

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on March 9, 2006, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Emalene Correll, Kansas Legislative Research Department
Lisa Montgomery, Revisor of Statutes Office
Judy Holliday, Committee Secretary

Conferees appearing before the committee:

Constantine Cotsoradis, Kansas Department of Agriculture
Edward R. Moses, Kansas Aggregate Producer's Association
Gary Blackburn, Kansas Department of Health & Environment
Leslie Kaufman, Kansas Co-op Council
Tom Palace, Petroleum Marketers Assn.
Jeff Turnbull, Turnbull Oil
Kim Barnes, Pawnee County Co-op

Others attending:

See attached list.

Chairperson McGinn asked the Committee to approve the minutes of the February 16, 17, and 20, 2006, Committee meetings. Senator Bruce made a motion, seconded by Senator Ostmeyer, to approve the minutes. Motion carried.

Chairperson McGinn asked if there was more discussion needed on **HB 2716, Granting of easement for diversion works on Kansas river for water district number 1 of Johnson County.** There being no further discussion, Senator Bruce made a motion, seconded by Senator Ostmeyer, to move the bill favorably out of Committee. The motion carried.

The hearing on **HB 2875, Concerning inspection fees for works constructed for appropriation of water for beneficial use.** Edward Moses, Managing Director of Kansas Aggregate Producer's Association, testified in support of **HB 2875 (Attachment 1).** Mr. Moses discussed with the Committee the primary provisions of the bill which would provide for a statute of limitations on the loss of priority resulting from delayed or faulty field inspection by the Kansas Division of Water Resources, and would provide a formal notification to the applicant upon completion of the inspection and any needed changes as a result of the inspection. Mr. Moses told the Committee that the original bill applied to all water users uniformly, but the House amended now limits the scope of the bill to the sand and gravel industry. Mr. Moses suggested a substitute bill be introduced to place this bill into the sand and gravel chapter (K.S.A. 82a-734) of the Kansas Water Appropriations Act.

Senator Lee asked about the location of the well in question that triggered the bill, and Mr. Moses stated that it was 625 feet, double what the distance should be.

Chairperson McGinn asked Mr. Moses to come forward to answer questions about support for the House changes to the bill if the language sand and gravel 'pits' is struck and sand and gravel 'projects' is added.

Constantine Cotsoradis, Assistant Secretary of the Kansas Department of Agriculture, testified in support of **HB 2875 (Attachment 2).** Mr. Cotsoradis stated that the Department supports the bill as it appears to the Committee right now because the bill is narrow in scope, covering sand and gravel projects, not just sand and gravel pits. He stated that the Department opposes not having meters.

Senator Taddiken asked about the suggestion on 'non-consumptive usage' and Mr. Cotsoradis stated his department opposes meters. He asked Lane Letourneau of the Division of Water Resources to help clarify the terminology. Mr. Letourneau stated that any water pumped from a well is consumptive use, whether its from the sand and gravel industry or any other industry.

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on March 9, 2006, in Room 423-S of the Capitol.

Senator Ostmeyer asked about wells that pump sand with the water, and Mr. Letourneau stated those are considered hydraulic dredging and considered different, or non-consumptive.

Chairperson McGinn told the Committee she would like to work this bill and get it out, but in the interest of time would hear the other bill before the Committee today and then come back to **HB 2875** later in the meeting or at tomorrow's Committee meeting. The hearing on **HB 2875** was closed.

Chairperson McGinn opened the hearing on **HB 2756, Kansas storage tank act, reimbursement for upgrades and closures**. She asked Raney Gilliland of the Legislative Research Department to explain the background of the bill.

Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas, testified in support of **HB 2756 (Attachment 3)**. Mr. Palace testified that **HB 2756** helps small distributors help small distributors with above ground tanks and bulk plants to maintain their presence in rural America. He testified that the underground storage tank act devastated many small towns and forced many small business owners to close because they could not afford to upgrade their tanks. This bill, while not covering all facility upgrade costs for above ground tanks will assist small business owners to stay in business to ensure adequate fuel supply for all Kansans.

Gary Blackburn, Director, Bureau of Environmental Remediation, Kansas Department of Health and Environment, testified in support of **HB 2756 (Attachment 4)**. Mr. Blackburn testified that the bill will provide reimbursements to aboveground storage tank owners to assist them in preventing spills. He also stated that ten months of the fees will go into the cleanup fund.

Senator Lee asked about the need for an advisory board, and Gary Blackburn stated that he felt the advisory board was a good idea to ensure uniform standards. Senator Taddiken asked if the Secretary has the authority to hold over the claims in case of a cash flow problem, and Mr. Blackburn stated that the Secretary has that discretion.

Chairperson McGinn asked all out-of-town conferees to present their testimony in the interest of time. Jeff Turnbull, Owner of Turnbull Oil in Plainville, Kansas, testified in support of **HB 2756 (Attachment 5)**. Mr. Turnbull testified that the EPA's Spill Prevention Control and Countermeasure Plan (SPCC) is an unfunded mandate which threatens numerous plants and businesses with closings due to the exorbitant costs. He explained that the SPCC was originally created to prevent pollution of navigable waters, but broadened to include all potential discharges over 2 spills > 42 gallons per year in any ditch, gutter, etc. He asked the Committee to include bulk dealerships in the one-cent per gallon environmental assurance fee which is already in place to cover the cost of these projects. Mr. Turnbull further explained that the proposed ceiling per location in the bill is helpful, but not enough to cover the costs and will result in numerous facility closings without a fee increase.

Kim Barnes, Internal Auditor for Pawnee County Cooperative Association in Larned, Kansas, testified in support of **HB 2756 (Attachment 6)**. Mr. Barnes told the Committee that the bill would allow the cooperative the ability to access the trust fund for reimbursement costs to retrofit one facility and permanently close another. He stated the important role bulk plants play in the farm economy regarding planting and harvesting time, terminal turnaround, and spot outages, and urged support of the Committee for the bill.

