas Association was organized in 1938 to address issues of common concern to independent oil and gas producers and to promote the development of oil and gas production in the State of Kansas.

Oil and gas production is a vital part of the Kansas economy and has been since the discovery in the early 1900's of Kansas' giant oil and gas fields. Oil and gas is produced in 90 of Kansas' 105 counties. The well head value of Kansas' oil and gas production is roughly the equivalent of the value of all of the crops produced by Kansas' agriculture.

Kansas oil and gas is produced by over 2000 operating companies, mostly small businesses, that employ, on average, 3 people, or approximately 6,000 people in the extraction process. An additional 17,000 people are employed in downstream operations such as gathering, transporting, processing, refining, distribution and retailing. Each oil or gas well is a business unto itself, generating jobs and value in the area in which it is located. Oil and gas typically pays in excess of \$200 million annually in royalty payments, most of which go to Kansas' farmers or landowners. Oil and gas typically pays in excess of \$100 million in ad valorem taxes annually to the Counties in which they operate. In addition to county ad valorem taxes oil and gas pays a state severance tax of 4.33% of the wellhead value of production.

Most Kansas oil and gas producers have learned to work in harmony with Kansas landowners and the communities in which they operate. And, most counties, local farmers and communities welcome the investment, jobs and value which accompanies exploration and production. It is in everyone's best interest that good relationships between industry and community be maintained. Most oil and gas producers pay a good

deal of attention and time to fostering good public relations. Occasionally conflicts cannot be resolved in spite of such efforts.

As in agriculture, transportation by train, truck or airplane, manufacturing and many other businesses, noise is present in the production of oil and gas. It is a simple fact of business. Managing that noise so that it does not rise to the level of a public nuisance is a concern of every producer. We believe, however, that issues of this nature must be dealt with on a case by case basis, individual by individual, and neighbor to neighbor.

As I understand it HB 2081 was introduced by Representative McCreary to address a specific situation that exists in Sumner County, Kansas. HB 2081, however, would have statewide applicability while creating thresholds for sound abatement which is unattainable for any industry be it agriculture, transportation of any kind, or manufacturing.

There is some level of sound generated by activities which create any economy and which must be tolerated by society. HB 2081, however, would require that “no person shall operate any oil or gas well which makes noise that is plainly audible beyond the property line of the oil or gas lease where the well is located”. What business in the State of Kansas, be it oil and gas, agricultural irrigation engines, tractors running in the field, manufacturing plants, or even your own children playing at home, can comply with such a standard?

HB 2081 would also require that “no person shall operate between the hours of 10 p.m. and 7 a.m. any oil or gas well which makes noise that is plainly audible within any residence located 500 feet or more from the motor or engine running the pump”. The concept that requires production to cease every night at 10 p.m. at every such location across the state will have a significant economic impact on a substantial number of wells and people and the Kansas economy in general. Such a concept would require intervention by the Kansas Corporation Commission simply to protect correlative rights of adjoining landowners. The expense associated with such a requirement would ultimately result in the waste of Kansas’ natural resources.

In addition to its other problems HB 2081 is unconstitutional. It is vague in its language and creates a moving standard of applicability. “Plainly audible” is a standard

which is as variable as the wind or the barometric pressure which drives it. What is plainly audible at 1000 feet on one day may not even be distinguishable on the following day.

HB 2081 is unconstitutional because it will result in the taking of vested property rights. Contractual rights and obligations to explore, drill and produce will be rendered worthless, taken without compensation and without a valid public purpose.

To pass legislation of state wide applicability to address a localized complaint is not appropriate. The facts of the case, as they have been presented to me, which led the proponent to request the bill are as follows:

On April 27, 2000, at the request of the proponent, the Sumner County Commission adopted a County Wide Zoning Regulation, Article 19-111 D, which states that "Any existing or new oil pumps utilizing petroleum based engines for operation will have operable or functioning mufflers adequate to muffle sound as to not allow sound to exit the property".

On May 18, 2000, the field inspector for the Sumner County Zoning Department sent a letter to two lease operators with wells in the vicinity of the proponent of HB 2081 advising them of a potential violation of the new ordinance.

