

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on February 2, 2007, in Room 423-S of the Capitol.

All members were present with the exception of Senator Wysong who was excused.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Emalene Correll, Kansas Legislative Research Department
Art Griggs, Revisor of Statutes Office
Judy Holliday, Committee Assistant

Conferees appearing before the committee:

Representative Bob Grant
Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas
Gary Blackburn, Director, Bureau of Environmental Remediation, Kansas Department of Health and Environment

Others attending:

See attached list.

Chairman McGinn asked the Committee members if there was an interest in having a landfill bus tour. She was thinking of setting it for February 15 at 7:30 a.m, and asked them to think about it and they would discuss it at the end of the meeting.

Representative Bob Grant briefly testified on **HB 2002, Concerning the membership of the Kansas wildlife and parks commission** (Attachment 1). The bill requires that Wildlife and Parks Commission appointments by the Governor should be one representative from each Wildlife and Parks Commission District and the two at-large positions could be from any one of the five districts. Senator Ostmeyer made a motion to move the bill out of Committee, seconded by Senator Francisco. The motion carried.

Chairman McGinn called on Raney Gilliland, Kansas Legislative Research Department, to explain **SB 190, Training for operators of underground storage tanks, funding**. Mr. Gilliland told the Committee that the new language in **SB 190** amends the Kansas Storage Tank Act and deals with the training program for persons with onsite responsibility for maintenance and for the persons responsible for cleanup of spills. The bill deals with compliance with new federal requirements and EPA oversight of the Kansas Storage Tank Program. There is a requirement for evidence of assurance for contractor license or renewal. The bill applies to both above and below ground tanks.

Gary Blackburn, Director, Bureau of Environmental Remediation, Kansas Department of Health, testified in support of **SB 190** (Attachment 2). Mr. Blackburn explained the purpose of the amendments was to help Kansas run a more effective Underground Storage Tank (UST) program and bring tank owners into compliance. The training program will help tank owners and employees learn program requirements and reduce severity of petroleum releases through early detection. The amendments to the federal act place new conditions on the Kansas UST program for more frequent inspections, public reporting, and greater responsibility for licensed installers. KDHE will contract for the services of private trainers. Operators of USTs will need to document completion of training before they can obtain tank permits.

Thomas Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas, testified as a proponent of **SB 190** (Attachment 3). Mr. Palace testified that the bill allows underground tank owners to meet federal requirements in four areas: training, financial responsibility, funding for enforcement (inspections), and extension of compliance dates to coincide with federally-adopted dates. The bill addresses funding of federal programs and under established, successful Kansas programs. Mr. Palace told the Committee the bill goes a long way toward keeping the environment clean.

Copies of written testimony in support of **SB 190** from Kansas Agribusiness Retailers Association

(Attachment 4) and Kansas Cooperative Council (Attachment 5) were distributed to Committee members.

Chairman McGinn opened the hearing on **SB 15, Establishing the Kansas dam rehabilitation program to provide cost-share assistance to rehabilitate certain deficient dams**. She asked Raney Gilliland, Kansas Legislative Research Department, to explain the bill and the proposed revisions (Attachment 6).

There was discussion by Committee members on the bill. There was a motion by Senator Taddiken for technical cleanup on the bill language, seconded by Senator Francisco. The motion carried.

Chairman McGinn asked Committee members to look over the bill since this was the first time they had seen the amendment, and it would be taken up again next week.

Senator Francisco advised the Committee that she had proposed a balloon amendment to **SB 15** and asked how best to proceed, since Senator Taddiken's amendment would change the balloon. Senator Taddiken asked that his motion be withdrawn since the bill would be held over. Senator McGinn suggested that the Committee move the concepts forward and have the Revisors do a balloon and bring back to the Committee.

Senators Huelskamp and Pyle requested copies of the list of the 21 "top priority" dams and owners from KDHE for the Committee's information.

Chairman McGinn called the Committee's attention to **SB 146, Solid waste, waste tire management fund**. Senator Taddiken proposed an amendment to the bill (Attachment 7) to ensure that money is well-spent for recycling projects; change the percentage local units of government would need to pay to purchase playground cover; remove the words "to install" and replace with "or other tire derived"; and change the definition of "tire derived product."

