

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on January 24th, 2008 in Room 423-S of the Capitol.

All members were present except:

David Wysong- excused
Tim Huelskamp- excused

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Emalene Correll, Kansas Legislative Research Department
Jason Thompson, Revisor of Statutes
Matt Todd, Revisor of Statutes
Adrienne Halpin, Committee Assistant

Conferees appearing before the committee:

Mary Jane Stankiewicz, Kansas Agricultural Remediation Board
Duane J. Simpson, Kansas Grain and Feed Association
Leslie Kaufman, Kansas Cooperative Council
Laura Pearl, J. B. Pearl Sales and Services
Karl McNorton, Chief Deputy Fire Marshal

Others attending:

See attached list.

Chair McGinn commenced the meeting with the a motion to introduce a bill regarding the Kansas Farmers and Hunters Feeding the Hungry program (Attachment 1). Chair McGinn made the motion; Senator Lee seconded the motion. The motion carried.

Chair McGinn then opened the hearing for **SB 447** which would make four amendments to the agricultural and specialty chemical remediation act. Raney Gilliland explained these changes to the Committee which included reimbursement as effected by property sales as well as the extension of the act from 2010 to 2020.

Mary Jane Stankiewicz of the Kansas Agricultural Remediation Board spoke in favor of the bill (Attachment 2) explaining that the Agricultural Remediation Fund is used as a type of self-insurance for individuals cleaning up agricultural contamination. She explained that all support for the program comes from the industry itself without the use of state funding. Ms. Stankiewicz stood for questions.

Duane J. Simpson, of the Kansas Grain and Feed Association testified in favor of the bill (Attachment 3) stating that the remediation program is supported by the industry itself and provides recourse for buyers and sellers who might otherwise be hesitant to purchase contaminated property. Mr. Simpson stood for questions.

Next, Laura Pearl of J. B. Pearl Sales and Services of St. Marys, Kansas spoke in favor of the bill (Attachment 4). Ms. Pearl is a member of the Remediation Board and stated that landowners appreciate the option of support in the remediation process. She added that the remediation program only helps with some of the issues involved in this procedure. Ms. Pearl then stood for questions.

Lastly, Leslie Kaufman of the Kansas Cooperative Council testified in favor of the bill (Attachment 5). Ms. Kaufman stated that the Council was fully supportive of the bill especially noting the increase of the monetary cap per site stating that this added flexibility would be beneficial. Ms. Kaufman stood for questions.

Written testimony was provided by:

Jarold W. Boettcher of Boettcher Enterprises, Inc., Beloit, Kansas (Attachment 6)

Senator Taddiken made a motion that the bill be passed out favorably. Senator Ostmeyer seconded the motion. The motion passed.

Senator Ostmeyer motioned to approve the revised minutes, which was seconded by Senator Bruce. The

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on January 24th, 2008 in Room 423-S of the Capitol.

motion passed.

Next, Karl McNorton, Chief Deputy Fire Marshal testified as to the Fire Marshal's role in the Barton Solvents fire and cleanup (Attachment 7). Chief Deputy McNorton explained that the Sedgwick Fire Fighters were involved in the actual extinguishing of the chemical fire. The Kansas Fire Marshal's role was that of investigation along with the Occupational Safety and Health Administration (OSHA) whose report is forthcoming. Chief Deputy McNorton provided the Committee with the Fire Marshal's report.

Chief Deputy McNorton stood for questions during which time he communicated that, although Kansas Department of Health and Environment is in charge of permit application for above-ground storage tanks, facility inspection is carried out by local entities. Gary Blackburn, Director of KDHE Bureau of Environmental Remediation, added that, after an above-ground storage tank has been registered with KDHE, the information is shared with the Fire Marshal, though neither office has the authority of regulation after this point.

Chair McGinn suggested that the Committee continue to follow this discussion at a later date.

Berend Koops, representing Kansas Wildlife and Parks, stood before the Committee to request amendments to K.S.A. 32-919 and 32-954 which concern controlled shooting areas and field trials. Senator Lee moved to introduce the bill, seconded by Senator Francisco. The motion carried.