Copies of written testimony from Senator Ralph Ostmeyer (**Attachment 7**); Leslie Kaufman, Executive Director of the Kansas Cooperative Council (**Attachment 8**); Brad Thompson, Vice President of Bridgman Oil Company in Hutchinson (**Attachment 9**); and Mary Jane Stankiewicz, Vice President and General Counsel for the Kansas Agribusiness Retailers Association (**Attachment 10**) were distributed to the Committee.

Chairperson McGinn asked the Committee to look over the bills testimonies and that **HB 2716** would possibly be worked at the Friday, March 10, Committee meeting.

There being no further discussion, the meeting adjourned at 9:35 a.m.

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

Date: March 2, 2006
Before: The Senate Committee on Natural Resources
By: Edward R. Moses, Managing Director
Kansas Aggregate Producer's Association
Regarding: House Bill 2875 – Field Inspections

Good Morning Madame Chair and Members of the Committee:

My name is Edward (Woody) Moses, Managing Director of the Kansas Aggregate Producers' Association, the Kansas Aggregate Producers' Association is an industry wide trade association comprised of over 175 members located or conducting operations in all 165 legislative districts in this state providing basic building materials to all Kansans. We appreciate the opportunity to appear before you today in support of HB 2875 a bill introduced at our request.

This bill has its genesis in the measures contained in SB 364 approved by the 2004 legislature. As many of you were on this committee at that time you will recall SB 364 essentially established an integrating statewide policy on the regulation of sand and gravel industry for water evaporation under the Kansas Water Appropriations Act. In order to accomplish this integration you, also authorized, as a part of SB 364 a study, when completed, to make necessary recommendations on the integration process. Our industry had hoped to be able to have a complete package of recommendations for you before this committee by this time; regarding needed adjustments in the Kansas Water Appropriations Act to adequately account for the differences in water use typically found in the sand and gravel industry versus a more traditional type of water diversion anticipated in the original Kansas Water Appropriations Act.

This bill would primarily provide for:

1. A "statue of limitations" on the loss of priority as the result of a delayed or faulty field inspection by the Kansas Division of Water Resources.
2. A formal notification to an applicant of the completion of an inspection and any requested changes as a result of the inspection.

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March 9, 2006
Attachment 1*

Unlike traditional water uses the point of diversion in a sand and gravel operation is not necessarily fixed at all times and in all places. As a sand and gravel operator gradually opens a pit the point of diversion is subject to being moved as a result of following the deposit. The Kansas Division of Water Resources (DWR) rules and regulations specify that the point of diversion for a sand & gravel operation shall be considered to be the east, west, north or south following the sand and gravel deposit; as a result the geocenter of the pit changes almost daily and therefore the point of diversion. Unfortunately under DWR rules if the point of diversion moves more than 350 feet the operator is required to file for a change in point of diversion and is required to file for a new water right, thereby losing priority on the original water right and pay a new inspection fee. As a means of illustration I ask you to refer to the attached diagram showing the possible situation.

In its original format HB2875 would have applied to all water users uniformly, however a House amendment has now limited the scope of the bill to the sand & gravel industry. Should this committee wish to remain with this policy, it our suggestion a substitute be introduced in order to place this bill into the sand & gravel chapter (K.S.A. 82a-734) of the Kansas Water Appropriations Act.

Thank you for the opportunity to appear before you today and I will stand ready to answer questions at the appropriate time.

Kansas Aggregate Producers' Association

HB 2875 -Bill Notes

HB 2875 An ACT concerning water; relating to the appropriation of water for beneficial use; amending K.S.A 2005 Supp. 82a-714 and repealing the existing section.

Background: This bill was introduced in House Environment Committee at the request of the Kansas Aggregate Producers' Association (KAPA). Its purpose is to establish a reasonable policy with respect to water rights priority. KAPA became aware of this problem when a producer, as a result of a Division of Water Resources field inspection; lost their priority date. This field inspection was conducted 8 years after notification of completion of diversion works to the chief engineer.

Peanut: HB 2875 prohibits the loss of priority as a result of field inspections conducted more than 2 years after the date of notification of completion of diversion works and requires formal notification of the completion of inspection within 90 days.

Amendments: At the request of the chief engineer the bill was amended in committee to apply to sand and gravel projects only.

Timeline on Water Right # 45373 (nee' 41732)

- 1995 - Well was drilled, cased and pump installed.
- 12/7/1995- Notification of completion of diversion works.
Diversion works inspected (?) and changes approved by DWR.
- 2004- Diversions works reinspected (?) or inspected by DWR. Global positioning technology (GPS) used by DWR finds "point of diversion" is in wrong location. Requires well owner to dismiss file # 41732 and **refile thus losing priority**. Applicant files for new water right paying second inspection fee on 12/20/04.
- 12/20/04- Second notice of completion of diversion works along with second fee to inspect the same diversion works submitted.
- Present - Applicant still waiting for second inspection.

