

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman John Faber at 3:30 p.m. on March 1, 2007, in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Jason Thompson, Revisor of Statutes
Florence Deeter, Committee Assistant

Conferees:

Bill Bider, Director of Bureau of Waste Management, Kansas Department of Health and Environment
Shawn Herrick, Executive Director, Mid-America Tire Dealers Association
Gary Blackburn, Director, Bureau of Environmental Remediation, Kansas Department of Health and Environment
Tom Palace, Executive Director, Petroleum Marketers and Convenience Store Association
Leslie Kaufman, Executive Director, Kansas Cooperative Council
Mary Jane Stankiewicz, Vice President and General Counsel, Kansas Agribusiness Retailers Association

Others attending:

See attached list.

Hearing on SB 146 - Solid waste, waste tire management

Bill Bider, Director of Bureau of Waste Management, Kansas Department of Health and Environment (KDHE), spoke as a proponent of **SB 146**. He advised the members of several facets in the bill and said that by expanding the existing recycling grant program and including grants to local entities, implementation of the bill could facilitate purchases of materials and products made from recycled tires. An additional restriction addresses the amount of money KDHE can provide annually for waste tire grants (Attachment 1).

Mr. Bider requested that KDHE have additional time to implement the recycling program in order to obtain future grants. In answer to questions, Mr. Bider said there is no playground cover from recycled tires being produced in Kansas at this time; two new companies are developing plans to be operational by the end of summer, 2007. He said that new standards related to usage will code and color products for purchasers. Mr. Bider said two cities, Humboldt and Chanute, have facilities for burning fuel in cement kilns.

Shawn Herrick, Executive Director of the Mid-America Tire Dealers Association, spoke in support of **SB 146** and commended the committee for its consideration of the bill. She said that, since 1990, approximately 86 percent of used tires are recycled; this bill will help improve the availability of new markets in the industry (Attachment 2). Answering a question, Ms. Herrick indicated that a large percent of recycled tires goes into fuel for cement kilns. Magnets are used to pull the steel out and it is recycled as well. She stated that a tire dealer pays \$1.00 to \$3.00 to dispose of used tires and that cost is reflected in the customer's billing at the time of sale.

Judy Moler, Legislative Services Director, Kansas Association of Counties, submitted written testimony in support of **SB 146** (Attachment 3).

The Chairman closed the hearing on **SB 146**.

Hearing on SB 190 - amending the Kansas Storage Tank Act

Gary Blackburn, Director, Bureau of Environmental Remediation, Kansas Department of Health and Environment, speaking as a proponent of **SB 190**, which amends the Kansas Storage Tank Act (KSTA), said the primary function of the bill is to grant authority needed to comply with new federal requirements (Attachment 4). Mr. Blackburn stated the KSTA program requires more frequent inspections, a greater

CONTINUATION SHEET

MINUTES OF THE House Agriculture and Natural Resources Committee at 3:30 P.M. on in Room 426-S of the Capitol.

number of public reports, and more responsibility for licensed underground tank installers. The Energy Policy Act (EPA) has not provided the funds needed for this program, yet requires these activities to be conducted. The Underground Storage Trust fund can be utilized for conducting this program until federal funds become available. Mr. Blackburn said **SB 190** will extend the eligibility deadline for the Kansas Essential Fuels Supply Trust fund from October 30, 2007, to July 1, 2009, and will benefit those who own above-ground tanks.

Tom Palace, Executive Director, Petroleum Marketers and Convenience Store Association, a proponent of **SB 190**, elaborated on three sections, stating that EPA mandates specific requirements for training any person who has responsibility with the operation, maintenance and oversight of underground storage tanks (Attachment 5). He said operators are required to complete an approved training program with KDHE, show evidence of either financial responsibility for spills and leaks, or give assurance of secondary containment requirements. In addition, Mr. Palace alluded to the bill's extension of the sunset provision from October 30, 2007, to July 1, 2009, to be in compliance with EPA requirements.

Leslie Kaufman, Executive Director, Kansas Cooperative Council, provided written testimony in support of **SB 190** (Attachment 6).

Mary Jane Stankiewicz, Vice President and General Counsel for Kansas Agribusiness Retailers Association, provided written testimony in support of **SB 190** (Attachment 7).

