

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Derek Schmidt at 8:30 a.m. on January 28, 2004 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research
Lisa Montgomery, Office of the Revisor of Statutes
Robert Myers, Committee Secretary

Conferees appearing before the committee:

Edward "Woody" Moses - Managing Director, Kansas Aggregate Producers' Association
Justin Holstin - Executive Vice President, Propane Marketers Association of Kansas
Karl McNorton - Chief Deputy State Fire Marshal, Office of the Kansas State Fire Marshal
Jim Brewer - Owner/Operator, Jim's Propane, Inc. of Leon, Kansas
Dave Lybarger - Lybarger Oil, Inc. of Garnett, Kansas; Petroleum Marketers and Convenience Store Association of Kansas

Others attending:

See Attached List.

Edward Moses appeared before the committee in order to request the introduction of a bill regarding the regulation of sand and gravel pits, specifically focusing on the need for water appropriation permits.

Senator Taddiken moved to introduce the bill as requested, seconded by Senator Umbarger. The motion carried.

Justin Holstin appeared before the committee in order to report on the Kansas Propane Education Research Council (KanPERC). He explained that the strategy of KanPERC at this point is to conserve funds that come in to the program in order to ensure that they have the right amount of money before setting up any kind of project. He further stated that although KanPERC is not expending any money yet, they are currently planning programs. He gave to the committee three pieces of written testimony: a letter written by Chairman Greg Noll to Chairman Schmidt and the other members of the Senate Agriculture Committee; a manual consisting of assessment procedures for KanPERC; and finally, a printout showing the homepage of the new KanPERC website (Attachments 1, 2 & 3).

Justin Holstin also testified to the committee as a proponent of **SB 335**, regarding the creation of the Kansas propane safety and registration act. He started off with a focus on the extensiveness of the propane industry in Kansas, providing the committee with statistics regarding the number of households served in Kansas, as well as the extent of annual propane consumption in the state. He then talked about what he perceived as a crisis being faced by the industry as a result of its current lack of regulations and registration. Continuing with this line of thought, he stated that the reason why there is a need for the implementation of the bill is that self-regulation has not and will not work in the case of the propane industry. Stating that only a few insurance companies in the state are willing to write propane, he expressed the need for this legislation in order to stop the trend of rural propane companies quitting the business. He stressed the fact that those companies currently abiding by regulations are at a competitive disadvantage to those that take advantage of the lack of regulatory enforcement. With regard to this lack of enforcement, he pointed out the lack of funds and resources faced by the Office of the Kansas State Fire Marshal, the industry's regulatory body. He also touched on the average costs that would be faced by propane businesses as a result of the bill, stating though that they would be willingly paid in order to have more competitive premiums and to ensure public safety. He also expressed the opinion that the tests required by the bill (i.e., inspection following the required notice given of alterations made to a propane system) should be free-of-charge, such as is the case with the call before you dig program used by electric companies (Attachment 4).

Karl McNorton appeared before the committee as a proponent of **SB 335**. He referred to the long, strong

CONTINUATION SHEET

MINUTES OF THE SENATE AGRICULTURE COMMITTEE at 8:30 a.m. on January 28, 2004 in Room 423-S of the Capitol.

working relationship that has existed between the Kansas State Fire Marshal's Office, the Propane Marketers Association, and the propane industry. He further spoke of how this relationship has resulted in improved safety in the industry with regard to the handling and transportation of propane. His support for the bill centered around its establishment of a single point of contact for businesses in the industry, a need that he indicated in stating the present inability to identify or locate all facilities, dealers, distributors, or cylinder exchange locations. According to him, the bill would further improve the safety of both businesses and consumers by allowing the propane industry to better police itself (Attachment 5).

Jim Brewer appeared before the committee as a proponent of **SB 335**. He stressed the importance of requiring registration and proof of insurance from all propane marketers in order to alleviate the current problem of not knowing the number and location of such businesses. By way of stricter regulation, and thus better enabling inspections by the Office of the Kansas State Fire Marshal, he claimed that the propane industry would be safer and consequently more appealing for insurance companies. In closing, Mr. Brewer expressed the desire to have an industry-wide requirement that customers must notify their propane marketer of any alterations made to their gas system or added appliances (Attachment 6).

Dave Lybarger appeared before the committee as a proponent of **SB 335**. His concern for the propane industry centered around the rising costs of insurance premiums for his and other companies. He provided statistics showing the rate of increase of his own premium over the past five years. He stated that the purpose of the bill is to create an attractive marketplace for insurance companies to enter into, thus acknowledging the current problem of there being only two companies that will insure propane businesses. Mr Lybarger gave the committee an idea of how his business would deal with the bills' requirement for customers to provide notification upon alteration of their gas system. Specifically, upon being notified, he would send a technician to the location of the alteration in order to perform a leak test on the system. The presence of the customer during this test would be required, in order to both fill out a written notice form provided by the technician as well as to sign a document stating that the test was indeed performed. Finally, Mr. Lybarger described the bill as being composed of six key elements: registration, inspection, education, liability insurance, limits on liability, and the Propane Advisory Board (Attachment 7).

Chairman Schmidt announced to the committee a to-be-determined working meeting for all interested parties and committee members. The purpose of this meeting would be to deal with technical difficulties with regard to the structure and language of **SB 335**.

The next meeting is scheduled for Tuesday, February 3, 2004.

On behalf of Scott Anderson of Kansas Farmers Service Association in Hutchinson, written testimony was submitted to the committee in support of **SB 335**.

On behalf of Kevin Kelly of Two Rivers Coop in Arkansas City, written testimony was submitted to the committee in support of **SB 335**.