Chairman McGinn told the Committee that there was an amnesty program wherein communities could apply to KDHE for cleanup of waste tires. Landowners often have to clean up tires that have been dumped on private land. Chairman McGinn asked the Committee if there was interest in discussing this issue and working on language. She asked Bill Bider of KDHE about the cost associated with a tire cleanup, and he responded that it was done 5-8 years ago at a cost of about \$1million statewide. Senator Taddiken made a motion to accept the amendment, seconded by Senator Huelskamp. The motion carried.

The meeting adjourned at 9:30 a.m.

The next meeting will be held Thursday, February 8.

SENATE NATURAL RESOURCES COMMITTEE

Guest Roster

2/2/07

(Date)

Steve Swaffar	KFB
John Denley	KLA
Woody Meadows	KAAA
Mary Kay Stankiewicz	
Matt Scherer	KDA
Tom Palace	PMCA OF KS
Randy Carlson	KDHE
Gary Blackburn	KDHE
Kent Askren	KFB
Mike Beam	Ks Livestock Assn
Bill Bider	KDHE
Hakim Saadi	SCC
Judy Moly	KAC
Paul B. Paul	SCC
Walter Oradic	KDHE
Dick Werth	KDHE
Charles Hicalay	Ks Landfill Assn
Shawn Herrick	Mid-America Tire Dealers Assn.
Kim Christiansen	Kansas Water Office
Tracy Streeter	Kansas Water Office
Steve Adams	Wildlife and Parks
Shari Albrecht	KDHE
Ed Haselwood	Leiszler Oil Co

Please use black ink only!!



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

RANKING MEMBER: EDUCATION BUDGET
STATE BUILDING AND CONSTRUCTION
MEMBER: COMMERCE AND LABOR
INSURANCE AND FINANCIAL
INSTITUTIONS
SPECIAL CLAIMS

ROBERT "BOB" GRANT
REPRESENTATIVE, 2ND DISTRICT
MOST OF CRAWFORD COUNTY
AND PART OF CHEROKEE AND
BOURBON COUNTIES
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Testimony on HB 2002
February 2, 2007

Chairman McGinn, Vice-Chairman Ostmeier, Ranking Minority Member Francisco, Members of Natural Resources, Representative Gatewood and I appreciate you taking the time to have a hearing on HB2002. This bill was heard last year and passed the house in flying colors. The bill, along with some others, got hung up in conference and died a slow agonizing death.

Hopefully we can get it passed this year.

All this bill does is require that when the Governor appoints a person to the Wildlife and Parks Commission that each Wildlife and Parks Commission District has one representative and the two at-large positions can be from anyone of the five.