The Chairman closed the hearing on **SB 190**.

The Chairman called for consideration of **SB 191**. Representative Svaty moved to pass SB 191 favorably and place it on the Consent Calendar. Representative Grange seconded the motion. The motion carried.

The Chairman called for consideration of **SB 192**. Representative Svaty moved to pass SB 192 favorably and place it on the Consent Calendar. Representative Grange seconded the motion. The motion carried.

The Chairman called for consideration of **SCR 1604**. Representative Moxley moved to pass SCR 1604 favorably and place it on the Consent Calendar. Representative Fund seconded the motion. The motion carried.

The meeting adjourned at 4:50 p.m. The next meeting is scheduled for March 5, 2007.



Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

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Division of Environment

Testimony on Senate Bill 146
presented to
House Agriculture and Natural Resources Committee
by
William L. Bider
Director, Bureau of Waste Management
March 1, 2007

KDHE appreciates this opportunity to present testimony on Senate Bill 146, which is related to waste tire recycling. This bill would permanently authorize KDHE to administer the waste tire grant program in a manner very similar to a proviso to the department's FY 2007 budget. KDHE introduced this bill to be identical to the proviso; however, a few amendments were made by the Senate Natural Resources. If passed, this bill would amend the existing waste tire recycling grant program to include grants to local governments to assist in the purchase of playground cover material and other non-specified products made from recycled waste tires. KDHE already has authority to award waste tire recycling grants to purchase specialized equipment to process waste tires into usable products but not to help with the purchase of such products.

The bill also removes current statutory restrictions on how much money KDHE may spend annually on waste tire grants. The current provisions of law limit grant expenditures to revenue in the previous year minus the amount spent for administering the statewide regulatory program and waste tire pile clean-up. There is a problem with this restriction. For example, if grant applications in a given year do not meet minimum requirements and available funds are not used, those funds become unavailable for grants in future years, even if excellent new applications are received. Since program administration expenditures are also limited by statute and tire pile clean-up may be unnecessary, it is possible that there will be no authorized ways to use unspent funds unless this restriction is removed.

The Senate made three changes to SB 146, one of which adds some complications to grant program administration. This is the expansion of the grant program to include various non-specified products made from recycled tires rather than limit the assistance program to playground cover only. Since this is a competitive grant program with award recommendations made to the secretary of KDHE by the Governor's Solid Waste Grants Advisory Committee, it becomes more difficult to compare applications since applications will be received for a wide variety of products. Also, KDHE must develop forms that accommodate various product types and consider standards for each product to ensure that they should be eligible for grant funding. It is likely that many more product vendors will need to be considered than if only playground cover was eligible for funding. The other two changes to the bill made by the Senate are acceptable to KDHE: (1) reduction of maximum grant from 75% to 50% of product costs; and

(2) removal of "installation" as eligible for grant funding. Based upon discussion of these issues in the Senate, KDHE believes that the elimination of the word "installation" would not prohibit a product supplier from delivering product or using their special expertise to blend and pour in-place a mat type playground cover product because this kind of product is not complete until the components are blended and poured into the playground area. However, in no case could grant funds be used to perform other "installation" activities such as leveling of the ground surface, construction of edging, site paving, or installing of playground equipment.

KDHE could not fully implement the provisions of the proviso in FY 2007, which was limited to playground cover only because no companies in Kansas had the capability to produce playground cover from waste tires. Thus, it was necessary to phase in this new program with the first phase being focused equipment grants to assist Kansas companies in gearing up to produce playground cover material from Kansas waste tires. Two grants were awarded in FY 2007 totaling \$500,000 to assist Kansas companies to gear up for such production by fall of 2007. Each of these companies has indicated that they will also invest considerably more of their own money to manufacture this product. The next phase of the program will be the grants to local governments to help them purchase the recycled rubber products.

Without the grant subsidies, few communities will purchase recycled rubber as playground cover because it is more costly than traditional cover materials such as sand or pebbles. This bill should promote the use of waste tires in this beneficial way while also minimizing landfill disposal and improving the appearance and safety of playgrounds.