Subject

HB-2875

Point of diversion

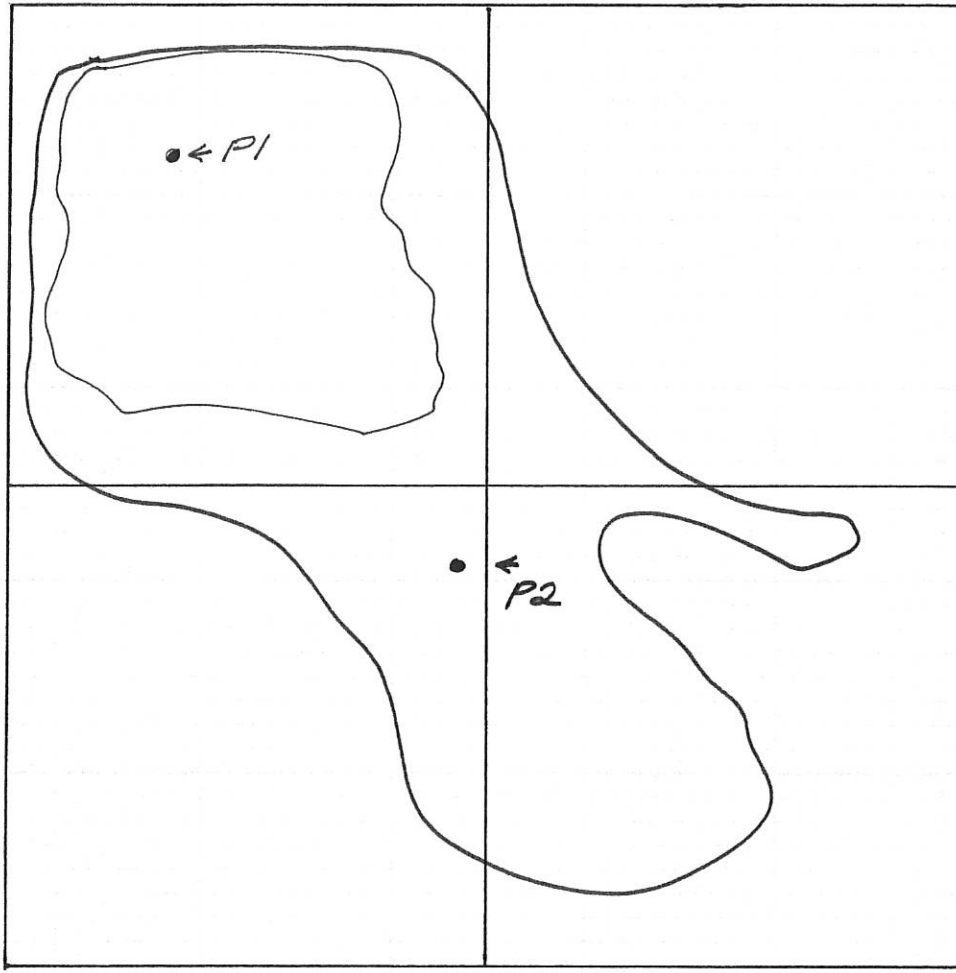
illustration



www.moksacpa.com

Date 16 FEB 06

Sheet 1 of



P1 = Original Point of Diversion

*P2 = New point of diversion due to change in
geo center of pit*

Count on Concrete

Amending 82a-734

Chapter 82a.--WATERS AND WATERCOURSES

Article 7.--APPROPRIATION OF WATER FOR BENEFICIAL USE

82a-734. Sand and gravel pits; beneficial use of water, when; permit; perfection of appropriation; reports to chief engineer. (a) An operator will notify the chief engineer of the location and area extent of any existing or proposed sand and gravel pit to be excavated, expanded or operated by the operator.

(b) The net evaporation of water exposed as the result of the opening or operation of sand and gravel pits shall be construed to be a beneficial use or diversion of water for the purposes of the Kansas water appropriation act, K.S.A. 82a-701 *et seq.*, and amendments thereto, if the sand and gravel pit is opened or operated in a township where the average annual potential net evaporation is greater than 18 inches per year, as determined by the chief engineer.

(c) If the chief engineer determines that an existing or proposed sand and gravel pit operation is a beneficial use of water, the operator shall apply to the chief engineer for a permit to appropriate water in accordance with the Kansas water appropriation act or otherwise acquire ownership or control of sufficient water rights, or by other methods pursuant to rules and regulations adopted by the chief engineer, or both, to offset net evaporation for the operation.

(d) (1) The period of time allowed to complete construction of diversion works pursuant to an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation shall be reasonable and consistent with the proposed use, but not less than five years. The chief engineer may allow extension of such period by not to exceed two five-year extensions if it can be shown that the operation requires the additional time for the operator to satisfy the operator's market demand in the area. The two five-year extensions may be granted at the same time, to run consecutively, if the applicant submits to the chief engineer a written development plan.

(2) The period of time allowed to perfect an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation shall be not less than 20 years and, for good cause shown, the chief engineer may allow one or more 10-year extensions of such period. The chief engineer shall consider the time needed until exhaustion of proven reserves, closure in accordance with the surface land reclamation and mining act, K.S.A. 49-601 *et seq.*, and amendments thereto, and the availability of water for the proposed use, but in no case shall allow longer than 60 years for perfection.

(3) Nothing herein shall require an extension of time to construct diversion works or to perfect a water right if there is demonstrable impairment of a use under an existing water right from the same source of supply, as determined pursuant to K.S.A. 82a-711, and amendments thereto.

(4) Upon examination of a diversion works the chief engineer or the chief engineer's duly authorized representative shall, within 90 days, notify the applicant of the results, including any requested changes. If the chief engineer fails to examine the diversion works within two years of the notice of completion the applicant shall not be required to forfeit priority as a result of any requested changes.

(over)

(e) (1) Evaporation from sand and gravel pits, as calculated by the chief engineer, will be reported as an industrial use to the director of taxation for the purpose of assessing the water protection fee pursuant to K.S.A. 82a-954, and amendments thereto.

(2) Any permitted diversions within a sand and gravel project, other than evaporation from a sand and gravel pit shall be deemed to be non-consumptive and not require the installation of a water meter.

(f) This section shall be part of and supplemental to the Kansas water appropriations act.

1 thereto, are pending on July 1, 2004;
2 (2) before July 1, 2006, in such cases in which an abandonment pro-
3 ceeding was pending pursuant to K.S.A. 82a-718, and amendments
4 thereto, on July 1, 2004; or

5 (3) not later than five years after the date the applicant notifies the
6 chief engineer of the completion of construction of the works and the
7 actual application of water to the proposed beneficial use within the time
8 allowed, in all other cases.