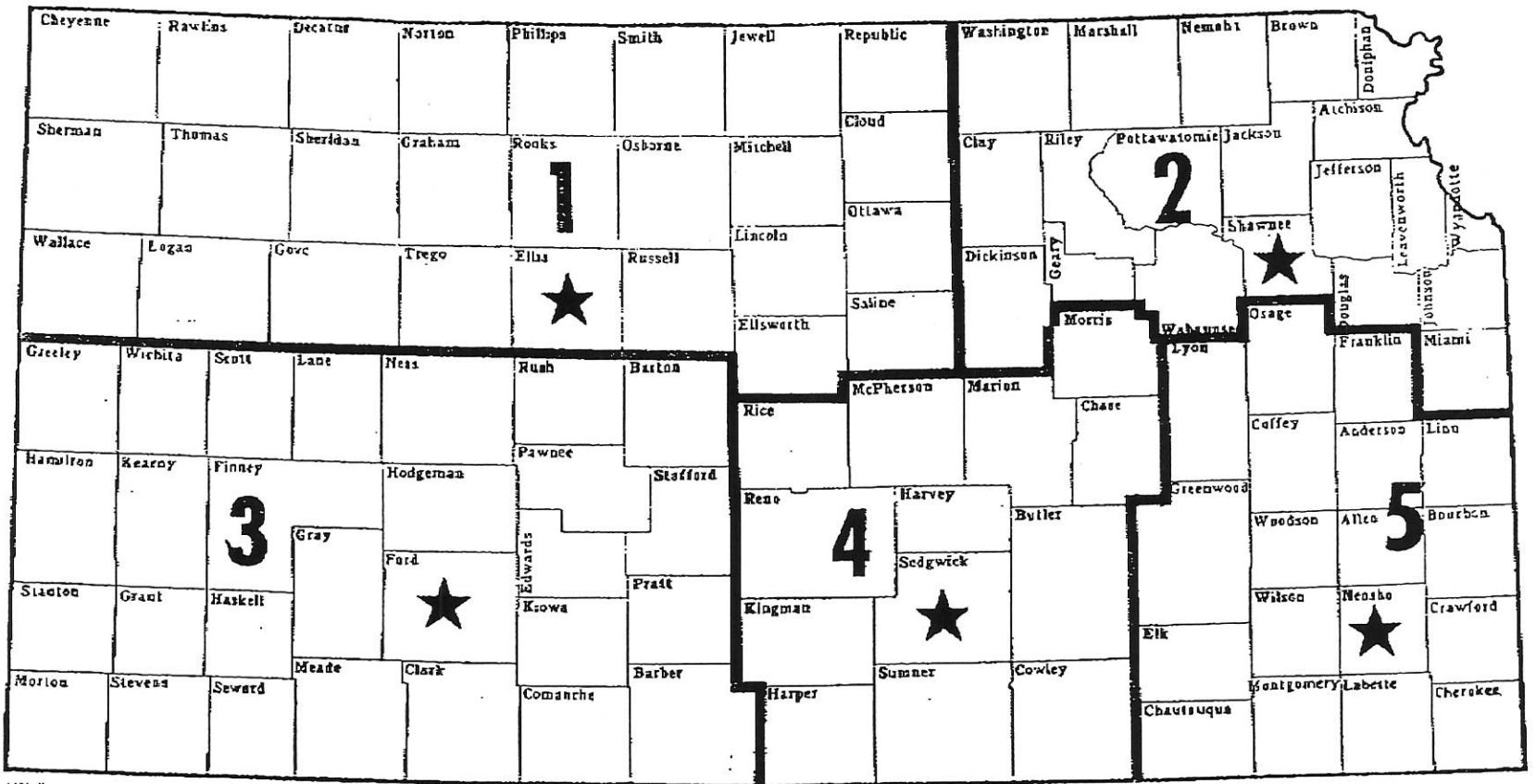
This came to Representative Gatewood's and my attention when the Commissioner from our district resigned for health reasons and the replacement Commissioner was not from our district. This left our area without a representative on the Wildlife and Parks Commission.

Hopefully this bill would stop this situation from happening again. I would not want to see anyone of the five districts not have at least one Commissioner on the Wildlife and Parks Commission.

With that, Mr. Chairman, I would be happy to stand for questions.

Respectfully submitted,
Bob Grant

*Senate Natural Resources
February 2, 2007
attachment 1*



1154-N

TOTAL P.02



Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

**Testimony on Senate Bill No. 190
An Act Relating to the Kansas Storage Tank Act
to
Senate Natural Resources Committee
Presented by Gary Blackburn
Director, Bureau of Environmental Remediation
February 2, 2007**

Chairperson McGinn and members of the Senate 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

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*Senate Natural Resources
February 2, 2007
Attachment 2*

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 Senate Natural Resources Committee and will gladly stand for questions the committee may have on this topic.

Memo To: Senate Natural Resources Committee
From: Thomas M. Palace
Date: February 2, 2007
Re: Comments on SB 190

Madam Chair 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.

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 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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*Senate Natural Resources
February 2, 2007
Attachment 3*

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.

Madam Chair 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.

Section 1 — Identifying The Equipment At Your UST Facility

Determine what UST equipment you have at your facility by completing the checklist below. Note that each part of the checklist below refers you to the appropriate section of this O&M booklet for relevant information. After you have identified your equipment, proceed to the following sections to identify the O&M actions necessary for your specific UST system.