The meeting adjourned at 9:30.

January 22, 2008

Senator Carolyn McGinn, Chairperson
Senate Committee on Natural Resources
State Capitol, Room 222-E

and

Representative Lana Gordon
House Committee on Economic Development and Tourism
State Capitol, Room 143-N

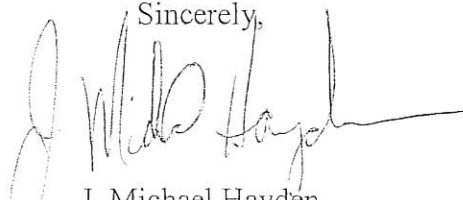
Dear Senator McGinn and Representative Gordon;

In accordance with KSA 32-995, the following report regarding the Kansas Farmers and Hunters Feeding the Hungry is provided to your committees. This program allows persons who obtain a hunting license to include a voluntary contribution of \$2.00 or more to support the activities of the Kansas Farmer and Hunters Feeding the Hungry Organization. Any contributions are deposited to the Feed the Hungry Fund in the Kansas State Treasury.

The Kansas Department of Wildlife and Parks (KDWP) is required to quarterly disburse funds deposited in the Feed the Hungry Fund to the organization to support their program activities. For the calendar year, 2005, the KDWP disbursed a total amount of \$20,594.00. For the calendar year, 2006, the amount disbursed was \$20,470.00. For calendar year 2007, an amount of \$26,200.06 was disbursed. In addition the Department of Social and Rehabilitation Services also provided an amount of \$25,000 to this program.

If you or members of your committees have any questions, please advise. Thank you.

Sincerely,



J. Michael Hayden
Secretary, Kansas Department of Wildlife and Parks



K A N S A S

AGRICULTURAL REMEDIATION BOARD

KATHLEEN SEBELIUS, GOVERNOR

Senate Natural Resources Committee

January 24, 2008

RE: Senate Bill 447

Good morning chairperson McGinn and the rest of the Senate Natural Resources committee members. My name is Mary Jane Stankiewicz and I am the administrator of the Kansas Agricultural Remediation Board (KARB). First of all, let me clarify that I appear before you as the administrator of the KARB program and not as a lobbyist of the Kansas Grain and Feed Association or the Kansas Agricultural Retailers Association. Secondly, let me introduce the members of the board that are present at this hearing.

I appear before you in support of SB 477 which would authorize the renewal of a successful and beneficial program known as the KARB program. The Kansas Agricultural Remediation Board was first enacted in 2000. The program was the idea of the Kansas Grain and Feed Association and the Kansas Agricultural Retailers Association with the support of the Kansas Cooperative Council as a way to assist their members in dealing with the cleanup costs associated with some of the agricultural chemical contamination issues that had been identified by EPA and KDHE.

When our members began reviewing their options in dealing with these contamination problems, they discovered that Minnesota and Wisconsin had already enacted remediation reimbursement programs. So the law you see before you is a hybrid of the Minnesota and Wisconsin programs. The grain and chemical representatives in the Kansas were so impressed with this concept that they were willing to impose a fee on themselves and have the program be totally fee funded.

Concept: The purpose of the program is to reimburse people that are cleaning up agricultural chemical contamination through a fee funded program.

Board: The board is composed of 7 individuals, 5 of which are appointed by the Governor and confirmed by the Senate and the other 2 members are representatives of the Kansas Department of Agriculture and the Kansas Department of Health and Environment. Each appointed board member represents a certain segment of the industry such as an agricultural

*Senate Natural Resources
January 24, 2008
Attachment 2*

retailer, farmer, processor, distributor, and a chemical registrant. The board members serve a 4 year term and most of the current board members are still the original members.

Overview of the Program: This is a reimbursement program, so people can only apply for reimbursements of costs that they have incurred via an order or agreement with KDHE or EPA. Therefore, the remediation board is only reimbursing for costs associated with actions that have been previously approved by the appropriate environmental regulatory body. This has been a handy process for the remediation board because since they are only paying for costs that have already been incurred they are never in the position of monitoring the progress of the work being done at the site and ensuring that the money is being used wisely.