**Statement of the
Mid-America Tire Dealers
Association**

**Submitted by
Shawn Herrick, Executive Director**

**Before the
House Agriculture and Natural
Resources Committee**

March 1, 2007

Chairman, Members of the Committee;

My name is Shawn Herrick. I'm the Executive Director of the Mid-America Tire Dealers Association (MATDA), and on behalf of our members, I appreciate the opportunity to be here today to state our position on SB 146.

The Mid-America Tire Dealers Association supports Senate Bill 146 as it passed the Senate. The members of our association would like to commend the Committee for considering this legislation and the Kansas Department of Health and Environment's (KDHE) efforts to improve end markets in the tire recycling industry.

We feel that if this bill were to become law, it has a high probability of achieving its intent. MATDA would like to urge your support and passage of SB 146.

On behalf of our membership, thank you again for allowing me to express our concerns.



Testimony on SB 146
House Agriculture and Natural Resources Committee
By Judy A. Moler, Legislative Services Director
March 1, 2007

The Kansas Association of Counties supports SB 146 which allows KDHE to administer the waste tire grant program on a permanent basis. In addition, this bill allows for the waste tire grant program to give grants to assist local governments in the purchase of playground material that is made from these recycled waste tires. This grant program promotes the use of these recycled products for playgrounds as it is unlikely that many counties would choose this as it is more expensive than other traditional ground covers.

The Kansas Association of Counties urges you to support SB 146.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services, and a wide range of information services to its member counties. Inquiries concerning this testimony should be directed to Randall Allen or Judy Moler by calling (785) 272-2585.

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**HS AGRICULTURE AND NATURAL
RESOURCES COMMITTEE**
3-1-2007
ATTACHMENT 3



Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

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**Testimony on Senate Bill No. 190
An Act Relating to the Kansas Storage Tank Act
to
House Agriculture and Natural Resources Committee
Presented by Gary Blackburn
Director, Bureau of Environmental Remediation
March 1, 2007**

Chairperson Faber and members of the House Agriculture and Natural Resources Committee, I am pleased to appear before you today to support Senate Bill 190, which amends the Kansas Storage Tank Act.

The amendments to the Storage Tank Act are to provide the additional authority needed to comply with the new federal requirements and to maintain EPA approval of the Kansas Storage Tank Program. The bill also allows money from the Underground Storage Tank (UST) fund to be used to perform the required tasks, including developing and implementing operator training, performing additional inspections, providing follow-up to ensure violations are resolved, complying with additional reporting to EPA and providing public access to program records.

The Kansas Storage Tank Act generally follows the federal storage tank laws and provides the statutory basis for the regulation of USTs by the state. Because the Kansas program fulfilled the federal requirements of Subtitle I of the Resource Conservation and Recovery Act, Kansas was given state program approval. The amendments to the federal act now place new conditions on the Kansas UST program for more frequent inspections and follow-up, increased public reporting, new training requirements for operators of USTs, and greater financial responsibility for licensed UST installers. For Kansas to retain program approval the new federal requirements must be incorporated into the program requirements.

The program changes will help Kansas run a more effective UST program. The increased inspections will bring some tank owners, who have struggled to comply with program requirements, into compliance. The training program will help tank owners and employees to learn the program requirements, improve overall compliance and reduce the severity of petroleum releases through early detection. KDHE intends to contract the services of private trainers to accomplish the operator training function. Operators of USTs will need to document the completion of this training before they can obtain their tank permits.

To date EPA has not provided funding to states to perform the new program requirements. State programs have been unsuccessful in obtaining additional funding from EPA to conduct these required activities. KHDE has been informed that regardless of funding, the

activities must be completed. Senate Bill 190 will allow the UST fund to be used to implement Energy Policy Act requirements. The UST fund money will only be used until federal funds become available. The Kansas UST fund is capable of funding the anticipated cost of this program within the existing fee structure.

The bill also moves back the eligibility deadline for the Kansas Essential Fuels Supply Trust fund from October 30, 2007, to July 1, 2009. KDHE administers the Essential Fuels Supply Trust Fund to provide partial reimbursement to owners of aboveground tanks storing fuel for resale for the costs of upgrades in order to comply with the federal Spill, Prevention, Control and Countermeasures (SPCC) requirements. The SPCC rules require owners of aboveground tanks containing petroleum to have secondary containment, integrity testing, corrosion protection, security and loss prevention. Since the passage of the Kansas act, EPA has extended the deadline for compliance with the requirements of 40 CFR 112 to July 1, 2009. The extension to the deadline for reimbursement under the Essential Fuels Supply Trust Fund to July 1, 2009 will provide many additional tank owners the opportunity to benefit from this program. To align the Kansas program with the federal deadlines the dates of the act should be amended.