General Facility Information (optional)					
Facility Name					
Facility ID #					
Release Detection (See Section 2 for information on release detection)					
A. Release Detection for Tanks					
Check at least one for each tank:		Tank #1	Tank #2	Tank #3	Tank #4
Automatic Tank Gauging System					
Interstitial Monitoring (with secondary containment)					
Groundwater Monitoring					
Vapor Monitoring					
Inventory Control and Tank Tightness Testing (TTT)*					
Manual Tank Gauging Only **					
Manual Tank Gauging and Tank Tightness Testing (TTT)***					
Other Release Detection Method, such as SIR (please specify)					
* Allowed only for 10 years after upgrading or installing tank with corrosion protection. TTT required every 5 years.					
** Allowed only for tanks of 1,000 gallon capacity or less.					
*** Allowed only for tanks of 2,000 gallon capacity or less and only for 10 years after upgrading or installing tank with corrosion protection. TTT required every 5 years.					
B. Release Detection for Pressurized Piping					
Check at least one from A & B for each tank's piping:		Tank #1	Tank #2	Tank #3	Tank #4
A (Automatic Line Leak Detectors)	Automatic Flow Restrictor				
	Automatic Shutoff Device				
	Continuous Alarm				
B	Annual Line Tightness Test				
	Monthly Monitoring*				
* Monthly Monitoring for piping includes Interstitial Monitoring, Vapor Monitoring, Groundwater Monitoring, and other accepted methods (such as SIR and Electronic Line Leak Detectors)					
C. Release Detection for Suction Piping					
Check at least one for each tank's piping:		Tank #1	Tank #2	Tank #3	Tank #4
Line Tightness Testing Every Three Years					
Monthly Monitoring*					
No Release Detection Required For Safe Suction **					
* Monthly Monitoring for piping includes Interstitial Monitoring, Vapor Monitoring, Groundwater Monitoring, and SIR					
** No release detection required only if it can be verified that you have a safe suction piping system with the following characteristics:					
<ol style="list-style-type: none"> 1) Only one check valve per line located directly below the dispenser; 2) Piping sloping back to the tank; and 3) System must operate under atmospheric pressure. 					

Spill and Overfill Protection (See Section 4 for more information)				
Check for each tank:	Tank #1	Tank #2	Tank #3	Tank #4
Spill Catchment Basin/ Spill Bucket				
Check at least one overfill device for each tank:				
Automatic Shutoff Device				
Overfill Alarm				
Ball Float Valve				
Corrosion Protection (See Section 5 for more information)				
A. Corrosion Protection for Tanks				
Check at least one for each tank:	Tank #1	Tank #2	Tank #3	Tank #4
Coated and Cathodically Protected Steel				
Noncorrodible Material (such as Fiberglass Reinforced Plastic)				
Steel Jacketed or Clad with Noncorrodible Material				
Cathodically Protected Noncoated Steel*				
Internally Lined Tank*				
Cathodically Protected Noncoated Steel and Internally Lined Tank*				
Other Method Used to Achieve Corrosion Protection (please specify):				
* These options may be used only for tanks installed before December 22, 1988.				
B. Corrosion Protection for Piping				
Check at least one for each:	Tank #1	Tank #2	Tank #3	Tank #4
Coated and Cathodically Protected Steel				
Noncorrodible Material (such as Fiberglass Reinforced Plastic or Flexible Plastic)				
Cathodically Protected Noncoated Metal*				
Other Method Used to Achieve Corrosion Protection (please specify):				
* This option may be used only for piping installed before December 22, 1988.				

Any Problems Filling Out This Checklist?

If you have trouble filling out this checklist or any following checklist, remember these sources of assistance you can contact:

- Your UST contractor, the vendor of your equipment, and the manufacturer of your UST equipment should be ready to help you. Look through your records for contact information. You may also want to use some of the industry contacts and other contact information provided in Section 7.
- Your state regulatory agency may be able to help you identify equipment or sources of information about your UST equipment. You should, in any event, make yourself aware of any ways in which your state may have additional or different O&M procedures than those presented in this booklet. See Section 7 for state agency contact information.



KANSAS AGRIBUSINESS RETAILERS ASSOCIATION
SAFE AND ABUNDANT FOOD THROUGH SOUND SCIENCE

**TESTIMONY BEFORE
THE SENATE NATURAL RESOURCES COMMITTEE
REGARDING
SB 190 - UNDERGROUND STORAGE TANKS
FEBRUARY 2, 2007**

I am Mary Jane Stankiewicz, Vice President and General Counsel for the Kansas Agribusiness Retailers Association. 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 training of employees regarding the safe handling and storage of product that they deal 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 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 would urge you to pass SB 190.



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Senate Committee on Natural Resources

February 2, 2007
Topeka, Kansas

SB 190 - Underground petroleum storage tanks.

Chair McGinn and members of the Senate Natural Resources Committee, thank you for the opportunity to comment today in support of SB 190 as it pertains to the Kansas Essential Fuels Supply Trust Fund.

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 US EPA's Spill Prevention Containment and Countermeasure (SPCC) regulation.

This rule is having a significant fiscal impact on our members. So, 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 will 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 these components.