The board meets quarterly and reviews applications. The applicant submits a copy of all their expenses, invoices related to the cleanup of the site along with a copy of the agreement they have signed with KDHE and any relevant insurance policies on the property. However, most insurance policies will not pay for environmental remediation costs, so this fund is their only source of assistance in offsetting these costs.

Funding: Each year, the following individuals pay into the fund when they get licensed or registered: 1) custom fertilizer blender; 2) commercial fertilizer; 3) agricultural chemical registration; 4) pesticide business dealer and 5) grain elevator. The fees from these 5 categories generate approximately \$1 million a year and ironically the reimbursements have also averaged \$1 million each year. As of December 31, 2007, the program had a balance of \$1.58 million which represents approximately the initial amount paid into the fund for the first 18 months when the program began and fees were being collected yet no reimbursements had been paid yet. There are no state general funds in this program. It is totally fee funded. The funds are paid into the Kansas Department of Agriculture when the person pays their registration or licensing fee so the person only has to write one check and it also saves KDA from receiving multiple checks and forms. The process seems to be running very smoothly and we are appreciative to KDA for their assistance.

Reimbursements: A person that has paid into the fund (through one of the above licenses or registrations) is eligible up to \$200,000 per site. If the person has not paid into the fund they are still eligible for up to \$10,000 per site. Attached to my testimony is a copy of a map outlining where reimbursements have been made in the state. As you can see, there have been reimbursements made throughout the state.

Proposed Changes:

1. The first change is to clarify that the remediation fee must be paid on the site that the applicant is seeking reimbursement (page 1, line 24 and page 3, line 11-13). While we have not had a problem with people paying into the fund, we want to ensure that the applicants are paying the remediation fee for each of the sites and not just one site and claiming reimbursement for various other sites they own.
2. The next change tries to address the changing business climate we are seeing now. Under current law, to be eligible for reimbursements of your costs, you must be 1) paying into the fund and 2) be the one that is responsible for the cleanup. If someone

sells their property, it is common for the seller to retain responsibility for the cleanup that has already begun, however, under our current law they do not carry a license for a property that they no longer own so they cannot fulfill the first prong that I previously referred to. The remediation board is attempting to address this situation to allow the seller to be able to pay into the fund (see page 2, starting on line 40) and be eligible for reimbursement of costs up to \$200,000, while still allowing the buyer to be able to pay into the fund and be eligible for up to \$200,000 for any future contamination remediation that might occur at the property (see page 1, lines 31-36).