9 If the chief engineer fails to issue a certificate within the time provided
10 by this subsection, the applicant may request review, pursuant to K.S.A.
11 2005 Supp. 82a-1901 and amendments thereto, of the chief engineer's
12 failure to act.

13 (d) Except for works constructed to appropriate water for domestic
14 use ~~or for existing works previously inspected~~, each notification to the
15 chief engineer under subsection (a) shall be accompanied by a field in-
16 spection fee of \$200, or commencing July 1, 2002, and ending June 30,
17 2010, a fee of \$400. ~~For works constructed pursuant to 82a-734, and~~
18 ~~amendments thereto, each notification to the chief engineer under subsection~~
19 ~~(a) shall be accompanied by a field inspection fee of \$100.~~ Failure
20 to pay the field inspection fee, after reasonable notice by the chief en-
21 gineer of such failure, shall result in the permit to appropriate water being
22 revoked, forfeiture of the priority date and revocation of any appropria-
23 tion right that may exist.

24 **(e) Upon examination of the diversion works the chief engineer**
25 **or the chief engineer's duly authorized representative shall, within**
26 **90 days, notify the applicant of the results, including any requested**
27 **changes. If the chief engineer fails to examine the diversion works**
28 **within two years of the notice of completion for a sand and gravel**
29 **pit, the applicant shall not be required to forfeit priority date as a**
30 **result of any requested changes.**

31 (e) (f) A request for an extension of time to: (1) Complete the diver-
32 sion works; or (2) perfect the water right, shall be accompanied by a fee
33 of \$50, or commencing July 1, 2002, and ending June 30, 2010, a fee of
34 \$100.

35 (f) (g) A request to reinstate a water right or a permit to appropriate
36 water which has been dismissed shall be filed with the chief engineer
37 within 60 days of the date dismissed and shall be accompanied by a fee
38 of \$100, or commencing July 1, 2002, and ending June 30, 2010, a fee of
39 \$200.

40 (g) (h) All fees collected by the chief engineer pursuant to this section
41 shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and
42 amendments thereto.

43 Sec. 2. K.S.A. 2005 Supp. 82a-714 is hereby repealed.

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STATE OF KANSAS

BILL GRAVES, GOVERNOR
Alice A. Devine, Secretary of Agriculture

DIVISION OF WATER RESOURCES
David L. Pope, Chief Engineer-Director
901 South Kansas Avenue, 2nd Floor
Topeka, Kansas 66612-1283
(913) 296-3717 FAX (913) 296-1176

KANSAS DEPARTMENT OF AGRICULTURE

January 17, 1997

ALSOP SAND CO INC
C/O DANE BARCLAY
PO BOX 331
CONCORDIA KS 66901-0331

Re: Appropriation of Water
File No. 41,732

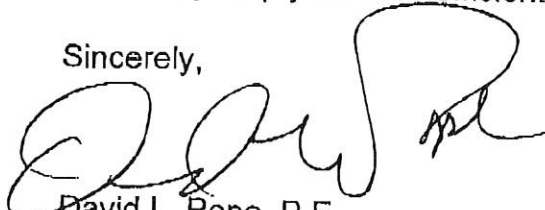
Dear Mr. Barclay:

On December 18, 1996, we received your request for waiver of the water flow meter requirement under the above referenced file. Based on the information you provided, it appears that the proposed hour meter and dredge logs can be used to provide accurate reports of the quantity of water pumped under File No. 41,732. Therefore, it is determined that the hour meter and dredge logs, as proposed, will meet the requirement in Paragraph No. 13 of the permit for an acceptable meter.

Please be advised that the Chief Engineer reserves the right to revoke this waiver if deemed necessary and you may be required to install a flow meter. In the mean time you are required to keep records as described in your letter of December 18, 1996, and have them available in the event it is necessary for our field staff to determine the amount of water diverted at any given time.

If you have any questions, please contact our office. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,



David L. Pope, P.E.
Chief Engineer

DLP:BLB
pc: Topeka Field Office



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2875
to
the Senate Committee on Natural Resources
by
Constantine Cotsoradis
Assistant Secretary
Kansas Department of Agriculture

March 2, 2006

Thank you, Madam Chairman and members of the committee. I am Constantine Cotsoradis, assistant secretary of agriculture, and I am here to testify in support of House Bill 2875.

In its current form, the bill would require the chief engineer to notify the applicant of the examination results of their diversion work within 90 days.

We do not support imposing work deadlines because circumstances, such as vacancies, lack of funding, etc. can make it difficult or nearly impossible to meet those deadlines. However, we understand the importance of priority dates to water users and can support the protection this bill offers.

Also, it should be noted that the current language only pertains to sand and gravel pits and not all sand and gravel projects. We believe, when amended the intent was for it to apply to all sand and gravel projects.

I will stand for questions at the appropriate time.



Memo To: Senate Natural Resources Committee
From: Thomas M. Palace
Date: March 9, 2006
Re: HB 2756

Madam Chairman and members of Senate Natural Resources Committee:

My name is Tom Palace. I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas petroleum distribution companies and convenience store owners throughout Kansas.

I appreciate the opportunity to appear before you today in support of HB 2756.

The Purpose of the Bill

On July 16, 2002, the Environmental Protection Agency (EPA) issued a new rule to revise the original Spill Prevention Control and Countermeasure (SPCC) regulations. The original SPCC regulations were promulgated by EPA in 1973, and since that time, petroleum facilities with aggregate aboveground storage capacity of 1,320 gallons have been required to have an SPCC in place. The SPCC plan is a document that aboveground tank owners are required to have at the storage facility.

I won't go into the complexities of this new regulation but what you need to know is that these new rules, mandated by EPA, probably will have the same impact on tank owners that were forced to comply with the 1988 underground storage tank act. This rule required that underground tanks be replaced or upgraded to the new standards by December 23, 1998. Many retailers could not justify or afford to upgrade their underground tanks, which caused small town gas stations to close their doors. HB 2756 attempts to assist aboveground tank owners and bulk plants to maintain their needed presence in the community as a fuel supplier.