*Senate Natural Resources
February 2, 2007
Attachment 5*

SENATE BILL No. 15

By Special Committee on Agriculture and Natural Resources

1-5

AN ACT concerning the state conservation commission; relating to dam safety; creating the Kansas dam rehabilitation program; amending K.S.A. 2006 Supp. 2-1915 and repealing the existing section.

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

Section 1. K.S.A. 2006 Supp. 2-1915 is hereby amended to read as follows: 2-1915. (a) Appropriations may be made for grants out of funds in the treasury of this state for terraces, terrace outlets, check dams, dikes, ponds, ditches, critical area planting, grassed waterways, tailwater recovery irrigation systems, precision land forming, range seeding, detention and grade stabilization structures and other enduring water conservation practices installed on public lands and on privately owned lands, *dam rehabilitation projects* and, the control and eradication of *sericea lespe-deza* as provided in subsection (n) of K.S.A. 2-1908, and amendments thereto, on public lands and on privately owned lands. Except as provided by the multipurpose small lakes program act, any such grant shall not exceed 80% of the total cost of any such practice.

(b) A program for protection of riparian and wetland areas shall be developed by the state conservation commission and implemented by the conservation districts. The conservation districts shall prepare district programs to address resource management concerns of water quality, erosion and sediment control and wildlife habitat as part of the conservation district long-range and annual work plans. Preparation and implementation of conservation district programs shall be accomplished with assistance from appropriate state and federal agencies involved in resource management.

(c) Subject to the provisions of K.S.A. 2-1919, and amendments thereto, any holder of a water right, as defined by subsection (g) of K.S.A. 82a-701, and amendments thereto, who is willing to voluntarily return all or a part of the water right to the state shall be eligible for a grant not to exceed 80% of the total cost of the purchase price for such water right. The state conservation commission shall administer this cost-share program with funds appropriated by the legislature for such purpose. The chief engineer shall certify to the state conservation commission that any water right for which application for cost-share is received under this section is eligible in accordance with the criteria established in K.S.A. 2-1919, and amendments thereto.

(d) (1) Subject to appropriation acts therefor, the state conservation commission shall develop the Kansas water quality buffer initiative for the purpose of restoring riparian areas using best management practices. The executive director of the state conservation commission shall ensure that the initiative is complementary to the federal conservation reserve program.

(2) There is hereby created in the state treasury the Kansas water quality buffer initiative fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director of the state conservation commission or the executive

director's designee. Money credited to the fund shall be used for the purpose of making grants to install water quality best management practices pursuant to the initiative.

(3) The county or district appraiser shall identify and map riparian buffers consisting of at least one contiguous acre per parcel of real property located in the appraiser's county. Notwithstanding any other provisions of law, riparian buffers shall be valued by the county or district appraiser as tame grass land, native grass land or waste land, as appropriate. As used in this subsection (3), "riparian buffer" means an area of stream-side vegetation that: (A) Consists of tame or native grass and may include forbs and woody plants; (B) is located along a perennial or intermittent stream, including the stream bank and adjoining floodplain; and (C) is a minimum of 66 feet wide and a maximum of 180 feet wide.

(e) The state conservation commission shall adopt rules and regulations to administer such grant and protection programs.

(f) Any district is authorized to make use of any assistance whatsoever given by the United States, or any agency thereof, or derived from any other source, for the planning and installation of such practices. The state conservation commission may enter into agreements with other state and federal agencies to implement the Kansas water quality buffer initiative.

(g) Within the limits of appropriations therefor, the state conservation commission shall develop and administer the Kansas dam rehabilitation program in consultation with the chief engineer of the division of water resources of the Kansas department of agriculture.

*(h) Any **jurisdictional** dam **owner** permit holder may apply for cost-share assistance to rehabilitate ~~or remove unsafe~~ deficient high and significant hazard dams or low hazard dams that are reclassified to high or significant hazard dams related to downstream development.*

(i) The division of water resources of the Kansas department of agriculture shall assist the state conservation commission by reviewing and recommending a dam priority order for applications for participation in the program based on the following criteria:

- (1) The highest severity of potential impact of dam failure;*
- (2) the greatest risk of failure due to the dams' deficiencies; and*
- (3) which deficiencies were a result of downstream development beyond the control of the dam owner.*

*(j) Any **jurisdictional** dam **owner** permit holder may apply to the state conservation commission for cost-share assistance in the amount of 70% of the rate prescribed pursuant to subsection (k), and if engineering costs are incurred, an additional 10% of the rate prescribed pursuant to subsection (k).*