Both operators responded immediately and by June 8, 2000, the oil operators attempted to comply and had installed mufflers on all engines. Upon compliance they so advised the Sumner County Zoning Department.

On June 30, 2000, the Sumner County Field Technician advised the oil operators that the "mufflers did not muffle the sound so as not to leave the property." The technician stated that his office is continuing to receive complaints.

By letter dated July 6, 2000, the two oil operators involved advised the Sumner County Field Technician that, having already placed mufflers on the engines, his request was futile. They requested that a meeting be set up and that the complaining area residents be invited to participate in determining a possible solution. The operators offer to meet and find an acceptable solution was not responded to. Further correspondence was not received.

On December 12, 2002, respectively, one and one-half years later, a letter was received by the oil operators from the Attorney for the Sumner County Zoning Board

requesting the status of placing a muffler on a pump on a specific lease. That information was promptly provided and a subsequent letter dated January 7, 2003, states that one commission member inspected the property and "sees no problem".

One final letter to the other operator dated February 3, 2003, confirms the installation of mufflers on the lease and thanks the other oil operator for his cooperation. It appears that the oil operators have made every effort to cooperate with the complainant and with the County Zoning Board.

Recent interviews with other landowners who live in close proximity to the oil field near Milan, Kansas, would indicate that there are no other complaints resulting from the sound of engines running pump jacks.

Finally, HB 2081 is not necessary. The proponent has a series of remedies available to him should the sound of oil and gas pumps create a grievance which might rise to the level of a public nuisance. In addition the local ordinance would appear to provide a remedy as well. Ultimately, communication and cooperation between neighbors working together will provide the most suitable remedy for all concerned. There seems to me to be no reason this cannot be accomplished.

Thank you very much.

Sumner County
PLANNING - ZONING - SANITATION
501 North Washington - P. O. Box 326
Wellington, Kansas 67152



Phone: (620) 326-2207
Fax: (620) 399-1033
<http://co.sumner.ks.us>

3 February 2003

FEB 04 2003

Phillips Oil Properties, Inc.
Attn: Troy Phillips, President
1822 S. Mead
Wichita, KS 67211

Re: Lakey Lease
Sumner County, Kansas

Dear Mr. Phillips:

I am in receipt of your response to Michael Brown, our legal counsel, indicating the installation of mufflers on this lease. Thank you for your cooperation in this matter.

Yours truly,


JON BRISTOR
Director

JB/mj
Cc: Michael Brown
Board of County Commission

MICHAEL C. BROWN, PA

Attorney at Law

EL (316) 777-1186
AX (316) 777-1136Please Reply To:
P. O. Drawer A
Mulvane, KS 67110

January 7, 2003

Sumner County Zoning
Attention: Jon Bristor
Fax No.: 620-399-1099

Re: Hummon Corporation

Dear Jon:

Attached is a phone message I received from Hummon Corporation stating that the engines on the oil pumps placed on the Hartman lease have mufflers on them. Please note that commission member, Ed Larson, has apparently inspected the property or is aware of the alleged problem, and sees no problem. I believe this concludes my investigation on behalf of the Board of County Commissioners as to the status of the muffler issue.

Very truly yours,



Michael C. Brown

MCB:cs:tp
Enclosure
cc: Hummon Corporation

MICHAEL C. BROWN, PA

Attorney at Law

TEL (316) 777-1186
FAX (316) 777-1136

Please Reply To:
P. O. Drawer A
Mulvane, KS 67110

December 24, 2002

Hummon Corporation
950 N. Tyler Road
Wichita, Kansas 67212

Attn: Terry Hummon

RE: Hartman Lease

Dear Mr. Hummon:

Enclosed are copies of documentation which pertains to the Hartman lease, not the Lackey lease. Some of these materials contain a legal description. It would appear that this might be a moot issue.

Please respond at your earliest convenience so that I can advise the Commissioners accordingly.

Very truly yours,

Michael C. Brown

Michael C. Brown

MCB:tp
Enclosures
cc: Sumner County Zoning-Planning-Sanitation

*Ed Lorenson
guy that had problem
Moved*

*Called 12-30-02
left message*

Troy Phillips

From: "Troy Phillips" <troy@phillips-southern.org>
To: <mike@mcbpa.kscoxmail.com>
Sent: Friday, December 13, 2002 11:53 AM
Subject: 12/12/02 muffler request

Mr. Brown,

We did install mufflers on the lease in question, when requested, and have had no complaints or any type correspondence from residents in the area.