Senator Corbin moved to approve the minutes of both the January 20 and 21 committee meetings, seconded by Senator Tyson. The motion carried.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 1-28-04

NAME	REPRESENTING
Leslie Kaufman	Ks Co-op Council
Kevin Kelly	Ks Coop Council - Two Rivers Co
Deane Gruber	Ks Co-op Council
Scott Anderson	Kansas Farmers Service Assn.
Mary Jane Stankiewicz	KGFA/KARA
Dan Holthaus	KEC
Jodd Johnson	KLA
Bruce GRAHAM	KEPCo
James Brewer	PMAK
BRAD HARRELSON	KFB
Roy Davis	PMAK
Rob Meali	HEW Law Firm
Lyn Klein	PMAK
Doug Wareham	KGFA/KARA
Dwight Baer	PMAK
C Jordan	KDA
Doug A. Dole	KDA
Don Sob	KFU
Woody Moses	KAPN



KanPERC

The Kansas Propane Education & Research Council

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Topeka, KS 66603
785/354-1749
Fax 785/354-1740

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www.propaneinkansas.org
kanperc@propaneinkansas.org

January 28, 2004

Chairman Schmidt and Members of the Senate Agriculture Committee;

In accordance with HB 2038 passed last year that created the Kansas Propane Education & Research Council, we present this letter to you as the official report and communication on behalf of the Council.

As you know, KanPERC became effective September 1, 2003 at 2/10 of a cent per gallon on odorized propane destined for end consumer use in Kansas. As of January 26, 2004 the Council has received a total of \$71,228 for the collection months of September through November. December collections were due on January 25, but will not be deposited until February 1st.

The Council held its first meeting in November with the emphasis of establishing and organizing the operations of KanPERC. The Governor was given a list of suggested appointments to the Council on July 1st and in late October the following were members were appointed to the Council:

Greg Noll, Topeka, elected chairman
Dick Dougherty, Great Bend, elected vice chairman
David DuVall, Garden City, elected secretary/treasurer
Jim Brewer, Leon
Nadene Ervin, Chanute
Don Sutton, Kansas City
Cody Wray, Wichita
Ron Clark, McPherson
Ken Larson, Wellsville

The Council has established by-laws and a procedures' manual that provide direction for meeting the educational and safety mandates of the Council and provide information on the operations of the Council to the public. We have also launched a website dedicated to education and information for the public and the industry use. This website can be found at www.propaneinkansas.org.

In late July an effort was made through letters and press releases to contact members of the industry to notify them of the beginning of the KanPERC assessment. The Council will continue to discuss potential industry members that are not paying the assessment, and ways in which to reduce the burden on reporting companies.

KanPERC--an industry commitment to the safety and education of Kansans.

*Senate Agriculture
January 28, 2004
Attachment 1*

The Council has adopted a strategic planning and a conservative approach to the use of KanPERC funds. That is, no funds will be expended for classes or other educational programs until, at the earliest, July 1, 2004 in order to properly project a budget of the coming year. Instead of starting projects, and potentially falling short of funds, it was decided that the Council would collect for almost a year in order to project yearly income to KanPERC and then proceed with new programs. As we told you last year, the Missouri PERC almost went bankrupt the first year due to overspending.

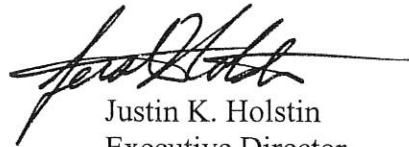
Over the next few months at the Council meetings, we will be discussing what classes are necessary and how to better reach out to the community and the public to offer education and awareness about propane and propane safety, and then create plans on how to best implement these programs.

If you have any questions or concerns, please do not hesitate to contact the Council office.

Respectfully Submitted,



Greg Noll
Chairman of KanPERC
Ferrellgas, Topeka



Justin K. Holstin
Executive Director
KanPERC

KanPERC

Kansas Propane Education & Research Council

An industry commitment to the safety
and education of Kansans.

Manual of Assessment Procedures

Senate Agriculture
January 28, 2004
Attachment 2

KanPERC

*An industry commitment to the
safety and education of
Kansans.*

Introduction and Explanation

This booklet explains the 'Kansas Propane Education and Research Council (KanPERC) Remittance Report', and other responsibilities of those involved with the remittance of funds through the Kansas Propane Education and Research Council program.

Under the provisions of House Bill 2038 and the Kansas Propane Education & Research Act (KanPERA) of 2003, the propane industry in Kansas was authorized and directed to establish the Kansas Propane Education & Research Council (KanPERC) and to collect funds for the use of research, education, and safety education.

The Kansas Propane Education & Research Act provides that the Council "shall consist of ten members, including four members representing retail marketers of propane; two members representing wholesalers, resellers, suppliers and importers of propane; two members representing manufacturers and distributors of propane gas equipment and transporters of propane; and one public member; and the state fire marshal or the state fire marshal's designee who shall serve as an ex officio member."

Council meetings are open to the public and fall under the requirements of the Kansas Open Meetings Act (KOMA).

KanPERC is mandated by law to establish programs for the advancement of Kansas' propane industry in the areas of:

- Consumer and employee safety and training
- Public information and education about safety and other issues associated with the use of propane
- Research and development of clean, safe and efficient propane utilization equipment

This manual was developed by KanPERC pursuant to its authority under Kansas state law and should be used by industry members to report assessment payments. If you have any questions about the assessment process or the Council programs, please call 785/354-1749, or email KanPERC@pmak.net.

Remittance Requirements

The Kansas Propane Education and Research Act requires that

- The owner of propane at the time of odorization, or the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold and placed into commerce.
- The assessment, when made, shall be listed as a separate line item on the bill labeled "Kansas Propane Education & Research Assessment" or "KanPERC."
- Assessments collected from purchasers of propane are payable to the council on a monthly basis by the 25th of the month following the month of collection. If

payment is not made to the council by the due date under this subsection, an interest penalty of 1% of any amount unpaid shall be added for each month or fraction of a month after the due date, until final payment is made.