~~*(k) The cost-share grant awarded pursuant to subsection (j) shall be in an amount not to exceed a rate approved by the state conservation commission for the least expensive alternative that such commission determines properly addresses the problem or problems identified with such dam. Dam owners shall not be required to implement such least expensive alternative.*~~

~~*(l)*~~ **(k)** *An applicant who is not a dam permit holder shall be eligible to*

apply for cost-share assistance under the Kansas dam rehabilitation program subject to the following:

- (1) Such applicant shall submit a rehabilitation plan to the chief engineer of the division of water resources of the Kansas department of agriculture in a form prescribed by such chief engineer;
- (2) such rehabilitation plan shall comply with policies and procedures adopted by the chief engineer of the division of water resources of the Kansas department of agriculture; and
- (3) cost-share assistance funds shall not be remitted until such applicant is granted a permit pursuant to K.S.A. 82a-301, and amendments thereto.

~~(m)~~(l) As used in subsection (g) through (n) of this section, "dam permit holder" means any person, partnership, association, corporation, agency or political subdivision of the state government or other entity who holds a permit pursuant to K.S.A. 82a-301, and amendments thereto.

(m) As used in this act, "jurisdictional dam" definition is as defined in K.S.A. 82a-301(b).

(n) The state conservation commission shall adopt rules and regulations to implement the Kansas dam rehabilitation act.

Sec. 2. K.S.A. 2006 Supp. 2-1915 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

OBSTRUCTIONS IN STREAMS

K.S.A. 82a-301 to 305a

2004

82a-301. Permit or consent of chief engineer required to construct dams or other water obstructions; exceptions. (a) Without the prior written consent or permit of the chief engineer of the division of water resources of the Kansas department of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to: (1) Construct any dam or other water obstruction; (2) make, construct or permit to be made or constructed any change in any dam or other water obstruction; (3) make or permit to be made any change in or addition to any existing water obstruction; or (4) change or diminish the course, current, or cross section of any stream within this state. Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer. Jetties or revetments for the purpose of stabilizing a caving bank which are properly placed shall not be construed as obstructions for the purposes of this section.

(b) As used in K.S.A. 82a-301 *et seq.*, and amendments thereto, "dam" means any artificial barrier including appurtenant works with the ability to impound water, waste water or other liquids that has a height of 25 feet or more; or has a height of six feet or greater and also has the capacity to impound 50 or more acre feet. The height of a dam or barrier shall be determined as follows: (1) A barrier or dam that extends across the natural bed of a stream or watercourse shall be measured from the down stream toe of the barrier or dam to the top of the barrier or dam; or (2) a barrier or dam that does not extend across a stream or watercourse shall be measured from the lowest elevation of the outside limit of the barrier or dam to the top of the barrier or dam. (History: L. 1929, ch. 203, Sec. 1; L. 1978, ch. 431, Sec. 6; April 11; July 1, L. 2002, ch. 138.)

82a-301a. Exclusive regulation and supervision of dams and other water obstructions by chief engineer. It is the intent of the legislature by this act to provide for the exclusive regulation of construction, operation and maintenance of all dams or other water obstructions by the state to the extent required for the protection of public safety. All dams or other water obstructions are declared to be under the jurisdiction of the division of water resources of the Kansas department of agriculture and the chief engineer thereof. The chief engineer or his or her authorized representative shall supervise the construction, modification, operation and maintenance of dams or other water obstructions for the protection of life and property. (History: L. 1978, ch. 431, S. 1; April 11.)

82a-302. Same; maps, plans, profiles and specifications to accompany application. (a) Each application for the consent or permit required by K.S.A. 82a-301, and amendments thereto, shall be accompanied by complete maps, plans, profiles and specifications of such dam or other water obstruction, or of the changes or additions proposed to be made in such dam or other water obstruction, the required application fee as provided in subsection (b) unless otherwise exempted, and such other data and information as the chief engineer may require. The chief engineer shall maintain a list of licensed professional engineers who may conduct the review of any application for the consent or permit required by K.S.A. 82a-301, and amendments thereto. Such list may include licensed professional engineers employed by a local unit of government. Notwithstanding any law to the contrary, an applicant for the consent or permit required by K.S.A. 82a-301, and amendments thereto, may have the application reviewed by a licensed professional engineer approved by the chief engineer pursuant to this subsection provided such engineer is not an employee of the applicant. If such licensed professional engineer finds that such dam or other water obstruction meets established standards for the construction, modification, operation and maintenance of dams and other water obstructions, such findings shall be submitted in complete form to the chief engineer. Upon such submittance, the chief engineer shall grant such consent or permit within 45 days unless the chief engineer finds to the contrary that such dam or other water obstruction does not meet established standards for the construction, modification, operation and maintenance of dams and other water obstructions. If the chief engineer declines to grant such consent or permit based upon a contrary finding, the chief engineer shall provide to the applicant within 15 days a written explanation setting forth the basis for the chief engineer's contrary finding. The chief engineer's action in