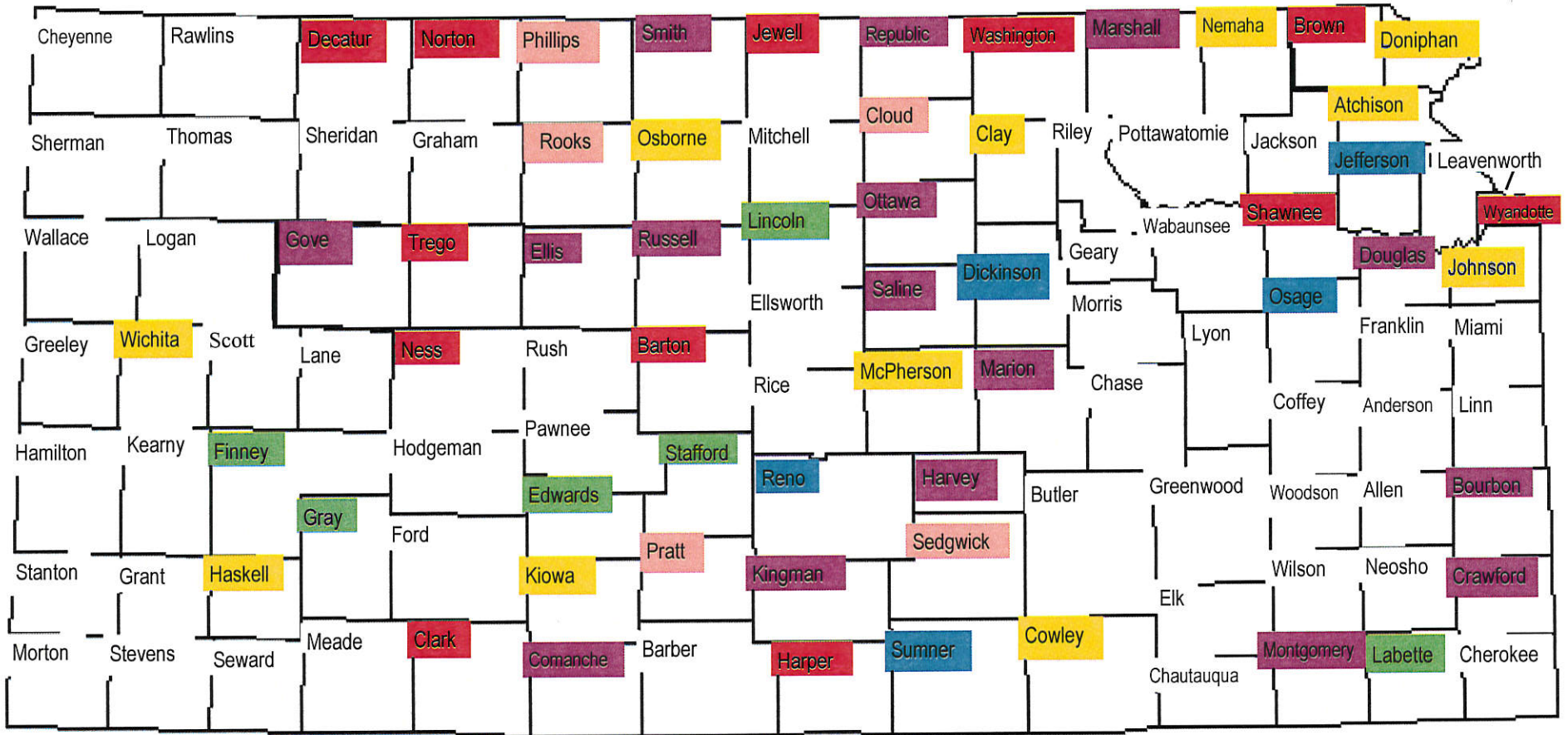
3. Finally, the board seeks the extension of this program until 2020 (see page 3, lines 11-13). The program was initially authorized until 2010. Since there does not seem to be a slow down in the number of sites in the various cleanup programs within KDHE, the board believes the need for the program exists and is seeking another 10 year renewal.

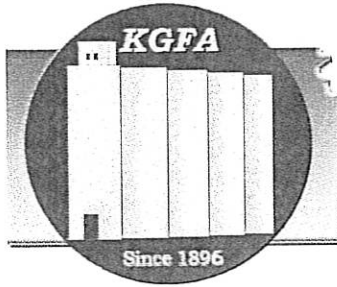
This program is a unique partnership between industry and the regulatory community. We think it has been a useful and productive approach to cleaning up contamination at various sites across the state and thus, on behalf of KARB, I urge your support of the program and passage of SB 447.

Thank you for your time and attention. I would be happy to stand for any questions you may have at this time.

Location of Kansas Agricultural Remediation Reimbursements

- = 1 Reimbursement
- = 2 Reimbursements
- = 3 - 5 Reimbursements
- = 6 - 10 Reimbursements
- = 11 - 15 Reimbursements
- = 16 - 20 Reimbursements
- = 21+ Reimbursements





Joint Statement of the Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association in Support of Senate Bill 447

**Presented to the Senate Natural Resources Committee on January 24, 2008
Senator Carolyn McGinn, Chair**

Thank you Madam Chair and members of the committee; I am Duane Simpson the Chief Operating Officer and Vice President of the Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association. KGFA is a volunteer trade association that represents approximately 900 grain elevators, grain merchandisers, feed manufacturers and flour mills in the state. We represent over 98% of the commercially licensed grain storage in Kansas. KARA's 700 member firms are comprised primarily of 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. I am testifying on behalf of the members of both of these organizations in support of Senate Bill 447 which would extend the Kansas Agricultural and Specialty Chemical Remediation Act for an additional ten years.