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

Memo To: House Agriculture and Natural Resources Committee
From: Thomas M. Palace
Date: March 1, 2007
Re: Comments on SB 190

Mr. Chairman and members of the House Agriculture and 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.

Background information

The U.S. Energy Policy Act of 2005

Among the provisions of the federal legislation passed in 2005 by Congress are stringent new regulations for owners and operators of underground storage tanks (USTs). The legislation amends the Solid Waste Disposal Act to add requirements for additional measures to protect groundwater from contamination from leaks from USTs.

Senate Bill 190, as proposed, allows Kansas underground tank owners to meet the federal requirements in four major areas: training, financial responsibility, funding for enforcement (inspections), and extension of compliance dates (to coincide with federally-adopted dates). In addition, SB 190 adds a provision to the Kansas Essential Fuels Supply Act, enacted by the Kansas Legislature in 2006, to allow for the sunset provisions to match federal extensions.

Training

The Energy Policy Act mandates training requirements for persons having primary responsibility for on-site operation and maintenance of USTs, persons having daily on-site responsibility for the operation and maintenance of USTs, and daily on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an UST system. This comprehensive list reflects the concern that responsible persons are not only in a position to prevent leaks, but also to respond quickly once they occur.

- New section one of Senate Bill 190 requires operators of underground storage tanks to complete a training program approved by KDHE. All persons having responsibility for on-site operation of UST must be trained.

Petroleum Marketers and Convenience Store Association of Kansas

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3-1-2007
ATTACHMENT 5**

Financial Responsibility

Congress adopted the Financial Responsibilities Act and Installer Certification Guidelines on August 8, 2005 that were included in the Energy Policy Act of 2005. As such, state underground storage tank (UST) programs that receive funding under the Energy Policy Act must require either evidence of financial responsibility **or** certification or tank and piping secondary containment.

Section 2 of Senate Bill 190 requires manufacturers and installers of USTs to maintain evidence of financial responsibility in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate amount for cost for corrective action directly related to a release caused by improper manufacture or installation. SB 190 adds additional on-site inspections by KDHE.

Why financial responsibility instead of secondary containment?

Kansas has approximately 35 tank installers and a handful of manufacturers of tanks. KDHE is attempting to find a happy medium with this issue. Fortunately, or unfortunately, depending on what line of business you are in, EPA has not established regulations concerning this issue, but has considered "tentative" guidelines. The issue: do we require the tank owner to convert tanks to double walled tanks when repairs are needed (very expensive action) or would requiring financial responsibility from tank manufacturers and tank installers along with installer certification be more cost effective?

To our advantage is the fact that as of January 31, 2007, EPA has not approved final regulations or guidelines to comply with this regulation; thus the Kansas Department of Health and Environment (KDHE) has some leverage in determining the best means of compliance for our state. (Important Note: EPA has given states until February 8, 2007 to implement either financial responsibility requirements or secondary containment).

PMCA and KDHE agree that financial responsibility and installer certification is the preferable method because Kansas currently requires tank installers to be licensed, and they all carry ample insurance coverage amounts for liability purposes. Another key issue here is whether or not manufacturers and installers can secure the proper trail coverage that EPA may require. Discussion with KDHE and EPA will continue and we will monitor the discussions until the new regulations are put in place.

Inspections

Additionally, the Energy Policy Act requires inspection of underground storage tanks. This section of the Energy Policy Act identifies inspection requirements for USTs. These provisions require (for the first time ever) that every state conduct routine inspections of every UST every three years. In an effort to give States time to pass the appropriate state laws and hire the necessary personnel, which is essential since only 19 states currently operate UST programs that could meet this three-year requirement, the provisions of this

section allow states an initial 2-year grace period to start their inspection program. The 2-year period is to allow states to eliminate any backlog of inspections that have not been done.

- Section 3 of Senate Bill 190 provides the funding to pay for additional enforcement (inspections), as well as the reporting and operator training that is required by the Federal Energy Policy Act of 2005.