Respectfully,

Troy A. Phillips
Phillips Oil Properties, Inc.
316-265-7779

MICHAEL C. BROWN, PA

Attorney at Law

TEL (316) 777-1186
FAX (316) 777-1136Please Reply To:
P. O. Drawer A
Mulvane, KS 67110

December 12, 2002

Hummon Corporation
Attn: Byron E. Hummon, Jr., President
960 N. Tyler Road
Wichita, KS 67212RE: Lakey Lease
Sumner County, Kansas

Dear Mr. Hummon

Attached is a copy of a letter dated July 6, 2002 which you wrote to Sumner County Zoning-Planning-Sanitation regarding mufflers on oil pumps placed on the Lakey Lease. You will recall, there were apparently some complaints from several citizens in the area about the noise. Frankly, I thought this matter had been resolved, but apparently some citizens have contacted the Board of County Commissioners regarding other leases. As a result, the Board has asked me to contact you to determine whether or not a muffler was ever put on your pump on this particular lease.

Since your letter dated July 6, 2002, both a new zoning director and field technician have been hired and as a result, they cannot advise the Board. As a result, I have been asked to write you this letter.

If it would not be too much trouble, would you please be kind enough to drop me a letter and let me know whatever happened as far as a muffler being placed on the pump? I am not aware of any new complaints regarding this lease.

Very truly yours,



Michael C. Brown

MCB:tlb
cc: Sumner County Zoning/Planning/SanitationMulvane Office: 507 N. 2nd Ave., Near K-15 Hwy & Rock Road
Wichita Office: 150 N. Main, Ste. 511, Commerce Bank Center
mike@mcbpa.kscoxmail.com



950 N. TYLER ROAD ■ WICHITA, KANSAS 67212-3240
(316) 773-2300 ■ FAX (316) 773-2543

July 6, 2000

Donald E. Mies, Field Technician
Sumner County Planning – Zoning – Sanitation
501 North Washington, P.O. Box 326
Wellington, KS 67152

RE: Notice Concerning Mufflers

Dear Mr. Mies:

This letter is to serve as the official response to your letters dated June 30th to both Phillips Oil Properties, Inc. and Hummon Corporation concerning the muffling of sound from our oilfield engines. Owners of both companies feel that your request for additional expenditures towards this is futile.

The location of the wells on a lease property may be such that there is no way that the sound can be contained to that property. No other county in the state of Kansas enforces such an ordinance because it is impossible to comply with.

Both Phillips and Hummon have requested names of the area residents who are making the complaints so that we can contact them and work out solutions. Your office has refused to release this information. If we would have had this information before we made the muffler installations, we could have dealt with each location individually.

The cost of doing business, in this case, to comply with your request, has been not only the monetary cost of purchasing and installing the mufflers, but also a loss of three to four horsepower from each of the engines and the risk of engine failure due to the fact that the engine's temperatures have increased to 190 to 200 degrees, which is too high.

We would like to set up a meeting, on the well sites, and at the residences in question, with you, our company representatives, county commissioners and/or your legal counsel and the area residents to discuss and resolve this issue. Please contact either Troy Phillips, Phillips Oil Properties, Inc. at 316-265-7779 or Debbie Hill, Hummon Corporation at 316-773-2300 on setting up an appointment for such a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Byron E. Hummon, Jr.', is written over the typed name and title.

Byron E. Hummon, Jr.
Pres. of Hummon Corporation

A handwritten signature in black ink, appearing to read 'Troy A. Phillips', is written over the typed name and title.

Troy A. Phillips, President
Phillips Oil Properties, Inc.