While the previous conferee explained what the program is, I want to take just a moment to explain why the program exists in the first place. In 1995, the Kansas Grain and Feed Association was approached by representatives from EPA Region VII concerning several USDA Commodity Credit Corporation Grain Bin Sites that had been tested in Kansas and found to have either soil or groundwater contamination caused by carbon tetrachloride, a chemical agent found in commercial grain fumigants used, and approved by the EPA, prior to 1984. Because environmental assessments of these former USDA sites yielded several cases of soil or groundwater contamination, EPA informed us they believed that commercial grain elevators, also known to use carbon tet based grain fumigants prior to 1984, were "highly probable" candidates for similar contamination and would likely require investigation.

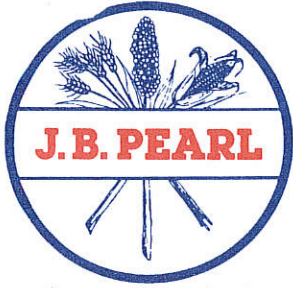
KGFA decided to work with EPA Region VII to identify sites with a high potential for contamination and developed a joint survey for our membership that was distributed in late 1997. At the same time then KDHE Secretary Gary Mitchell requested a joint meeting with the Kansas Grain and Feed Association and the Kansas Fertilizer and Chemical Association (KARA's predecessor). KDHE demonstrated to our leadership that growing numbers agricultural sites were being placed on KDHE's potential contaminator list and enrolled in various remediation programs. As a result of those meetings, the two associations

*Senate Natural Resources
January 24, 2008
Attachment 3*

decided that the industry would need to develop a program that could clean up the contamination, be funded by the entire industry, not just the businesses where contamination was found, and do it without any state general fund assistance. By 2000, we were able to pass Senate Bill 501, the Kansas Agricultural and Specialty Chemical and Remediation Act which created the remediation program.

Since passage of the bill, our industry has paid on average a little over \$1 million per year and we have reimbursed over \$6.5 million in remediation costs incurred by our members. More importantly, a total of 115 different locations across Kansas have started the remediation process.

Our associations take a lot of pride in their decision to seek the creation of this program. This is an example of an industry that stepped forward to take responsibility for contamination inadvertently caused by their products. The industry strongly supports the program and we urge this committee to extend the program for another ten years. I will stand for questions at the appropriate time.



J.B. PEARL SALES & SERVICE, INC.

27425 W. Hwy. 24 • P.O. Box 128 • St. Marys, Kansas 66536 • 785-437-2772

Senate Natural Resources Committee

Laura Pearl, JB Pearl Sales and Service, Inc.

RE: SB 447 – Kansas Agricultural Remediation Program

January 24, 2008

Good morning Chairperson McGinn and members of the Senate Natural Resources Committee. I am Laura Pearl and I am here to testify before you in favor of SB 447.

First, let me tell you a little about myself. My family owns and operates an Agriculture Retail business headquartered in St. Marys, Kansas. The business has been in our family for 47 years and we have grown to have two additional locations in northeast Kansas where we sell and apply fertilizer and chemicals to producers.

I am a member of the Kansas Agricultural Remediation Board. I was one of the original board members appointed in the fall of 2000. I am happy to serve on this board because it is a way to learn more about the environmental issues confronting our industry, and it is a way to assist in developing a program that benefits both the environment and the industry. Our business is also a member of the Kansas Agribusiness Retailers Association, and I am proud of our industry for developing an idea to address these problems in a way that uses only industry money. The industry still remains supportive of funding this valuable and useful program.

