

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on February 3, 2006, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Bill Bider, Director, Bureau of Waste Management, Kansas Department of Health & Environment
Randall Allen, Executive Director, Kansas Association of Counties
Patrick Cassidy, Director of Environmental Services, Kansas City Board of Public Utilities
Andrew Schlapp, Director, Government Relations, Sedgwick County
Charles Benjamin, J.D., Sierra Club
Shawn Herrick, Kansas Landfill Association
Doug Sommers, C&D Recyclers, Wichita

Others attending:

See attached list.

Chairperson McGinn called on Bill Bider to present his testimony on **S.B. 467, new landfill siting restrictions for solid waste** (Attachment 1). Mr. Bider expressed citizens' concerns about water contamination, and that water is the most valuable resource we have. He reference a map of landfills contaminated by groundwater and stated that 50 of those landfills, or roughly one-third of all Kansas landfills. He told the Committee that KDHE and interested parties combined efforts to improve current law to protect water resources in the state and noted that current law is inadequate. One provision says a landfill should not be placed within a half-mile of a navigable stream used for interstate commerce. There are only two navigable streams in Kansas, the Kansas River and the Missouri River. The other provision that meets that criteria states that a landfill cannot be placed within one-mile of an intake point for a surface water supply, but that leaves many other areas and water resources unprotected by state law. He referenced parts of his written testimony which states that it is not good public policy to place landfills in areas near valuable water resources such as aquifers and other bodies of water and wells.

Mr. Bider stated that some areas are open to landfills without risks to water resources. The bill applies to new and existing landfills, and would have no impact on existing capacity. It will allow expansion but not allow landfills to be built closer to wells or water sources.

This bill helps zoning officials decide on site selection before KDHE permits the landfill, gives the public more assurances, and saves time in the permitting process because the area in question has already met some of the needed requirements.

Mr. Bider noted that there was a report out that the permit recently issued for a facility in Harper County would not be issued with these restrictions, but he stated that it would be issued because it passes the test for where the restrictions need to be. He noted the Department has made seven drafts of this bill and is submitting amendments today. The amendments address power generation facilities that have both a lake and a landfill near their facility that is a low-risk facility overall, and could be accommodated in this bill and still protect water quality. He stated that overall this bill is a sign of good stewardship for protecting long-term water resources and good protection for future development. He asked the Committee to challenge opponents to this bill by asking why this bill is not good public policy.

Chairperson McGinn asked how many contaminated landfills there are under Subtitle D? Mr. Bider responded two, at most, and this is being reviewed. Chairperson McGinn restated that there are contaminated landfills but we do not know if there are any leaks under Subtitle D, and Mr. Bider responded that at this time it is not confirmed.

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Senator Taddiken asked if a county purchased 160 acres of land for a landfill site, obtains a permit to develop the first cell and a city drills a well for the city water supply within five miles of the landfill, does that limit further expansion of that 160 acres? Mr. Bider responded that the 160 acres that is permitted is grandfathered in, but if they wanted to expand outside the 160 acres then it would limit the expansion if the expansion is for an area closer to the well.

Senator Teichman questioned whether Harper County would have encountered its problems if this bill had been in effect, and Mr. Bider responded that it would not have affected its permit at all and it would have passed all the tests.

Chairperson McGinn recognized Charles Benjamin who testified on behalf of the Sierra Club as a proponent of **SB 467** (Attachment 2). Mr. Benjamin referenced the 1991 bill passed by the Legislature prohibiting a landfill near a public access navigable stream, which would be the Kansas and Missouri Rivers. The historical definition of navigable stream was changed to include the Arkansas River near Wichita. Mr. Benjamin stated that Subtitle D caused "state-of-the-art" landfills which are run by huge corporations locate in small counties, and because these corporations pay a fee to the counties, the counties equate landfills with a source of revenue.

Mr. Benjamin expressed concern that the proposed changes protect public water but not private water wells and that there are no protections for the individual landowners who may have a contaminated landfill adjacent to their property. The bill says there should be no landfills within 5-miles upstream of an aquifer, but he proposes to double that distance because pollution travels very rapidly. He mentioned the exemptions and he is concerned about the standards that allow the exceptions. He congratulated KDHE for bringing this bill, but cautioned the Committee about weakening the bill and recommended strengthening the bill to protect our children and grandchildren.

Randall Allen, Kansas Association of Counties, testified as a proponent of **SB 467** (Attachment 3). He told the Committee he had been in discussions with and is working with KDHE. He stated the bill emphasized water protections, provides reliable information to counties regarding land use, and maintains a balance between KHDE and the counties.