SUMNER COUNTY
PLANNING - ZONING - SANITATION
501 NORTH WASHINGTON - P.O. BOX 326
WELLINGTON, KANSAS 67152
(316) 326-2207

30 June 2000

CERTIFIED LETTER:
7099 3220 0006 5957 3043

PHILLIPS OIL PROPERTIES, INC.
TROY A. PHILLIPS
1822 S MEAD
Wichita, KS 67211

RE: NOTICE OF SUMNER COUNTY ZONING &/OR ENVIRONMENTAL CODES
SE4, W2-NE4 & N2-SW4 30-32S-3W Lakey Lease
PARCEL: 179-30-0-00-00-002.00-0-01 TRACT SZ:317.6 acres

Dear Mr. Phillips:

A followup inspection in the area of the above referenced site indicated you have installed mufflers on the pumps as we requested, however; we required the mufflers to "muffle" sound so as not to leave the property. This has not yet happened. Our office is continuing to receive complaints from area residents including residents in the town of Milan. You are required to install adequate mufflers so that the sound does not exit the property resulting in violation to Sumner County Regulations.

Our Office understands this will cost more money, but there is always a cost of doing business. Please contact this office within 10 days of the date of this letter for a compliance inspection. As stated in the Certified Letter dated 18 May 2000, there is a \$35.00 inspection fee required.

Respectfully,



DONALD E. MIES
Field Technician

JB/DM:mj

cc: Board of County Commission
Legal Counsel
Cusc / file

PHILLIPS OIL PROPERTIES, INC.
1822 S. Mead, Wichita, KS 67211, 316.265.7779, 316.265.1942 FAX

June 9, 2000

Sumner County
Planning-Zoning-Sanitation
P.O. Box 326
Wellington, KS 67152

Attn: Don Mies

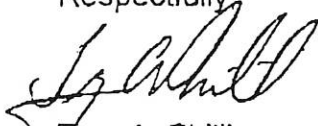
Re: Certified Notification of Compliance

Don,

As of June 8, 2000 we have installed adequate mufflers on our engines. Please inspect the leases and respond to me your approval and acceptance.

Please contact me with any questions or concerns.

Respectfully,


Troy A. Phillips

Send Cert'd
w/ Return
envelope

PHILLIPS 1822 S. Mead, Wichita, KS 67211, 316.265.4186, 316.265.1942 FAX

Fax-MEMO

To: DON MIES, SUMNER CO From: TROY PHILLIPS
 Fax: 399-1033 Pages: 2
 Phone: _____ Date: 6/7/00
 Re: _____ CC: _____

Urgent For Review Please Comment Please Reply Please Recycle

The information contained in this facsimile is privileged and confidential information intended for the sole use of the addressee. If the reader of this facsimile is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of communication is strictly prohibited. If you have received this FAX in error, please immediately notify the person listed above, and return the original message to the sender at the address listed above.

Don,
PER REQUEST I AM SENDING COPY
OF INVOICE FROM DERBY MUFFLER.

I WILL CONTACT YOU WHEN INSTALLED
FOR YOUR INSPECTION

Troy

PHILLIPS OIL PROPERTIES, INC.

1822 S. Mead, Wichita, KS 67211, 316.265.7779, 316.265.1942 FAX

May 24, 2000

Sumner County
Planning-Zoning-Sanitation
P.O. Box 326
Wellington, KS 67152

Attn: Don Mies

Re: 5-18-00 Notice Response


Don,

Per our 5-19 conversation, I have contacted the muffler supplier for my engines. The mufflers for the C-96 engines are not a stocked item; I have to order them. I will have the mufflers installed as soon as they arrive. Your office will be contacted after installation is complete.

This contact should meet my response requirement and relieve me of the violation fee.

Please contact me with any questions or concerns.

Respectfully,


Troy A. Phillips

*5/24/00 - Told him we are waiting for mufflers - will be installing next week
Send him copies*



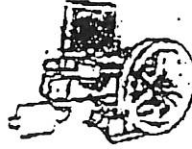
FAX COVER PAGE

TRANSMISSION: DATE: 5/19/00 TIME: 4:00

RECIPIENT: NAME: Randy Cates
FIRM: Cates Supply
CITY: _____
PHONE: _____

Please Deliver the Following Pages to-

SENDER:



LONNIE COTHRAN
CUSTOMER SERVICE

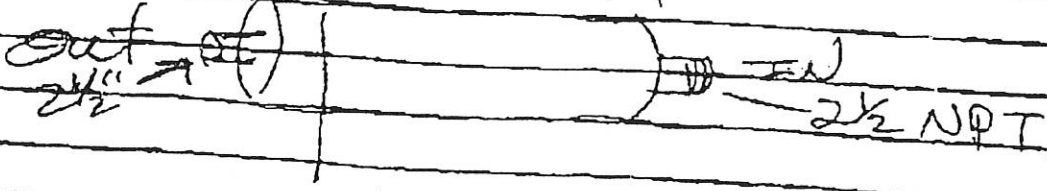
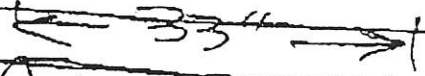


2201 E. Independence Tulsa, Oklahoma 74116-8803
24hr 583-6711 • 1-800-277-2282 • FAX 583-828-1463
U.S. AND CANADA FAX 1-800-288-1461
E-Mail: lonnie@arrow-specialty.com

NOTICE: We are transmitting (including this cover page) _____ pages. If you do not receive all the pages, please call as soon as possible • (918) 583-5711 and ask for Fax Attendant.

MESSAGE: Re: MuF-L-H-46 \$ 349.80 - 15% = 297.33

Randy No drawing Here is mine



10" OD

Reduces Noise Level 30 to 35 DB

Lonnie



2201 E. Independence Tulsa, Oklahoma 74116-8803



TOTAL P. 01

Derby Muffler

788-242

Laura -

T RON Toubit

- 16ga Steel

5/23/00

7" x 26" 75⁰⁵

~~10"~~

9" x 24' 109⁰⁰

→ ORDERED → 4 9" x 24"
will be here in one week



950 N. TYLER ROAD ■ WICHITA, KANSAS 67212-3240
(316) 773-2300 ■ FAX (316) 773-2643

May 22, 2000

Donald E. Mies, Field Technician
Sumner County Planning, Zoning, Sanitation

Fax No. 316-399-1033

RE: Environmental Code Violation

Dear Mr. Mies:

We are in receipt of your letter dated May 18, 2000 concerning the violation you observed on our lease located at NW/4NW/4 Section 30-32S-3W.

Our company pumper, Don Ray, will install mufflers on the oil well today.

We are sorry for any inconveniences this has caused you or the residence in the area.

Sincerely,

A handwritten signature in black ink, appearing to read 'Debbie Hill', is written over the typed name.

Debbie Hill
Office Manager

cc: Frank L. & D.A. Hartman
c/o John R. Thome, Jr.
658 Wetmore Drive
Wichita, KS 67209-1323

**SUMNER COUNTY
PLANNING - ZONING - SANITATION**
501 NORTH WASHINGTON - P.O. BOX 326
WELLINGTON, KANSAS 67152
(316) 326-2207

18 May 2000

Oxwell Inc
600 E 16th Street
Wellington, KS 67152

Phillips Oil Properties, Inc.
1822 S. Mead
Wichita, KS 67211

CERTIFIED LETTER:
7099 3220 0006 5957 2534

7099 3220 0006 5957 2541

RECD MAY 19 2000

RE: NOTICE OF SUMNER COUNTY ZONING &/OR ENVIRONMENTAL CODES
SE4, W2-NE4 & N2-SW4 Section 30, Township 32 South, Range 03 West
PARCEL: 179-30-0-00-00-002.00-0-01 TRACT SZ:317.6 acres
Lakey Lease

Property Owner:

An inspection in your area indicated the above referenced site possess a potential violation of Sumner County Zoning Regulations and/or Environmental Codes. As property owner(s) you are responsible for the corrective action to bring this site in compliance with Sumner County Codes/Regulations.

VIOLATIONS OBSERVED:

1. Operation of oil pumps without operable or functioning mufflers.

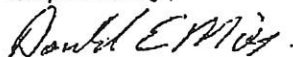
CORRECTIVE ACTION/SOLUTION:

1. Install adequate mufflers as to not allow sound to exit property.
2. Seize the use of the pumps.
To abandon site, the site must be restored to original agriculture state.
Both options will require a compliance inspection by this office.