Our company has always paid into the remediation fund. However, it was not until recently that we began participating in the remediation program. We purchased a facility that had contamination on the site. We were aware of the contamination when we made the purchase knowing we would be required to clean up the facility. We appreciate the opportunity to seek reimbursement of some of the costs we have incurred during the process of clean up.

A lot has changed over the past 47 years that JB Pearl Sales & Service has been in the Ag-Retail business and we are appreciative the remediation program has been created to address some of the cleanup issues currently facing many Ag-Retailers. Environmental cleanup is not easily or quickly resolved; therefore I am supportive of the change to allow both a buyer and a seller of property to be able to pay into the fund. Consolidation and mergers are a fact of life today and this amendment would allow more flexibility for both parties of the transaction to participate in the program.

This is a program that is working in a timely and efficient manner and I would urge you to pass out favorably SB 447.

*Senate Natural Resources
January 24, 2008
Attachment 4*



Kansas Cooperative Council
816 S.W. Tyler St., Suite 300
Topeka, Kansas 66612

Phone: 785-233-4085
Fax: 785-233-1038
Toll Free: 888-603-COOP (2667)
Email: council@kansasco-op.coop

www.kansasco-op.coop

Senate Natural Resources Committee

January 24, 2008

Topeka, Kansas

SB 447 - Extension of the Ks Ag Remediation Board/Fund.

Chair McGinn and members of the Senate Natural Resources Committee, thank you for the opportunity to share our support for SB 447 which extends the Kansas Agricultural Remediation Board/Fund (KARB). I and Leslie Kaufman and I serve the Kansas Cooperative Council as Executive Director.

The Kansas Cooperative Council represents all forms of cooperative businesses across the state -- agricultural, utility, credit, financial and consumer cooperatives. Approximately half of our members are grain elevator/farm supply cooperatives.

The KCC supports the Kansas Agriculture Remediation Fund and encourages the continued existence of the fund, as well as the oversight administrative board. The fund has been able to assist in financing important remediation projects. We support increasing the cap on the dollar amount a site is eligible to receive from the fund to be more reflective of the costs actually incurred to implement the remedial efforts.

Over the years, various agricultural chemicals have been available for crop protection and nutrition. Other chemicals have been used for maintaining grain quality. Some were once lawful to use and are now restricted, but residues from past years application and storage require remediation. The KARB program has been an important partner for many of our co-ops involved in the remediation of agricultural sites. A significant number of sites reimbursed by the fund have been co-op properties. As such, the Council respectfully requests your favorable action on SB 447. Thank you.

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.

*Senate Natural Resources
January 24, 2008
Attachment 5*

Testimony of Jarold W Boettcher, President, Boettcher Enterprises, Inc., Beloit, Kansas

Before the Senate Natural Resources Committee

Regarding Senate Bill 447, January 24, 2008

Our company has participated in funding provided through the Kansas Agricultural Remediation Board, and is strongly supportive of legislation to extend KARB by 10 years and also to provide for some flexibility in the determination of eligible parties.

Our Company sold most of its assets (fertilizer and chemical businesses) to United Agri Products in January, 2007. We do have sites enrolled in the program and have paid the required licenses and fees to retain our eligibility for reimbursement under current regulations. There have been transactions in the industry, however, involving sites where the buyer and seller may need to enroll in KARB for different reasons. Sites may already be enrolled in the program and there is active interest from buyers where their eligibility for KARB can be retained. The proposed changes in this bill would facilitate business transactions and still accomplish the primary objectives of having the sites cleaned up to the satisfaction of the Kansas Department of Health and Environment. Most business transactions that have occurred in agriculture involve real estate and both the seller and the buyer are concerned about their respective liability and future exposure. Industry support has been very strong for KARB and adoption of the proposed changes to the KARB structure would:

- 1) Extend the authorization for KARB by 10 years
- 2) Clarifies that each site must pay into the fund to be eligible for reimbursement
- 3) Allows both the buyer and the seller of a property to be separately eligible for up to \$200,000 in clean-up costs, based upon environmental assessments that may be performed by one or both parties
- 4) Requires that a seller who wishes to continue to participate in the program to pay \$1000 into the fund annually.