What the Bill Does

HB 2756 will reimburse aboveground tank and bulk plant owners up to \$25,000 for expenses for installation, upgrade or permanent closure of their facilities.

Only aboveground storage tanks and bulk plants with a storage capacity of 1, 320 gallons or more, but less than 1,000,000 gallons, used to dispense fuel for resale are eligible for reimbursement.

This bill establishes the Kansas essential fuels supply trust fund. Excess funds from the

Petroleum Marketers and Convenience Store Association of Kansas

115 SE 7th • Topeka, KS 66603
PO Box 678 • Topeka, KS 66601-0678
785-233-9655 • Fax: 785-354-4374

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March 9, 2006
Attachment B*

environmental assurance fee (\$.01) shall be paid into the Kansas essential fuels supply trust fund only after the principle balance of underground and aboveground fund exceeds the required level.

This bill establishes the Kansas essential fuel supply trust fund compensation advisory board. It shall be a five member board and will include the fire marshal or designee, the director of the division of environment or designee, two representatives from the petroleum industry, at least one of which shall be a petroleum marketer and one from the equipment installation industry.

Funding

In 1992 the Kansas Legislature established the underground petroleum storage tank release trust fund. This fund is used to monitor and remediate contaminated sites in which petroleum products may have leaked out of underground storage tanks. A one-cent environmental assurance fee is assessed on each gallon of gas until such time that the underground fund has \$5 million and the aboveground fund has \$1.5 million. This fund is administered by the Kansas Department of Health and Environment.

HB 2756 establishes the Kansas essential fuels supply trust fund (KEFSTF). When the underground and above ground tank fund no longer requires the one-cent funding, the **excess funds** will be transferred to the Kansas essential fuels supply trust fund leaving the one-cent fee in place.

Who is eligible to access the KEFSTF?

- An aboveground storage tank or bulk plant is eligible for reimbursement if it is used for the storage of petroleum products for **resale**.
- Aboveground storage tanks facility must be registered with KDHE.
- Aboveground storage tanks contain petroleum products.
- Upgrade expenses must be incurred after August 1, 2001, and not later than October 30, 2007.
- KDHE will reimburse tank owners for 90% of the approved cost of the facility upgrade or permanent closure not to exceed \$25,000.

Fiscal Note

If we were to calculate all the eligible above ground tank facilities (approximately 700), and multiply that by \$25,000, the maximum reimbursement amount, the price tag would be approximately \$17.5 million. In reality it is very unlikely that each facility will require the maximum amount, and we estimate that the cost may be \$5-\$7 million. For instance, the cost to permanently close or dismantle a facility is approximately \$8,000-\$10,000. Depending on how extensive a tank facility needs to be upgraded to comply with the new regulations could range from \$5,000 and as high as \$100,000.

In closing Madam Chairman, HB 2756 will be a big help to small distributors that have aboveground tanks and bulk plants to maintain their presence in rural America. As I mentioned before, the underground storage act (to replace underground tanks) of 1998 devastated many small towns when gas stations were forced to close because many small business owners could not afford to upgrade their tanks. The impact of that EPA rule was not only devastating to the small business owner, but the local community as well. With no fuel locally, Kansans were forced to drive great distances to find fuel for their cars, trucks, tractors and lawn mowers. Although HB 2756 may not cover the entire cost to upgrade a facility, it will go a long way to assist small businesses to stay in business so that all Kansans will have adequate fuel supply.

We urge your support of HB 2756.

Secondary Containment: Secondary means of containment for entire capacity of largest tank in the containment area and sufficient freeboard for precipitation, that is sufficiently impervious to contain discharged oil.

Integrity testing: A regular schedule of test and inspection to insure integrity of bulk storage containers. “You must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing. Or another system on non-destructive shell testing”.

Security: EPA’s states “We believe that fencing, facility lighting, and the other measures prescribed in the rule to prevent vandalism are elements of good engineering practice for most facilities including mobile facilities.”

Engineering Cost: \$1,200.00 to \$6,000.00 has been reported to us. A minimum of 10 hours will be spent in SPCC plan preparation alone. Additional cost can occur if engineer does specific design work for a facility.

Tank Removal: Under both state and federal law there is no mandate to remove tanks out of service, provided that they are capped and marked out of service. However, an abandoned facility could become unsightly overtime. To remove a tank used to contain petroleum products would involve not only costs associated with the physical removal of the tank, but also the expense to properly dispose of a tank in an approved method. Companies that dispose of used tanks can charge extensive fees to cover the safety and environmental liability they assume when they take possession of a used tank.



K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

**Testimony on House Bill 2756
Kansas Essential Fuels Supply Trust Fund
An Act amending the Kansas Storage Tank Act
to
Senate Natural Resources Committee
Presented by Gary Blackburn
Director, Bureau of Environmental Remediation
March 9, 2006**

Chairperson McGinn and members of the Senate Natural Resources Committee, I am pleased to appear before you today to discuss House Bill 2756, the Kansas Essential Fuels Supply Trust Fund.

This is an amendment to the Storage Tank Act to provide a reimbursement fund to assist owners of aboveground storage tanks and bulk plants with the cost of upgrading their facilities to meet the requirements of the US Environmental Protection Agency's Spill Control and Countermeasures (SPCC) regulations for aboveground storage tanks outlined in 40 Code of Federal Regulations 112. As originally written, the bill appeared to include all aboveground storage tanks that must meet the SPCC requirements, except those owned by the federal government. According to the agency database, this would have included about 3,000 facilities at a potential cost of \$75,000,000. If the bill is reduced to only facilities where the fuel is used for resale or retail, as amended, about 726 facilities would be eligible at a cost ranging between \$7,000,000 and \$18,000,000, depending on participation and actual cost.

