

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairman Senator Robert Tyson at 8:35 a.m. on March 7, 2003 in Room 423-S of the Capitol.

Members present: Senator Downey, Senator Tyson, Senator Taddiken, Senator Lee, Senator Umbarger, Senator Corbin, Senator Schmidt

Committee staff present: Raney Gilliland, Legislative Research  
Lisa Montgomery, Revisor of Statutes  
Shannon Stone, Secretary

Conferees appearing before the committee:

Gary Blackburn, Director Bureau of Environment, Kansas Department of Health and Environment  
Tom Whitaker, Executive Director, Kansas Motor Carriers Association  
Thomas Palace, Petroleum Marketers and Convenience Store Association of Kansas

Others attending: See attached guest list

**Hearing on House Bill 2196**

Staff, Raney Gilliland gave an overview of the bill. The bill would amend the Kansas Storage Tank Act, placing greater responsibility of compliance to state regulations with *owners* and *operators* of storage tanks, as opposed to the fuel suppliers.

Gary Blackburn of KDHE said the Department supports the bill as amended. He believes the bill provides the agency with workable alternatives, as well as the authority it needs to enforce the Storage Tank Act. (Attachment 1)

Tom Whitaker represented Kansas Motor Carriers Association, the organization that requested the bill. The Association sees the bill as a workable compromise because of the new language that requires KDHE to give suppliers written notice of tank owners who fail to comply with state regulations. Fines would only be imposed on suppliers if, after notification, they continued to deposit fuel in unregistered tanks. (Attachment 2)

Thomas Palace, spokesman for Petroleum Marketers and Convenience Store Association of Kansas supported the bill because the "other parties" will no longer be forced to act as "the police or enforcer of the statute." (Attachment 3)

The conferees stood for questions following testimony. Mr. Blackburn confirmed that distributors and suppliers are both given notice of tank owners who are "out of compliance" with state requirements. Further discussion ensued over fines, gas tax and encumbered funds.

Chairman Tyson closed the hearing on **HB 2196**.

Senator Lee made a motion to pass the bill out favorably. Senator Umbarger seconded the motion and the motion carried.

The meeting was adjourned at 9:11 a.m.

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: March 7, 2003

NAME	REPRESENTING
Kelly Conwell	
Matt Conwell	
Tom Whiraker	Ks Motor Carriers Assn.
TOM PALACE	PMCA OF KANSAS
Tom Winn	KDHE
Gary Blackburn	KDHE
Ron Secher	Hein Law Firm
Woody Moss	Ks App Pool Assn
Wendy Hanns	Ks Ready Mixed Conc Assn.



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on House Bill 2196 as Amended  
to**

**Senate Natural Resources Committee  
Presented by Gary Blackburn, Director  
Bureau of Environmental Remediation**

**March 7, 2002**

Chairperson Tyson and members of the Natural Resources Committee, I am pleased to appear before you today in support of House Bill 2196 as amended. The initial proposed legislation removed the responsibilities placed on fuel suppliers to help the agency enforce the underground tank program requirements. Amendments made to the bill provide alternatives to the original enforcement authority which allow the agency to enforce the provisions of the Storage Tank Act without negatively impacting the program.

In the future, the agency will make a concerted effort to place the responsibility for compliance with the Storage Tank Act on the tank owners and operators rather than on those who deliver the fuel. Passage of this bill will help the agency obtain compliance with the storage tank requirements without placing an unfair share of the burden on the fuel suppliers and fuel delivery firms.

I thank you for the opportunity to appear before the Natural Resources Committee and will gladly stand for questions the committee may have on this topic.

*Senate Natural Resources Committee  
Date: March 7, 2003  
Attachment 1*





# KANSAS MOTOR CARRIERS ASSOCIATION

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Executive Director

## Legislative Testimony

**Presented by the Kansas Motor Carriers Association  
Before the Senate Natural Resources Committee  
Senator Robert Tyson, Chairman  
March 7, 2003**

### **In Support of House Bill No. 2196**

#### **MR. CHAIRMAN AND MEMBERS OF THE SENATE NATURAL RESOURCES COMMITTEE:**

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

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

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

Following testimony in the House Environment Committee, KMCA, PMCA and KDHE agreed on language in HB 2196 that will benefit all concerned. The bill places the responsibility of making sure the tank is properly registered and in compliance on the tank owner. Additionally, the bill makes the fuel distributor, or the motor carrier, responsible for depositing fuel in an unregistered tank if the fuel distributor or motor carrier has been notified by KDHE that the tank is out of compliance. Finally, HB 2196 provides KDHE immediate cease and desist authority on tank owners that are out of compliance.

*Senate Natural Resources Committee  
Date: March 7, 2003  
Attachment 2-1*

Our industry is overwhelmed by new requirements on hazardous material transporters because of the possibility of terrorism threats against our country. Truck drivers have enough to worry about just making sure the load of fuel arrives at its destination in a safe and timely manner. We believe the language in House Bill No. 2196 provides KDHE the necessary authority to stop the placing of motor fuels in unregistered tanks. We would like to thank KDHE working closely with our association and PMCA to produce fair and common sense legislation for the industry and the department.

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





Testimony: Senate Natural Resources Committee  
From: Thomas M. Palace  
Date: March 7, 2003  
RE: House Bill 2196

Mr. Chairman, and Members of the Senate Natural Resources Committee:

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

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

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

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

As amended in the House, the Motor Carriers Association, PMCA and the Department of Health and Environment have agreed to the language that makes the tank owner or operator ( not all parties) liable for civil fines if fuel is dispensed into a non-permitted tank. However, the amendment goes further to say that if fuel is dispensed into a non-permitted tank after KDHE has issued a written notice to all parties, thus rendering the tank out of compliance, civil penalties can be assessed.

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

PMCA believes that KDHE needs to be the enforcer of this statute. They know as of each registration deadline of July 31, the tank owners that are not in compliance. We feel the amendment properly penalizes the parties that are not in compliance with KDHE tank regulations, and we urge your support of HB 2196 as amended.

Petroleum Marketers and Convenience Store Association of Kansas  
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Topeka, KS 66608-0479  
785-233-9655 Fax: 785-354-4374

*Senate Natural Resources Committee  
Date: March 7, 2003  
Attachment 3*