Thank you for your consideration of this testimony. I regret that I cannot be at the hearing for this bill to present my support in person. If you have any questions, please contact me at:

Jarold W Boettcher, President
Boettcher Enterprises, Inc.
1520 D West 8th Street, P O Box 486
Beloit, Kansas 67420

785-738-4181(w) 785-738-8159(c) e-mail jboettcher@boettchersupply.com

JWB/jb

*Senate Natural Resources
January 24, 2008
Attachment 6*



K A N S A S

DAN McLAUGHLIN
FIRE MARSHAL

OFFICE OF THE KANSAS STATE FIRE MARSHAL

KATHLEEN SEBELIUS
GOVERNOR

**Senate Committee on Natural Resources
Testimony of
Karl McNorton
Chief Deputy State Fire Marshal**

**Barton Solvents Chemical
Explosion and Cleanup**

An investigation of the fire at Barton chemical in Valley Center was conducted by an investigator of our office along with personnel from Sedgwick County Fire Department, assistance from the BATF, the Chemical Safety Board, OSHA, EFI Global.

We have a 54 page report that was assembled by our investigator Dave Higday and it includes a significant amount of detail about the events of the fire. I'll try to summarize these. Just prior to the fire there were three off loadings of products from a transport and a railcar into stationary tanks. The railcar was off loading oil into a tank at a separate location and two products were being off loaded from the transport by two separate pumps into two tanks. The railcar had stopped pumping as well as one pump operation from the transport prior to the explosions. The ensuing events happened in the last tank being pumped to.

Based on eye witness reports there were two explosions that occurred. The first was small followed shortly after by the explosion and lifting or launching of what is known as tank 31. The liquids in this tank ignited and then flowed throughout the tank area causing the conflagration that ensued. Due to flame impingement some of the other tanks failed and released their products as well. There are several factors that go into tank design. They include venting devices such as an atmospheric vent that lets the tanks literally breathe when product is being pumped into or out of the tanks. There is also an emergency vent that is to open when the vapor pressure exceeds the vents designed overpressure rating or when the tank is overfilled and it allows product to spill out of the tank into the secondary containment area. These vents can fail if they haven't been inspected and maintained regularly. If they do fail they could cause overpressure of the tank causing it to rupture at its weakest point, usually a seam. If this occurs a spark from

Senate Natural Resources
January 24, 2008
Attachment 7

the tearing metals can ignite the product. This is one possibility of what may have happened.

The conclusions of our investigator along with several industry experts believe that with the type of product that was being transferred into the tank and at the rate of pumping which causes additional agitation of the product that a static charge occurred inside the tank triggering the explosion. There are several factors that lead to this conclusion:

Tank 31: Special Naphtholite 66/3 (Citgo) Tank level prior to filling from Klotz trailer was 1'-4" with 864 gallons of product. Total delivery in three trailer compartments was 5,500 gallons (only 4908 gallons shipped). Compartment 2 contained 1,100 gallons and fill had been completed. Compartment 3 held 1,600 gallons and fill had been completed. Compartment 4 held 3,100 gallons and fill had just started when incident occurred. Tank contained about 5'-2" of product when incident occurred. Tank separated at bottom and launched upward landing north of the tank farm. Flash point: (Closed cup) 66F/Auto-ignition: 450F/LFL: 0.9%/UFL: 6.7%/Vapor density: 4.1/Specific gravity: 0.76. (No anti-static additives

Including inadequate bonding of the tank to the transport even though the tank and the truck were both grounded.

The high volume pumping (140 gallons per minute) didn't allow for the product relaxation time for the charge to dissipate.

No anti-static additives were used.

Air being introduced into the line while pumping.

As far as cleanup our agency didn't have any activity in regards to this. One of our hazmat regional response teams was on scene as they are a part of the Sedgwick County Fire Department. They did air monitoring and research regarding the chemicals involved in the fire and most likely provided information to their incident commanders regarding applicable methods for extinguishment.