- In accordance with antitrust laws, the Council can take no action, nor may any provision of the 'Act' be interpreted as establishing an agreement to pass along to consumers the cost of the assessment. In all cases, market forces shall determine the price of propane.
- Any person who unreasonably fails or refuses to pay any assessments due under this act may be subject to legal action by the council to recover the assessments due, plus interest and costs.
- "Placed into commerce" shall be defined as—being delivered, transported for storage, or sold within the State of Kansas.
- "Sold" shall be defined as—when the title to the propane is transferred.
- Under the Kansas Propane Education and Research Act all odorized propane transactions coming from a refinery or gas plant, when title is transferred at the refinery or gas plant or when odorized product is transported into Kansas for sale is subject, by law, to the assessment.
- Any and all subsequent transactions or transfers of odorized propane subject to the assessment of the Kansas Propane Education and Research Act shall also be included in the bill and labeled "Kansas Propane Education and Research Assessment" until final distribution to the end user of propane.
- The rate of assessment for the Kansas Propane Education and Research Council was established by the Kansas Propane Education and Research Act at 2/10th of a cent per gallon, effective September 1st, 2003.
- Compliance with the Kansas Propane Education & Research Act and the Kansas Propane Education & Research Council is mandatory by law.

Remittance Reports

The following rules have been adopted by KanPERC to efficiently implement remittance of the KanPERC fee:

- Forms must be completely filled in.
- Remittance reports must be filed within 25 days after the end of each month for which an assessment is due by the party who has legal title to the product as the odorant is added. This is the party responsible for remitting the assessment to KanPERC with the Remittance Report.
- **Electronic Filing** - Remittance reports may be submitted via email to KanPERC@pmak.net utilizing the Microsoft Excel format established by KanPERC. The Excel remittance spreadsheet can be downloaded from the KanPERC Web Site at www.propaneinkansas.org. Electronic fund transfers will be available once the process is completed with the bank, all filers will be notified.
- **Manual Filing** - Remittance reports can be submitted manually via mail.
- A check or money order for the amount of assessments is to be remitted to the Kansas Propane Education & Research Council (KanPERC) with the monthly report.

- Assessments shall be made on all gallons of odorized propane sold and placed into commerce or imported into Kansas.
- No assessment shall be made on un-odorized propane.
- The Kansas Propane Education & Research Council has the responsibility for monitoring compliance with this law. Failure to properly remit assessments could result in legal action by the Council to compel compliance.
- A late payment charge and interest is required under the Act and will be imposed, and enforced, by the Council.
- The Council will retain an accounting firm who will be responsible for auditing assessments and refunds on behalf of the Council.
- **All information submitted to KanPERC will be treated as confidential by KanPERC staff and accounting agents. Members of the Council will not have access to company specific data except for audit or enforcement purposes and only in such limited detail as required for decision making.**

Glossary of Terms

Assessment - The amount of money payable to KanPERC on sales of odorized propane pursuant to KanPERA. The assessment is 2/10 of 1 cent per gallon (\$.002) effective September 1, 2003.

Awareness—any action that provides information or safety guidelines about propane, propane equipment, mechanical and technical practices and uses of propane to propane consumers or industry employees.

Council—the Kansas Propane Education & Research Council or KanPERC.

Education—any action that provides information, instruction or safety guidelines about propane, propane equipment, mechanical and technical practices and uses of propane to propane consumers or industry employees.

Industry—those persons involved in the production, transportation and sale of propane gas and in the manufacture and distribution of propane utilization equipment.

Industry trade association—an organization that represents a segment of the industry and which is exempt from tax under section 501 (c) (3) or (c) (6) of the Federal Internal Revenue Code of 1986, as in effect on July 1, 2002.

Manufacturer and distributor of propane gas equipment—any person engaged in the manufacturing, assembling and marketing of appliances, containers and products used in the propane gas industry and any person in the wholesale marketing of appliances, containers and products used in the propane gas industry.

Odorized propane—propane to which odorant has been added.

Owner of Odorized Propane—The party who has legal title to the product as the odorant is added. That person is the party responsible for remitting the assessment to KANPERC. This party may be a producer, a wholesaler, or a marketer. This also includes importers of odorized propane into the State of Kansas.

Person—any individual, group of individuals, partnership, association, cooperative, corporation or other legal entity.

Producer—The owner of propane at the time it is recovered at a gas processing plant or refinery.

Propane—propane, butane, mixtures and liquefied petroleum gas as defined by the national fire protection association standard, liquefied petroleum gas code, the chemical

composition of which is predominantly C₃H₈, whether recovered from natural gas or from crude oil.

Public member—a member of the council selected from among users of odorized propane, organizations representing users of odorized propane, public safety officials or state propane gas regulatory officials.

Qualified industry organization—the propane marketers association of Kansas, a successor association or any other propane industry organization or industry trade association the members of which are engaged in the sale or distribution of odorized propane, or the sale of propane utilization equipment, to the ultimate consumer.

Research—any type of study, investigation or other activity performed by a qualified public or private research group for the purpose of advancing and improving the existing technology related to the propane industry, including the development of increased efficiency of propane use, enhancing the safety of propane and propane utilization equipment and furthering the development of such information and products.

Retail marketer—any person engaged in the sale of odorized propane to the ultimate consumer or to retail propane dispensers within Kansas.

Retail Propane Dispenser—A person who sells odorized propane to the ultimate consumer but is not engaged primarily in the business of such sales (e.g., hardware stores, campgrounds, and service stations).

Sold and Placed into Commerce—The sale of propane destined for the ultimate consumer or a retail propane dispenser by a producer, wholesaler or another marketer to a marketer. Copies of invoices showing the KanPERC assessment as a separate line item and a copy of the bill of lading (BOL) for each load must be included with the completed forms. Delivered, transported for storage or sold within the state of Kansas.

Transporter—any person involved in the commercial transportation of propane by pipeline, truck, rail or water.

Ultimate Consumer - Where the product is consumed.

Wholesaler, reseller, supplier or importer—the owner of the propane at the time it is first sold to a retail marketer in Kansas regardless of the state where production occurs, with ownership of the propane determined by the freight on board designation.

Wholesaler—A party who purchases and re-sells propane not for their own use. A wholesaler may also be a broker or a wholesale propane marketer.