Kansas Essential Fuels Supply Act – Aboveground Storage Tanks (ASTs)

Last year this committee discussed and approved funding for the Kansas Essential Fuels Supply Trust Fund. The fund was formed to reimburse aboveground tank owners for upgrades to their tanks as well as bulk fuel plants in accordance with EPA's Spill Prevention, Control and Countermeasure (SPCC) regulations. EPA recently revised their regulation extending the deadline for tank owners to be in compliance for two additional years. The amendments below change the sunset of the Kansas Essential Fuels Supply Trust Fund in accordance with the EPA extension.

- Section 4 of SB 190 amends the act to extend the length of the sunset provision that allows reimbursement from the current October 30, 2007 to July 1, 2009, to match the EPA extension of the Spill Prevention Control and Countermeasure (SPCC) plans,
- Section 5 of SB 190 changes the sunset provision by two additional years for the Kansas Essential Fuels Supply Trust Fund Compensation Advisory Board and the Kansas Essential Fuels Supply Trust Fund to more closely mirror the SPCC deadline extension.

Mr. Chairman and members of the committee, EPA is known for establishing rules and regulations that require states to comply without adequate funding from the federal government. SB 190 will help the KDHE and Kansas tank owners keep the environment safe through increased training for owners, operators and clerks that oversee USTs and it will also allow KDHE to increase their state inspections so that all USTs are inspected every three years. The bill addresses funding of federal programs in a sensible manner and under established, successful Kansas programs. We urge the committee to approve SB 190.

Thank you.



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The Mission of the Kansas Cooperative Council is to promote, support and advance the interests and understanding of agricultural, utility, credit and consumer cooperatives and their members through legislation and regulatory efforts, education and public relations.

House Committee on Agriculture & Natural Resources

March 1, 2007
Topeka, Kansas

SB 190 - Underground petroleum storage tanks.

Chairman Faber and members of the House Agriculture & Natural Resources Committee, thank you for the opportunity to comment today in support of SB 190. 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.

Those members with petroleum businesses have been and continue to be affected by US EPA's Spill Prevention Containment and Countermeasure (SPCC) regulation. This rule is having a significant fiscal impact on our members.

Last session, we joined with partners like the Petroleum Marketers and Convenience Store Owners of Kansas to support the Kansas Essential Fuels Supply Act. As you know, this act provides financial assistance for upgrading certain petroleum tanks for compliance with SPCC. SB 190 allows the fund to provide financial assistance for reporting and training required by the EPA. Costs for EPA compliance can be significant and we support the existence of the fund and its expansion to cover these additional cost requirements.

SB 190 will also re-align the sunset dates for the Essential Fuels Supply Act to match the extension EPA has granted for SPCC compliance. Since the compliance period is now longer, it would be extremely beneficial for the financial assistance to be available during that entire period. This same philosophy is being applied to the Essential Fuels Trust Advisory Board.

We thank you for the opportunity to share our thoughts on this bill and encourage favorable action on the measure.

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3-1-2007
ATTACHMENT 6



KANSAS AGRIBUSINESS RETAILERS ASSOCIATION
SAFE AND ABUNDANT FOOD THROUGH SOUND SCIENCE

TESTIMONY BEFORE
HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE
SB 190 – UNDERGROUND STORAGE TANKS
MARCH 1, 2007

Good afternoon Chairman Faber and members of the House Natural Resource Committee. I am Mary Jane Stankiewicz, Vice President and General Counsel for the Kansas Agribusiness Retailers Association (KARA). Kara's membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. Because of our involvement in the petroleum business KARA appears in support of SB 190.

KARA has always supported the training of employees regarding the safe handling and storage of product that they with at their facilities. This bill is an attempt to ensure that anyone that is responsible for the underground storage is knowledgeable about how to prevent leaks and address problems if they occur. We think this is a reasonable expectation. We are hopeful that KDHE will be reasonable and judicious in the exercising of this authority.

KARA is very supportive of the extension of the sunset of the Kansas Essential Fuels Supply Trust Fund. It only seems appropriate that the sunset on this fund match EPA's extension of the Spill Prevention Control and Countermeasure plans (SPCC).

Thank you for your time and attention to this matter. We urge you to pass SB 190.