Andy Schlapp, Director of Government Relations for Sedgwick County, testified in opposition to **SB 467** (Attachment 4). He stated that Sedgwick County believes the process of siting landfills is too cumbersome, time-consuming and frustrating, currently taking up to seven years to site a landfill. The County believes that the State should set minimum standards for a landfill, but the cities and counties should have more local control over the decisions that affect their communities.

Chairperson McGinn recognized Shawn Herrick, Kansas Landfill Association, who testified in opposition to **SB 467** (Attachment 5). Her organization's opposition is based on economic, technical and principle. There are private landowners and three types of permit holders in their membership: construction and demolition, municipal solid waste, and industrial landfills. Members of the group feel the strict siting criteria is not justified with better practices and training and improved performance in landfill operation, which her members feel is a positive trend that will continue. The cost involved in increasing the number of landfills and in permitting the landfills will be increased. The regulations already in place provides the Department the controls needed and this bill is redundant.

Joe Dick, Government Affairs Officer for Kansas City Board of Public Utilities, testified in opposition to **SB 467** (Attachment 6). He told the Committee that KCBPU operates three landfills, and opposes the bill because of the affect it will have on drinking water treatment facilities, present and future power plant disposal operations, and the enormous expense to the taxpayers.

Doug Sommer, General Manager of C&D Recyclers in Wichita, testified in opposition to **SB 467** (Attachment 7). His company is a demolition waste recycler in business since 1981. He discussed the impact of this bill on Sedgwick, Reno, Harvey, McPherson and Rice counties, and major population centers along the Arkansas River. He stated his company has plans for expansion, but passage of this bill will place those plans in doubt since they are located in the Alluvium and are within one-mile of the Arkansas River. Mr.

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Sommers testified that the increased cost of permits will be passed on to residents of the state in the form of higher tipping fees; will increase vehicle emissions around major population centers since landfills will need to be located farther away from water resources and the emissions will be critical in areas of the state struggling to comply with air quality standards; and additional truck traffic will increase wear and tear on the roads, and will have an adverse affect on highway safety.

Chairperson McGinn questioned Bill Bider about the exclusion on the KDHE map of the Ogallala, and asked if it was because of the distance to groundwater. Mr. Bider responded that it was not included because it would cover the major portion of many western Kansas counties where there are fewer wells and some are at a depth of 300' in some cases. Chairperson McGinn stated that the people in Western Kansas were getting their drinking water from the Ogallala, and Mr. Bider explained that a lot of the wells in the Ogallala are not defined as in an alluvial aquifer.

Senator Bruce asked how the standards and restrictions were developed, what scientific method was used, and what do other states do. Mr. Bider stated there was a major meeting where everyone was asked to put ideas on the table, and the one-mile appropriate separation distance proposal came from an engineer for Waste Management in Kansas. Some of the other criteria were debated and discussed, but the Department came up with what was reasonable. Senator Bruce questioned the numbers as being arbitrary, and Mr. Bider explained that the water resources even though small were worth protecting. Senator Bruce stated that, in his opinion, numbers were pulled out of thin air, that 48 landfills were contaminated with perhaps only two meeting current regulations,, and he failed to see a scientific need for the bill. Senator Bruce asked what methodology is done by other states, and Mr. Bider stated that most states have some restrictions, but Kansas is the only state with such limited restrictions on protecting water resources. He said the Department could provide a summary of the research to the Committee.

Senator Lee asked how the bill interacted with the classification of streams involving water contamination, and Mr. Bider responded that a de facto limit was set at one cubic foot per second. Senator Lee commented that if a stream required classification for protection, that there should be a connection with the landfill law. Mr. Bider explained that they looked at various proposals and decided it puts a wide buffer around a lot of areas. Senator Lee commented that for farming operations, the requirements are much stricter for putting feedlots and other operations in place than this bill's requirements. Senator Lee asked if she could see information from KCBPU on how they handle mercury that comes from their coal waste in percentage of capture, and how that would affect the landfill that the are proposing.

Senator Huelskamp questioned if the Secretary of KDHE would have the authority to put these restrictive laws into effect, and Mr. Bider commented that current specifies restrictions on water resources and the bill would only expand on that law if the Legislature makes its intent known as to what water resources are to be protected.

With no further comments to come before the Committee, Chairperson McGinn adjourned the meeting at 9:30 a.m.