Forms

The forms on the following pages are to be used for reporting assessments and for submitting requests for refunds. They can be removed from the manual and used as masters to make copies as needed. Additional masters are available from KanPERC.

Form K-01 Remittance Report: is to be used for reporting all assessment activity as an overall report of activity, and should be accompanied by a check or money order made payable to the Kansas Propane Education and Research Council or KanPERC. This is to be the totals cover sheet where information from other forms is compiled.

Form K-02 Remittance Worksheet: is to be used to report assessment activity. To remit, use form K-01 as the cover sheet to the K-02 forms and include a check or money order made payable to KanPERC.

You may also report the forms via email by using K-02 on email to report assessments and sending K-01 with a check or money order made payable to the Kansas Propane Education & Research Council or KanPERC.

--Mail necessary forms and check payable to:

**KanPERC
214 SW 6th Ave., Suite 305
Topeka, KS 66603**

Frequently Asked Questions

Does a marketer who buys unodorized product have to pay when he causes it to be odorized?

Yes. The law places the obligation for payment of the assessment on the owner of the product at the time it is odorized. If you now own unodorized propane and you have it odorized, either by yourself or by a storage cavern, terminal operator or loading rack, either for your own use or for sale to another, then you must pay the assessment to KanPERC.

Does a chemical company or other end-user of unodorized propane have to pay if he sells odorized propane to someone else?

Yes. Anyone who owns unodorized propane and then sells odorized propane to another is responsible for reporting and remitting the assessment on the volume of that propane at the time that it is odorized.

May I wait to pay the assessment until after I have collected the money from my customer?

No. The assessment is to be made on all propane at the time it is odorized—or on odorized propane at the time that it is imported into Kansas—and must be paid to the Council on the 25th of the month following its odorization or import. Whether you are a producer, marketer or an importer; if you own propane at the time it is odorized, you are obligated by law to pay the assessment by the due date.

May I pay electronically?

No, at this time KanPERC has not established the means for electronic transfers. Until KanPERC has established banking relationships that will allow for electronic transfers, all payments should be made by check or money order and should accompany the Remittance Report form K-01. You may however submit the forms electronically and then send Form K-01 along with a check or money order, at KanPERC@pmak.net

May I be reimbursed for my administrative costs of compliance?

Payment is not required until the 25th of the month following the month in which the product is odorized or imported. This allows collectors/remitters of the assessment the use of these funds for a period of 25 to 55 days. This “float” is intentional in order to help defray administrative expenses.

What If I am a marketer in another state that imports odorized propane into Kansas to service customers I may have in Kansas?

You are required by law to self-assess the fee for all odorized propane you import into Kansas. From time to time KanPERC will conduct audits to assure compliance by all companies operating in Kansas.

If I am paying an assessment to another state program, may I deduct that amount from the KanPERC assessment or vice versa?

No.

Is the Council restricted in how they may invest the funds collected?

Yes. Pending disbursement, the Council may invest available funds only in obligations of the U.S. or any government agency, in general obligations of any State or political subdivision, in any interest-bearing account or CD of a Federal Reserve System (FDIC) member bank, or in obligations fully guaranteed as to principal and interest by the U.S.

As a marketer or supplier, may I serve on the KanPERC Council?

Yes. All Kansas marketers & suppliers are eligible to serve on the KanPERC Council and are encouraged to do so. Applications are available at the KanPERC office.

How is State government involved in this program?

The Kansas Legislature through the House & Senate Agriculture Committees will receive yearly reports and updates as to the expenditures, collections, administration, and functions of KanPERC as well as the programs that are being implemented.

The KanPERA Act

The Kansas Propane Education & Research Act

As Amended by Senate Committee

As Amended by House Committee

Session of 2003

HOUSE BILL No. 2038

By Committee on Agriculture

1-21

AN ACT creating the **Kansas propane education and research council**; providing for the powers, duties and functions thereof; providing for certain assessments.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This act shall be known and may be cited as the **Kansas propane education and research act**.

Sec. 2. As used in this act:

- (a) "Council" means the Kansas propane education and research council established in section 3, and amendments thereto;

- (b) "education" means any action that provides information, instruction or safety guidelines about propane, propane equipment, mechanical and technical practices and uses of propane to propane consumers or industry employees;
- (c) "awareness" means any action that provides information or safety guidelines about propane, propane equipment, mechanical and technical practices and uses of propane to propane consumers or industry employees;
- (d) "industry" means those persons involved in the production, transportation and sale of propane gas and in the manufacture and distribution of propane utilization equipment;
- (e) "industry trade association" means an organization that represents a segment of the industry and which is exempt from tax under section 501 (c) (3) or (c) (6) of the federal internal revenue code of 1986, as in effect on July 1, 2002;
- (f) "manufacturer and distributor of propane gas equipment" means any person engaged in the manufacturing, assembling and marketing of appliances, containers and products used in the propane gas industry and any person in the wholesale marketing of appliances, containers and products used in the propane gas industry;
- (g) "odorized propane" means propane to which odorant has been added;
- (h) "person" means any individual, group of individuals, partnership, association, cooperative, corporation or other legal entity;
- (i) "placed into commerce" means delivered, transported for storage or sold within the state of Kansas;
- (j) "propane" means propane, butane, mixtures and liquefied petroleum gas as defined by the national fire protection association standard, liquefied petroleum gas code, the chemical composition of which is predominantly C₃H₈, whether recovered from natural gas or from crude oil;
- (k) "public member" means a member of the council selected from among users of odorized propane, organizations representing users of odorized propane, public safety officials or state propane gas regulatory officials;
- (l) "qualified industry organization" means the propane marketers association of Kansas, a successor association or any other propane industry organization or industry trade association the members of which are engaged in the sale or distribution of odorized propane, or the sale of propane utilization equipment, to the ultimate consumer;
- (m) "research" means any type of study, investigation or other activity performed by a qualified public or private research group for the purpose of advancing and improving the existing technology related to the propane industry, including the development of increased efficiency of propane use, enhancing the safety of propane and propane utilization equipment and furthering the development of such information and products;
- (n) "retail marketer" means any person engaged in the sale of odorized propane to the ultimate consumer or to retail propane dispensers within Kansas;
- (o) "transporter" means any person involved in the commercial transportation of propane by pipeline, truck, rail or water; and
- (p) "wholesaler, reseller, supplier or importer" means the owner of the propane at the time it is first sold to a retail marketer in Kansas regardless of the state where production occurs, with ownership of the propane determined by the freight on board designation.