The new federal regulations require owners of aboveground storage tanks containing petroleum or other hazardous substances to have secondary containment, integrity testing, corrosion protection, security and loss prevention. These requirements along with a spill contingency plan must be in place and signed by a licensed Professional Engineer by October 31, 2007.

The Kansas Department of Health and Environment provides reimbursement to assist owners and operators of storage tanks in programs similar to that proposed in this bill: the Kansas Petroleum Storage Tank Release Trust Funds. The Underground and Aboveground Storage Tank trust funds provide financial assistance to storage tank owners and operators to perform corrective action in response to spills of petroleum from their storage tank systems.

Towards the same end, House Bill 2756 will provide reimbursements to aboveground storage tank owners to assist them in preventing spills. The Kansas Essential Fuels Supply Trust Fund is structured in a manner similar to the Kansas Petroleum Storage Tank Release Trust Funds. While the

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department has the experience and expertise to carry out the functions of this new fund some additional staffing will be needed to perform the work. As proposed, this program will only collect the environmental assurance fee when the UST and AST funds do not require the income.

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

TURNBULL OIL, INC
704 W MIU
Box 367
Plainville, KS 67663
785-434-4629

**Madam Chairman and Members of the Senate Natural Resources
Committee:**

**My Name is Jeff Turnbull, and I am the owner and president of
Turnbull Oil, Inc., in Plainville, Kansas. I stand before you in support of
House Bill 2756.**

**Turnbull Oil is a two-generation, 40-year-old small business that
specializes in selling and delivering gas and diesel to the agricultural,
railroad, and construction businesses. We have three bulk fuel facilities
located in Plainville, Palco, and Hill City. We currently employ six people
in these communities. While this business is critical to the existence of our
customers, it is threatened by the EPA's Spill Prevention Control and
Countermeasure Plan referred to as SPCC. The SPCC is an unfunded
mandate that will result in numerous plant and business closings due to
the exorbitant costs, which will obviously hurt many towns and the
businesses they support.**

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Attachment 5*

Let me explain. **Turnbull Oil in 2005 had net sales of \$6.7 million with earnings of \$4,146; in 2004 a net sales of 4.4 million with earnings of \$18,140. The reasons behind such low earnings are primarily the increase costs of fuel, insurance, and the inability to increase margins to an already economically strapped agricultural community. This leaves little room for updating any equipment or facilities.**

The SPCC Plan is an unfunded mandate created by the EPA to prevent pollution of "Navigable Waters." Initially this concept had merit, but the EPA has broadened their definition of navigable water to include all potential discharges over 2 spills > 42 gallons per year in any ditch, gutters, etc.

What this means to a bulk fuel dealer is that we will have to meet the following minimal guidelines to be in compliance:

- 1. We will need non-permeable dikes and floors to capture 110% of the largest tank capacity - basically cement.**
- 2. We will need a catch basin for loading and unloading trucks capable of handling the largest capacity of a single tank on a truck - 3,000+/gallons.**
- 3. We will need security fencing and lighting.**
- 4. We will need locked valves and locked electrical controls.**

5. We must test the tanks and piping for integrity.
6. We need an in-depth plan and reporting procedures for discharges, even if it is water.
7. We must train personnel on spill reporting procedures.
8. We must get this plan approved by a professional engineer.

My estimated costs for the previously mentioned "minimal"

compliances are as follows:

Cement Dikes, Floor, & Catch Basin	\$29,740
Fencing	\$ 5,000
Lighting	\$ 2,000
Professional Engineering Plan	\$ 5,000
	<hr/>
Total Per Location Cost	\$41,740

I am asking on behalf of hundreds of bulk dealerships, such as mine, that this committee allow us to be included in the already implemented 1¢ per gallon environmental assurance fee to meet these requirements. Although the proposed ceiling of \$25,000 per location in the House Bill 2756 is of aid, it is not nearly enough money to cover the cost of these projects and will result in numerous facility closings if the amount is not increased.

There will be some facilities that will need minimal amounts of funding to get in compliance and numerous plants that will need considerably more funding than proposed. I would ask this committee to increase the funding to come into compliance based on need, perhaps monitored by the KDHE.

In conclusion, with Turnbull Oil working off a 7% gross margin, we can ill afford these costs. We cannot pass these costs on to our customer base. The end result will be numerous closings of plants, numerous layoffs, and ultimately a valuable service to our farmers and construction industries will be lost or hard-pressed to find adequate services. I am asking this committee to approve HB 2756, increase the amount available through the Kansas Assurance Fee and keep our small businesses in Kansas viable.

Thank You.

SENATE NATURAL RESOURCES COMMITTEE

MARCH 9, 2006

Re: HB2756

Madam Chairman and members of Senate Natural Resources Committee:

My name is Kim Barnes. I serve as the Internal Auditor for The Pawnee County Cooperative Association located in Larned, Kansas. Pawnee County is a 100 year old company with over 2600 member owners living in Kansas and across our great nation. I appreciate the opportunity to appear before you today in support of HB 2756.

Background of the Coop

As stated earlier, my Association, I am proud to say, celebrated its 100th anniversary in 2005. The Pawnee County Cooperative Association has [2] two complete above ground refined fuel storage facilities. One, located in Larned, was constructed in 1968 and will be retrofitted to comply with the upcoming Spill Prevention Control and Countermeasures. The other, in Garfield, Kansas was constructed in 1962 and will be permanently closed and dismantled.

Both facilities today are registered with the State of Kansas and are in compliance with current rules and regulations under both the State and EPA's Spill Prevention Control and Countermeasures (SPCC) regulations. You would be hard pressed in Kansas to find two refined fuels loading facilities exactly alike yet now we are working to met SPCC's one size fits all set of regulations. Each of our facilities is larger than the 1,320 gallon minimum and below the 1,000,000 gallon maximum as stipulated in HB 2756 for consideration yet they look nothing alike, other than commonality of tanks, piping, load

*Senate Natural Resources
March 9, 2006
Attachment 6*

out rack and an earthen dike. Industry sources have projected that the cost to permanently close the Garfield facility will be in the range of \$8,000.00 to \$10,000.00.