SENATE BILL No. 146

By Committee on Natural Resources

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AN ACT relating to solid waste; concerning the waste tire management fund; amending K.S.A. 2006 Supp. 65-3424g and repealing the existing section.

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

Section 1. K.S.A. 2006 Supp. 65-3424g is hereby amended to read as follows: 65-3424g. (a) There is hereby established in the state treasury the waste tire management fund.

(b) Money from the following sources shall be credited to the waste tire management fund:

- (1) Revenue collected from the excise tax by K.S.A. 65-3424d and amendments thereto;
- (2) permit application and renewal fees provided for by K.S.A. 65-3424b and amendments thereto;
- (3) interest provided for by subsection (e);
- (4) additional sources of funding such as reimbursements and appropriations intended to be used for the purposes of the fund;
- (5) any recoveries from abatement and enforcement actions provided for by K.S.A. 65-3424k and amendments thereto; and
- (6) any other moneys provided by law.

(c) Moneys in the waste tire management fund shall be used only for the purpose of:

- (1) Paying compensation and other expenses of employing personnel to carry out the duties of the secretary pursuant to K.S.A. 65-3424 through 65-3424h, and amendments thereto, but not more than \$250,000;
- (2) action by the department to implement interim measures to minimize nuisances or risks to public health or the environment that are or could be created by waste tire accumulations, until the responsible party can fully abate the site or until a state clean-up occurs pursuant to K.S.A. 65-3424k, and amendments thereto;
- (3) action by the department to pay for the removal and disposal or on-site stabilization of waste tires which have been illegally accumulated or illegally managed, when the responsible party is unknown or unwilling or unable to perform the necessary corrective action;
- (4) the costs of using contractors to provide: (A) Public education

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February 2, 2007
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regarding proper management of waste tires; (B) technical training of persons on the requirements of solid waste laws and rules and regulations relating to waste tires; and (C) services described in subsection (i) of K.S.A. 65-3424k, and amendments thereto; and

(5) grants to public or private entities for up to 75% of the cost to start-up or enhance projects to recycle waste tires or recover energy through waste tire combustion. ~~In the fiscal year beginning July 1, 2003, waste tire grants may not exceed \$200,000. In subsequent fiscal years, waste tire grants may not exceed the amount of unspent excise tax revenue from the preceding year calculated by subtracting all program expenses and indirect transfers for department overhead from excise tax revenue;~~
and

(6) grants to local unit of government to pay up to 75% 50% of the costs -----change 75% to 50% to purchase ~~and install~~ playground cover, or other tire derived products -----take out "and install" & insert "or other tire derived" made from recycled Kansas waste tires.

(d) All grant applications received for waste tire recycling grants shall be reviewed by the solid waste grants advisory committee established pursuant to K.S.A. 65-3426, and amendments thereto. Waste tire recycling grants shall be subject to the requirements set forth in subsection

(g) of K.S.A. 65-3415, and amendments thereto, related to the misuse of grant funds with the exception that any grant funds recovered by the secretary shall be deposited to the waste tire management fund. Waste tire management funds shall be used only for waste tire recycling grants. Waste tire grants shall not be awarded, nor shall waste tire funds be disbursed to a grant recipient, if the department determines that the grant applicant or recipient is operating in substantial violation of applicable environmental laws or regulations administered by the department.

(d) (e) All expenditures from the waste tire management fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.

(e) (f) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the waste tire management fund interest earnings based on: (1) The average daily balance of moneys in the waste tire management fund for the preceding month; and (2) the net earnings rate for the pooled money investment portfolio for the preceding month.

Sec. 2. K.S.A. 2006 Supp. 65-3424g is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

*New Definition for Tire Derived Product

65-3424 new (j) "Tire derived product" means athletic field surfacing, playground cover, horticultural products, and molded or extruded rubber products made from recycled waste tires.