Sec. 3.

- (a) The Kansas propane education and research council is hereby created. Members of the council shall be appointed by the governor from a list of nominees submitted by qualified industry organizations within 60 days after the effective date of this act. The council shall consist of ten members, including four members representing retail marketers of propane; two members representing wholesalers, resellers, suppliers and importers of propane; two members representing manufacturers and distributors of propane gas equipment and transporters of propane; and one public member; and the state fire marshal or the state fire marshal's designee who shall serve as an ex officio member.
- (b) Members of the council shall serve terms of three years, except that, of the initial members, three shall be appointed for terms of one year and three shall be appointed for terms of two years, as designated by the governor. Members filling unexpired terms shall be appointed in a

manner consistent with this section. Members may serve a maximum of two consecutive full terms, except that members filling unexpired terms may serve a maximum of eight consecutive years. Former members may be reappointed if they have not been members for a period of two years.

(c) The council shall select from among the council's members a chairperson and other officers as necessary, establish committees and subcommittees of the council and adopt rules and regulations and bylaws for the conduct of business. The council may establish advisory committees of persons other than council members.

(d) The council may employ an executive director to serve as chief executive officer and such other employees as it deems necessary. The council shall determine the compensation and duties of each and shall protect the handling of council funds through fidelity bonds.

(e) The administrative costs of operating the council shall not exceed 10% of the funds collected in any fiscal year.

(f) At the beginning of each fiscal year, the council shall prepare a budget plan that includes the estimated costs of all programs, projects and contracts of the council. The council shall provide an opportunity for public comment on the budget. The council shall prepare and make available to the public an annual report detailing the activities of the council in the previous year, those planned for the coming year and costs related to the activities.

(g) The council shall keep minutes, books and records that clearly reflect all of the acts and transactions of the council. The books of the council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the council may designate. Copies of audits shall be provided to the executive director, to all members of the council and to any other member of the industry upon request.

(h) The council shall be subject to the Kansas open meetings act and shall require reports on the activities of the committees and subcommittees and on compliance, violations and complaints regarding the implementation of this act.

(i) The council shall develop programs and projects and enter into contracts or agreements for implementing this act, including programs to enhance consumer and employee safety and training, programs to provide research and development to improve existing propane technology, programs to increase efficiency of propane use and any other programs to educate the public about the safety and environmental aspects of propane. Safety issues shall receive first priority in the development of all programs and projects funded by the council. The funds collected for the council shall not be used to promote one energy source over another. In developing programs and projects and entering into contracts or agreements for implementing the provisions of this act, the council shall not use any funds collected by the council to provide for or assist the purchase of equipment related to such programs and projects by or for a private, for profit corporation or other business association or entity. The council shall not use any funds collected by the council to purchase consumer products or replace consumer products, including through cost-share programs, for Kansas consumers, except that the council may use such funds for the purchase of consumer products for displays in such programs or projects. The council shall provide for the payment of the costs of the programs and projects with funds collected pursuant to section 4, and amendments thereto, and shall coordinate the council's activities with qualified industry organizations to provide efficient delivery of services and to avoid unnecessary costs of duplication of activities.

(j) The council shall report annually to the house and senate committees on agriculture. Such report shall include details of council programs, projects and activities as provided pursuant to this act. The report provided in 2004 shall include a review of propane safety policies, statutes, rules and regulations in Kansas and adjoining states and shall include recommendations the council deems appropriate for policy, statutory or regulatory changes in Kansas to improve propane safety.

Sec. 4.

(a) Except as otherwise provided by law, there shall be an assessment as provided in this section on odorized propane. The council shall set the initial assessment at no greater than 2/10 of one cent per gallon of odorized propane. Thereafter, annual assessments shall be sufficient to cover the costs of plans and programs developed by the council. The assessment shall not be greater

than 3/10 of one cent per gallon of odorized propane, unless approved by the council. In no case may the assessment be raised by more than 1.10 of one cent per gallon of odorized propane annually.

(b) The owner of propane at the time of odorization, or the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold and placed into commerce. The assessment, when made, shall be listed as a separate line item on the bill labeled "Kansas propane education and research assessment" or "KanPERC." Assessments collected from purchasers of propane are payable to the council on a monthly basis by the 25th of the month following the month of collection. If payment is not made to the council by the due date under this subsection, an interest penalty of 1% of any amount unpaid shall be added for each month or fraction of a month after the due date, until final payment is made. The council may establish an alternative means of collecting the assessment if another means is found to be more efficient and effective. The council may establish a late payment charge and rate of interest to be imposed on any person who fails to remit or pay to the council any amount due under this act.

(c) Pending disbursement pursuant to a program, plan or project, the council shall invest funds collected through assessments, and any other funds received by the council, only in obligations of the United States or any agency thereof, in general obligations of any state or political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the federal reserve system, or in obligations fully guaranteed as to principal and interest by the United States.

(d) The price of propane shall be determined by market forces consistent with antitrust laws and no provision of this act shall be interpreted as allowing a pass through to consumers of the assessment determined by the council pursuant to subsection (a).

(e) Any rebate funds received from the national propane education and research council from assessments collected on odorized propane distributed from Kansas shall be the property of the Kansas propane education and research council and the use of such funds shall be determined by the Kansas council for the intended purposes of this act.

(f) Any person who unreasonably fails or refuses to pay any assessments due under this act may be subject to legal action by the council to recover the assessments due, plus interest and costs.