Another major reason to dismantle the Garfield plant is all tanks are vertical. The Larned facility will take a major renovation to retrofit for SPCC compliance. The current earthen dike will need to be replaced with a cement containment system which will also include a neoprene liner of a size able to hold a volume 125% of the largest tank in case of a spill. The now existing loading facility will need to be changed to include a loading pad able to hold the largest compartment of a transport. The regulations also require that all tanks must be viewable from all sides to help detect any leaks. In the Larned facility we have both horizontal and vertical tanks. It is easy to view all sides of a horizontal tank and today they will work under the new regulations. We just have to be put it within the containment area. The existing vertical tanks must be elevated 6" of the ground.

Let's consider the impact on this part of the regulation. Our current vertical tanks were not constructed to be supported only on the outside circumference of the tank. They must be entirely supported to avoid collapse. Construction requires that they be placed on a solid base. Now here comes the unique engineering design to comply with the regulation and have a stable tank. We are faced with either eliminating a vertical tank thus causing greater expense to buy horizontal tanks or design a structure which will met the regulations and be safe.

Our design team has been working on this for several months. The ultimate goal is to find a solution which makes good financial sense and will comply with SPCC requirements. Currently SPCC is another unfunded mandate from Washington. Passage of HB 2756 will not completely pay for this new regulation but will go a long way

toward helping those of us who chose to stay in the refined fuel storage business. We support the two amendments to HB 2756 as put forth by Tom Palace Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA). On page two, line 8, added language that specifically states that eligible storage tanks or bulk plants store fuel for **resale** and on page 2, line 16 the insertion of the word **products** after petroleum. This change excludes crude oil.

What the Bill Does

HB 2756 establishes the Kansas essential fuels supply trust fund (KEFSTF). The benefit to the Co-op will be the ability to access the trust fund for reimbursement costs to retrofit one facility and permanently close another. In closing Madam Chairman, HB 2756 will be of great benefit to our Association and its 2600 member owners. We have greatly benefited from the underground storage act of 1988. Without it, we would have been another statistic forced to close. Bulk plants play an important role in today's farm economy. They allow us the opportunity to maintain adequate inventories in an often volatile time period: when its time to plant or harvest; terminal turnaround; long lines at the terminals; or spot outages. We understand that HB 2756 will not cover all of the costs to upgrade a facility, but it will help this Association and many like us across the State in our compliance with the SPCC regulations. I would stand for questions at the appropriate time.

Thank you.

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

RALPH OSTMEYER
SENATOR, 40TH DISTRICT
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GRINNELL, KS 67738-0097

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COMMITTEE ASSIGNMENTS

VICE-CHAIR: NATURAL RESOURCES
MEMBER: AGRICULTURE
EDUCATION
FEDERAL AND STATE AFFAIRS
JOINT COMMITTEE ADMINISTRATIVE
RULES AND REGULATIONS

March 9, 2001

Madam Chair McGinn and members of your committee.

Thank you for the opportunity to voice my support for HB -2756 which amends the Kansas storage tank act that provides for reimbursement of certain expenses and establishes a Kansas essential fuel supply trust fund compensation advisory board.

The Environmental Protection Agency has amended the 1973 Spill Prevention Control and Countermeasure (SPCC) rule for above ground tanks and bulk plants. While a lot of owners have upgraded their plants for various reasons some because of economic reasons did not. Now they have no choice and Kansas tank owners may be forced to close because of costs to upgrade these plants. Bulk fuel plants are not in abundance in Western Kansas and this bill would help fund upgrading of these facilities. These owners would have to meet eligibility requirements and upgrade expenses must be incurred after August 1, 2001 and not later than October 30, 2007. Any plants already updated must present receipts to share in this reimbursement. I would ask the committee to pass out HB - 2756 as Amended.

Ralph Ostmeyer

*Senate Natural Resources
March 9, 2006
Attachment 7*



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Senate Natural Resources Committee

March 9, 2006

HB 2756 - establishing the Kansas Essential Fuels Supply Trust Fund.

Chair McGinn and members of the Senate Committee on Natural Resources, thank you for the opportunity to appear on behalf of the Kansas Cooperative Council in support of HB 2756. This bill will establish the Kansas Essential Fuels Supply Trust Fund that can assist qualified petroleum product storage facilities with financial assistance to meet upgrade requirements or to help cover the cost of closure. This is a very timely measure as our industry is actively upgrading as a result of US EPA's Spill Prevention Containment and Countermeasure (SPCC) regulation.

I am Leslie Kaufman and I serve the Council as Executive Director. The Council represents all forms of cooperatively structured businesses across Kansas. Almost half of our members are engaged in agricultural businesses. Many of these operations have a petroleum component to them. They have been, and continue to be, affected by SPCC. This rule is having a significant fiscal impact on our members.

We have been working with our national affiliate, the National Council of Farmer Cooperatives (NCFC), on this issue for months. There are still impracticalities for our industry in these regulations - for both our agribusinesses and the farmers and ranchers that own/control these enterprises. I have attached a copy of correspondence on this issue as background reference. Nevertheless, our co-ops are making strides to comply with SPCC provisions. For many, this will require upgrades to facilities that can be extremely costly.

We have one cooperative with four petroleum product operational sites. They are in the process of upgrading to further comply with SPCC and expect to spend roughly \$10,000 per site on just fencing, whistles (tank filling/overflowing alarms) and related engineering. This bill will provide an important financial tool to entities such

*Senate Natural Resources
March 9, 2006
Attachment 8*

as this one that need to upgrade at a measurable cost. We anticipate this bill may make a difference in whether or not some facilities continue to even exist.