A ten day response time is allowed. To avoid administrative and/or legal action, and a violation fee of \$50.00; contact this office for an appointment with the Code Officer and /or call for an inspection **NO LATER THAN: 30 May 2000.**

NOTE: each follow-up inspection hereafter has a \$35.00 fee
Violations will be corrected within ten (10) days of the date of this letter.
There will be no further correspondence from this office sent to you unless you contact this office on or before 30 May 2000. At such date this will be forward to Legal Counsel and a \$50.00 violation fee will be required.

Respectfully,



DONALD E. MIES
Field Technician

JB/DM:mj

cc: Board of County Commission
Legal Counsel
cusc / file

LEGAL PUBLICATION

(First Published in the Conway Springs Star-Argonia Argosy, 27 April 2000) 11

RESOLUTION

PURSUANT TO THE AUTHORITY GRANTED TO THE BOARD OF COUNTY COMMISSION BY K.S.A. 12-741 et seq, AS AMENDED AND SUMNER COUNTY ZONING AND SUBDIVISION REGULATIONS, IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THE SUMNER COUNTY, KANSAS, HERE WITH:

CASE NUMBER 09-00

SECTION 1: WHEREAS by having received a recommendation from the Planning Commission and proper notice having been given and hearing held as provided by the law and under the authority and subject to the provisions of the zoning classifications by amending the following:

SUBDIVISION REGULATIONS

The following Chapter contains addition to existing text:

CHAPTER 1 GENERAL PROVISIONS

add 1-104 Exemptions

6. One Time Split allowed without the zone change procedures provided:

- (A). Property consists of 40 taxable acres;
- (B). Ownership of property of minimum of fifteen (15) years verified prior to division (one time split).
- (C). Affidavit must be completed and filed at Register of Deed for each division. Affidavit may be obtained in the Planning Office

REC'D MAY 23 2000

ZONING REGULATIONS

The following Articles contain deletions/changes/additions/updating to existing text: Underlining indicates change.

ARTICLE 2. "A" AGRICULTURAL DISTRICT REGULATIONS

change
(AS READS) 2-106 (6) Lot Area Per Family: Every dwelling hereafter erected, constructed, reconstructed, moved or altered shall provide a minimum lot area of one million seven hundred forty-two thousand four hundred (1,742,400) square feet or forty (40) acres per family.

(CHANGE TO) 2-106 (6) Lot Area Per Family: Every dwelling hereafter erected, constructed, reconstructed, moved or altered shall provide a minimum lot area of eight hundred seventy one thousand two hundred (871,200) square feet or twenty (20) acres per family.

ARTICLE 19. SUPPLEMENTARY USE REGULATIONS/CONDITIONAL USES-ACCESSORY USES

delete 9-104 ~~A, B, C, D, E Oil and/or gas well drilling~~

add 19-111 Prohibited Uses

D Any existing or new oil pumps utilizing petroleum based engines for operation will have operable or functioning mufflers adequate to muffle sound as to not allow sound to exit the property.

ADOPTED AND APPROVED by the Board of County Commissioners of Sumner County, Kansas, on the 27th Day of April, 2000.

Commissioners present and voting were:

- Damon F. Weber Yes
- Robert A. Courtney Yes
- Eugene Bongiorno, Jr. Yes

BOARD OF COUNTY COMMISSIONERS
SUMNER COUNTY, KANSAS

Robert A. Courtney
ROBERT A. COURTNEY Second District
Chairman

Eugene Bongiorno, Jr.
EUGENE BONGIORNI, JR. First District

Damon F. Weber
DAMON F. WEBER Third District

Pursuant to Environmental Codes:

Section 1-1.2: Declaration of Finding and Policy.

"An environmental codes establishes standards to eliminate and/or prevent the development of environmental conditions that are hazardous to health and safety... "

Section 1-3.5.2 Penalties: In addition to, and independently of the enforcement procedures provided in Section 1-3.5.1, herein, any violation of any provision of an Environmental Codes shall be deemed to be a Misdemeanor and upon conviction, shall be punishable by a fine not to exceed two hundred (\$200) dollars for each offense. Each day's violation shall constitute a separate offense. (K.S.A. 19-3707).

Pursuant to Zoning Regulations:

Article 19-111 D

Any existing or new oil pumps utilizing petroleum based engines for operation will have operable or functioning mufflers adequate to muffle sound as to not allow sound to exit the property.