Sec. 5. Except as provided in subsection (j) of section 3, moneys collected by the council shall be expended only for the purposes of this act and shall not be used in any manner for influencing legislation or for political campaign contributions.

Sec. 6. The provisions of this act do not preempt or supersede any other program relating to propane safety or education which has been organized and is operating under the laws of this state.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

House Bill 2038 the Kansas Propane Education & Research Act was published and became effective as of July 1, 2003.

Revised December 3, 2003

Kansas Propane Education & Research Council Remittance Worksheet

Reporting Company _____
Report for _____

Remittance Company	Date	Product	Refinerby Origin	Destination City/State	Odorized Gallons	KanPERC Amount
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
Total Odorized						0.00
Page Total						\$ -

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Kansas Propane Education & Research Council

Remittance Report

A verification of assessments due on sales of odorized propane. This form is required to be filed with KanPERC within 25 days after the end of the reporting month. Interest of 1% will be assessed on any unmade payments.

For further information please see www.propaneinkansas.com

KanPERC--An industry commitment to the safety and education of Kansans.

<p>Company _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Contact Person _____</p> <p>Phone _____</p> <p>email _____ FAX _____</p> <p>I the undersigned, certify that the above named company was the owner of the state volumes of propane at the time they were odorized or imported and that the information contained in this report is true and accurate</p> <p>_____ Signature of Corporate Officer or Authorized Person</p> <p>_____ Print Name & Title</p>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"></td> <td style="width: 40%; text-align: right;"> Report for Month _____ Year _____ </td> </tr> <tr> <td colspan="2" style="text-align: center; background-color: black; color: white; padding: 5px;"> Attach Manual Remittance Worksheet </td> </tr> <tr> <td>Total number of odorized gallons reported</td> <td style="text-align: right;">305,777</td> </tr> <tr> <td>Assessment due @ .002 per gallon</td> <td style="text-align: right;">\$ 611.55</td> </tr> <tr> <td>penalties/interest (attach explanation)</td> <td style="text-align: right;">_____</td> </tr> <tr> <td>Total amount enclosed</td> <td style="text-align: right;">\$ 611.55</td> </tr> </table> <div style="text-align: center; padding: 10px;"> <p>Mail necessary forms and check payable to</p> <p>KanPERC 214 SW 6th Ave., Suite 305 Topeka, KS 66603</p> <p>Questions or comments please call 785/354-1749 or email kanperc@pmak.net</p> </div>		Report for Month _____ Year _____	Attach Manual Remittance Worksheet		Total number of odorized gallons reported	305,777	Assessment due @ .002 per gallon	\$ 611.55	penalties/interest (attach explanation)	_____	Total amount enclosed	\$ 611.55
	Report for Month _____ Year _____												
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Assessment due @ .002 per gallon	\$ 611.55												
penalties/interest (attach explanation)	_____												
Total amount enclosed	\$ 611.55												

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Kansas Propane Education Research Council

KanPERC is designed to enhance propane safety, education, and training for propane consumers and employees; to improve existing propane technology; to increase the efficiency of propane and to develop other programs to educate the public about the safety, environmental aspects, and uses of propane.

[MORE KanPERC INFORMATION ...](#)

PROPANE
EXCEPTIONAL ENERGY™



Consumers

Propane gas has many advantages that simply make life more pleasant. A propane gas water heater recovers twice as fast as an electric one - and can make running out of hot water a thing of the past. Most homeowners prefer propane gas furnaces because they are more comfortable. And a propane gas range heats more evenly and reduces the risk of burning with its "instant off" feature. It's also never effected by an electrical power outage.

[MORE CONSUMER INFORMATION ...](#)



Dealers & Suppliers

KanPERC takes pride in our commitment to our dealers and suppliers as well as leading the way in consumer information. KanPERC is a valuable source of information and training for individuals involved in the propane gas industry as well as a source of information for consumers.

[MORE DEALER INFORMATION ...](#)

[about](#) | [consumer](#) | [dealer](#) | [builder](#) | [links](#) | [contact us](#) | [sitemap](#)

To learn more about the propane industry, visit www.pmak.net.

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Senate Agriculture
January 28, 2004
Attachment 3
1/27/2004



Propane Marketers Association of Kansas

214 S.W. 6th Avenue, Suite 305

Topeka, KS 66603-3719

Phone 785-354-1749

Fax 785-354-1740

e-mail: jkholstin@pmak.net

Justin K. Holstin
Executive Vice President
January 28, 2004

Mr. Chairman and Members of the Senate Agriculture Committee;

Thank you Mr. Chairman, members of the committee, I appreciate the ability to come and talk to you today about a bill that we feel is very necessary for the propane industry in Kansas.

My name is Justin Holstin and I am the Executive Vice President of the Propane Marketers Association of Kansas or PMAK. The Propane Marketers Association of Kansas represents about 200 members in all aspects of the propane industry including retail, wholesale, transportation, production, and manufacturing of propane and propane related equipment. The propane industry serves more than 98,000 households in Kansas, not including barbeque grills, heaters, agricultural implements and application, and motor vehicles. Each year over 192 million gallons of propane are consumed in Kansas.

At this point, I would like to take a moment to introduce some propane industry members that have made the trip to Topeka to be here during their busiest season. Seated behind me are _____. It is coincidence that this bill would be heard during one of the coldest and busiest weeks of the session and therefore many members that wanted to be here were not able to get away from their businesses. I enjoy this cold weather, and really we should rename this from a "cold front" or a "cold spell" to an "economic stimulus package!"

Today we are here to address the legislation before you, SB 335, which has been requested by the propane industry in Kansas that overhauls the regulatory and liability. It is an approach that the industry has been discussing from many years.

The picture that I am about to paint for you is bleak but realistic. The propane industry in Kansas is facing a crisis that continues to grow. This stems from a lack of insurability and incredible court judgments and settlements. At the heart of the problems, as identified by my association, is the lack of regulations and registration that is absent in Kansas but found in many other states. Many insurance representatives have concurred that the lack of regulatory oversight, massive court judgments, and a lack of educational requirements are the main reasons that only a few insurance companies continue to write

propane insurance policies in Kansas. At his point I believe there are only two insurance carriers in the state, but that will be discussed in more depth by a later conferee.