We appreciate that HB 2756 finances the trust fund in a manner that does not negatively impact either the underground or aboveground storage funds. It is important to us that fee funds maintain their integrity and we see the addition of the essential fuels supply trust fitting within the framework of the environmental assessment.

From our members' experiences over the last few months, it seems EPA is increasing the aggressiveness of their regulatory program relative to SPCC. Thus, creation of this trust fund comes at an extremely important time. Some of our members will have pursued upgrades sooner than others. As such, we appreciate that improvement costs incurred as far back as August 2001 can be eligible for reimbursement under this program. This is important to recognize those operators that reacted more quickly to changing requirements. It avoids a situation where the "early bird" is essentially penalized and the late-comer garners all the benefits.

The Kansas Essential Fuels Supply Trust Fund is a positive development for our members. We support enactment of the fund and respectfully request this committee act favorably on HB 2756. Thank you.



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February 9, 2006

Mr. Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OPA-2005-0001

Dear Administrator Johnson:

On behalf of the Kansas Cooperative Council, we submit the following comments on the EPA's proposed changes to the SPCC regulation and support the comments submitted by the Agriculture Coalition on the Spill Prevention, Control and Countermeasure (SPCC), which includes organizations representing farmers, ranchers, farmer cooperatives, livestock operations and related agribusinesses.

The Kansas Cooperative Council is a statewide association representing all forms of cooperative businesses. Approximately half of our nearly 200 members are directly involved in agribusiness. Many are directly impacted by SPCC provisions.

It is imperative that EPA establish a different approach for the agricultural sector and establish a clear definition of a farm, farming operation, and agribusiness for purposes of this rule. It is also vital that EPA acknowledge that oil storage in our industry cannot be aggregated but must be established on a non-contiguous field by non-contiguous field basis. A recent survey conducted by the US Department of Agriculture found that farms with multiple oil storage sites are, on average 4.1 miles from the main site. It would be impractical to aggregate storage on sites so far apart.

There are many questions relevant and applicable only to farms, livestock operations, farmer cooperatives and other agribusinesses that still exist with EPA's latest proposal. It is essential that EPA take the time to collect relevant data on our industry before it proceeds with costly and burdensome regulation. EPA must completely understand the unique nature of the industry, our history of spills and our reaction to those spills, and the challenges this rule poses in its current form and the cost.

We urge the EPA to continue to work with the agriculture coalition to create a rule practical and relevant to our industry.

Thank you for the opportunity to comment on the SPCC proposed rule. Should you need to contact us, you may reach me by phone at 785-233-4085, by fax at 785-233-1038 or by mail at 816 SW Tyler St., Topeka, Kansas 66612.

Sincerely,

Leslie J. Kaufman, Executive Director
Kansas Cooperative Council



BRIDGMAN OIL COMPANY, INC.

109 Clay Street • Hutchinson, KS 67501-7093 • 620-665-6811 • Fax: 620-665-1082

March 8, 2006

Madam Chairman and Members of the Senate Natural Resources
Committee:

My name is Brad Thompson and I am Vice President of Bridgman Oil Co
of Hutchinson Kansas. I stand before you in support of HB 2756.

Bridgman Oil has supplied fuels to rural farm accounts for the past 46 years
in Reno, Harvey, Sedgwick, and McPherson counties. The continuing saga
of federal mandates such as SPCC incurs cost to my company that will result
in rural fuel bulk facilities being closed. The cost of installations needed to
upgrade facilities will result in the closures of them. These facilities are
important to my rural customers as without them in place, they will have to
travel to the next community for their fuel needs. This would be one less
business in their community which in turn helps destroy rural Kansas.

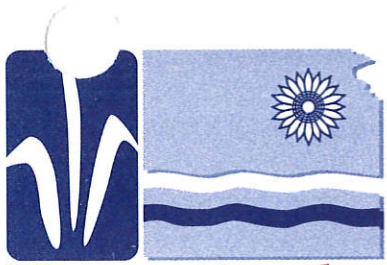
With the passage of HB 2756 Bridgman Oil could use appropriated monies
to keep these facilities in operation. With out the passage of HB 2756, I will
have to make hard decisions as to which facility I can keep open and which
ones will be closed. This is not an expense that I can pass along to my
customers as competition from big box businesses keeps my margins at all
time lows and without some kind of assistance, rural Kansas will be hurt.

I urge you to pass HB 2756 and help me in preserving rural Kansas for the
next generation that follows. Thank you

Sincerely:

Brad Thompson
Vice President

*Senate Natural Resources
March 9, 2006
Attachment 9*



KARA

Safe & Abundant Food Through Sound Science

Kansas Agribusiness Retailers Association

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P.O. Box 1517
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Senate Natural Resources Committee

HB 2756

March 9, 2006

Mary Jane Stankiewicz

Good morning Madam Chairman and members of the Senate Natural Resources Committee, I am Mary Jane Stankiewicz, Vice President and General Counsel for the Kansas Agribusiness Retailers Association and I appear before you in support of HB 2756. KARA has members throughout the state that provide various products and services to the farmers and other members of their various communities.

One of the services that some of our members provide is the sale of fuel. The Environmental Protection Agency has implemented regulations that will cause a number of our members that have aboveground tanks to either upgrade or permanently close their tanks. HB 2756 would provide up to \$25,000 to cover the costs of upgrading or closure of the facilities.

We are hopeful that this program will be of great benefit in keeping gas retailers in business in our smaller, rural communities. While our members are the core group of gas retailers in the state, they do provide this service to a number of rural communities. These facilities are constantly weighing and balancing the cost of providing a service with the return on the investment. Without this assistance, a number of the facilities might determine that it is time to close their gas retail service and just focus on providing agronomic services to that particular community.

We hope you support HB 2756 because these small communities do not need to lose any more services than they have already experienced. Thank you for your time and consideration.

*Senate Natural Resources
March 9, 2006
Attachment 10*