As a matter of fact, if you have a tank and a truck you could also be in the propane industry in Kansas. At this time you do not need to be registered or have recurring training about propane or new technology. Essentially, the propane industry is under-regulated compared to many other states. At least eleven other states require the propane industry to be centrally registered. Many of those states also have insurance requirements or are in the process of establishing requirements of insurance anywhere from \$500,000 to a maximum of \$5 million. This bill contains what the propane and insurance industry representatives believe to be an answer for the lack of insurance competition in Kansas, the ever increasing liability exposure for marketers, and a leveling of the field when it comes to regulations. The bill before you is a culmination of research and analysis and input from the industry. It combines the bests of several state laws including Texas, Oklahoma, Colorado, Nebraska, Iowa, and Missouri.

A major part of the bill is focused on determining where and how much of the propane industry we have in Kansas. Currently there is no comprehensive list of marketers in Kansas. The industry has tried and failed to self-regulate; self regulation simply will not work in this case.

I stress to you that there are only a few insurance companies that are willing to write propane in Kansas. This has forced many companies including small "mom & pop businesses" and cooperatives to make a business decision to quit the propane business altogether because premiums have sky rocketed sometime in excess of 300% in the last five years, and repeatedly companies face 20% plus increases every year to the point that they can no longer economically sustain a propane business which leads to a lack of competition. In short, many companies are dropping their propane business every year, and this legislation is an answer to stop that trend so that rural areas may still have a choice of businesses.

This bill has a separate intent from KanPERC. KanPERC was designed for education and awareness for the industry and consumers, this bill focuses on competition, safety, and regulations. The bill creates requirements for all aspects of the propane industry to be registered and licensed through regulatory and education compliance. Special care has been taken to exempt private applications of propane users including farmers and ranchers. The focus of the bill is those who work with propane in a commercial fashion. There are a total of eight classifications to cover the propane industry and related groups. Class I is intended to cover traditional propane businesses and applies to all companies that deliver propane for use at a residence. It includes a requirement of general liability insurance of \$500,000 which we feel that every company can attain. Most companies that are currently insured have a minimum of \$1 million in coverage. As I said, there is no requirement of general liability insurance coverage for companies.

All classifications include an education requirement that for the most part is not required at this time. This is not an overbearing requirement. After initial training all that will be required will probably be a day long refresher course every three years. Many of these education programs will be set up and provided for by the KanPERC.

As I have said the premium increase trend continues, with many businesses experiencing increases of 20% each year. At that rate, it is hard to maintain a business. In every gallon of propane you receive, you can figure that a few cents of the cost are just to cover those insurance costs, and as those premiums continue to rise, so will the price of propane.

We will come to a time in Kansas where we will have a lack of competition among propane companies because high insurance rates and lawsuits will cause many companies that are family owned to simply close their doors. It becomes a business decision, one that you will hear of from other conferees, but when the cost of doing business is more than the profits and satisfaction of providing good service, many will choose, and several have already chosen, to exit the propane industry.

When we think of regulations we usually think of them as a burden that makes doing business harder, when in fact, it is the opposite in this case. Those that currently abide by the regulations are at a disadvantage compared with those that ignore the safety requirements because there is no enforcement. This bill will provide the financial resources to enforce these regulations. In order to insure everyone in equally regulated and equally educated, we need to have a comprehensive industry list that can only happen through registration. Although the fire marshal is charged with inspections on the industry they are so under-funded that they do not have the resources, but moreover, it is hard to inspect those locations of which you do not know exist. Right now we do not pay fees, it is the opinion of the industry that we should "pony up" and help with this responsibility. These fees and inspections provide a specific service that the industry demands and deserves to better serve the public.

Liability— our industry is being held liable for incidents that we had absolutely no control over. For example two incidents come to mind. One here in Shawnee County had a massive judgment after a home owner replaced his water heater and did not install a "drip leg" to catch impurities, which is common practice in the industry. Although the propane company had no knowledge of the change the company was still found liable for millions of dollars in damages. Another incident, that I do not believe has reached a conclusion, was in south central Kansas in which a family removed the stove but failed to cap the line and instead left a ball valve on the line. Children in the house played with ball valve and an explosion and fire ensued. A cap for the line was all that was needed and if the company had had notice of the change I am sure that they would have donated the \$2 piece to secure the line. As I said, I do not believe the case has been finished but I have hunch that the propane company will still be held liable.

I could go on with many more sad examples, but the fact remains, in many of these cases the incidents could have easily been prevented just by giving notice to the propane company. I ask you the question that I receive from the industry on a daily basis "why are we liable for something that we had no knowledge of...."

In the bill we propose limited liability with a price. An occupant is required to provide notice to their propane supplier within thirty days of any alteration to their propane system, if they do not then the propane company should not be held liable. If they do provide notice, then the company has a specified amount of time to inspect the system and suggest corrective repairs. It is as simple as someone writing us that they made a change so that we, as the experts, can come and insure the integrity of the system. It doesn't say in the bill, but the tests probably should be free such as with the electric companies call before you dig program.

Think of this not as a limited liability provision, but an issue of consumer safety. Why should a propane company be liable for something of which they had no actual knowledge? This issue is more about placing the burden of notice on the consumer so that propane companies can better insure the safety of the public.

The average costs for businesses under this proposal would range anywhere from \$150 per year to more than \$1,000 for larger companies. It is a price the industry is willing to pay in order to have more competitive premiums and insure the safety of Kansans.

This bill will insure competition and availability of propane in rural areas and insurance because if we do not act proactively many companies will be closing their doors in the near future. This is a demonstration of the continuing commitment of the industry to further increase the safety of Kansans. I ask that you support SB 335 and the future of the propane industry in Kansas.

Thank you for allowing me to come before the committee and talk about such an important issue. I would be glad to answer any questions you may have.



K A N S A S

JOSEPH P. ODLE
FIRE MARSHAL

OFFICE OF THE KANSAS STATE FIRE MARSHAL

KATHLEEN SEBELIUS
GOVERNOR

Testimony before the Senate Agriculture Committee
On Senate Bill 335
By Karl W. McNorton
Chief Deputy State Fire Marshal
January 28, 2004

The Kansas State Fire Marshal stands in support of Senate Bill 335.

The Kansas State Fire Marshal's Office, the Propane Marketers Association, and the propane industry has had a long and strong working relationship. This relationship has made strides in improving the knowledge and qualifications of handlers of propane, transportation from the bulk facility to the end user, and in the safety features of the dispensing facilities. These improvements have made the use of propane safer for the consumer. We, jointly, have much to do to continue this activity.

At present no state agency or organization has the ability to identify or locate all of the facilities, dealers, distributors, or cylinder exchange locations in the state outlined in the bill. The bill establishes eight different classes from the retail distributor to a quick stop that may have an exchange cylinder rack. This bill establishes that single point of contact.

There are hazardous incidents that occur in the state, spills, leaks, fires in the home and transportation accidents, that put the consumer and/or a handler of propane in jeopardy. There is a need to protect these individuals from harm and protect property from losses.



1-800-794-1013 • 316-745-3378 • Fax 316 745-3202
P.O. Box 276 • Leon, KS 67074-0276
3500 S. E. Hwy 96

Chairman Schmidt and committee members,

I am Jim Brewer, I own and operate Jim's Propane, Inc. in Leon, Kansas. We are a retail propane business serving approximately 1100 customers in Butler, Cowley, Greenwood, Elk and Sedgwick counties. We have 5 employees. Jim's Propane has been in operation for 30 years. We are one of the few family owned businesses left in the state. I have been active in the propane business for 25 years. I am a past president of the Propane Marketers of Kansas, and currently serve on the board of directors. I also serve on the KanPERC council.

The bill before you today is very important to the propane industry in Kansas. The Fire Marshal regulates our industry. There has never been a way for the Fire Marshal to know how many, or where propane marketers are located. With this bill, it would provide funding for the Fire Marshal, by the propane industry. With registration and proof of insurance required of all propane marketers we hope to make a much safer industry. This will allow the Fire Marshal to provide the industry with inspectors to make sure all marketers are in compliance with the law.

The propane industry in Kansas is facing an insurance crisis. There are very few insurance companies who will insure in our state, because of our lack of enforcement. There have been several propane companies in Kansas who have been put out of business, or forced to merge with another company, because they were canceled by their insurance carrier.

We believe in safety. My company does an inspection and leakage test on all our customer's gas systems. We are finding many problems because many systems have never been tested. Sometimes the customer has made alterations to their gas system or added appliances. When this happens there may be a chance of a leak. If it were law that they were required to notify their propane marketer of any alterations, we would be able to leak test their gas system after any alterations. Hopefully, this could save lives and decrease property loss.

I want to thank you for your time and consideration on this very important bill.

Jim Brewer
Jim's Propane Inc.

*Senate Agriculture
January 28, 2004
Attachment 6*

Lybarger

OIL, INC.

704 NORTH MAPLE - P.O. BOX 99
GARNETT, KANSAS 66032-0099

January 28, 2003

Good Morning,

My name is Dave Lybarger. I am a retail propane marketer in Kansas. I serve customers in Anderson, Allen, Linn, Miami, Franklin, Coffey and Douglas counties.

My family has a history in the Petroleum Marketing business that dates back to 1955. More recently I entered the propane business in 2001.

I employ 15 full time employees of which 6 are dedicated to propane.

I am very concerned about the rising cost of business insurance but more importantly, the insurance costs specifically related to the propane industry.

I have looked back over the last five years premium history for my company and here is what I have found.

From 1999 to 2000 my premium cost rose 6.5%.

From 2000 to 2001, (the year I started marketing propane) my premiums increased 27%.

From 2001 to 2002: A 49% increase.

From 2002 to 2003: A 21% increase.

In total I have watched my premiums increase 371% over the past five years. My current policy is up for renewal in February. Frankly, I am frightened to know what I will pay this year.

I am also concerned that I may well be one claim away from uninsurable. If I were to sustain a significant claim this year, it is likely that I will be cancelled at my next renewal period. **I'm not certain if the only other carrier that writes insurance for propane companies in Kansas would write me.** You have a number of choices of companies willing to write insurance for your home or car. **I have two choices for my propane business.**

The legislation that you are considering today may well be the best first step in attracting new insurance carriers to my industry.

Senate Agriculture
January 28, 2004
Attachment 7

The bill contains six key elements:

Registration; My company will be required to register with the Kansas Fire Marshal. I estimate my cost for this to be \$150.00. A price I am willing to pay.

Inspection; My company will be subject to regular inspection by the Fire Marshal insuring that everyone in my industry is living up to the high standards that our customers deserve. This provision is good for the public and industry.

Education; My company will be required to provide continuing education to our employees.

Liability Insurance; I will be required to maintain a minimum insurance coverage. There are members of my industry who have chosen not to carry coverage or who have limits well below actual exposure. I find this a bit frightening.

Limits Liability; My liability will be limited to the services and products that I provide to my customers. Under current precedent, I can be held responsible for the actions of my customer without my knowledge.

Propane Advisory Board; Members of my industry that know and understand the issues of my industry will play a vital role in policing my company by helping to establish the minimum industry standards that I will be held to. This legislation is not attempting to add a level of government oversight. Our industry is willing to provide a great deal of input.

I urge your support of this legislation as it will make insurance more affordable for my industry and promote a high standard of quality for all Kansas propane customers.

Finally, I am a member of the Petroleum Marketers and Convenience Store Association of Kansas. The Association asked me to offer its full support for this legislation.

Thank you



Dave Lybarger
President
Lybarger Oil, Inc.
785-448-5512