Approved 3/12/84
Date

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources.

The meeting was called to order by Representative David J. Heinemann at
Chairperson

3:30~~xxx~~a.m./p.m. on January 31st, 1984 in room 519-S of the Capitol.

All members were present except:

All members were present.

Committee staff present:

Ramon Powers, Legislative Research
Theresa Kiernan, Revisor of Statutes' Office
Raney Gilliland, Legislative Research
Pam Somerville, Committee Secretary

Conferees appearing before the committee:

Richard Fortuna, Executive Director, Hazardous Waste Treatment Council, Washington, D.C.
Duane Sanders, Kansas Farm Bureau, Sedgwick County
Sharilyn Dienst, Resident near Furley Site
Sara Jane Bodecker, Resident near Furley Site

The Chairman introduced Mr. Richard Fortuna, Executive Director, Hazardous Waste Treatment Council, Washington, D.C. Mr. Fortuna presented testimony on new solutions and the current market for treatment alternatives. Mr. Fortuna began his presentation by reviewing the history of the Resource Conservation and Recovery Act (RCRA), which is the nation's basic authority for preventive management of hazardous wastes. He said some progress had been made in establishing a program, but guidelines to regulate and restrict land disposal created major problems.

Mr. Fortuna recommended the committee should not totally ban hazardous waste landfills, and suggested the state develop a list of chemicals and wastes that should not be buried because of the danger of leakage. He further stated certain types of wastes should not be land disposed at all.

Mr. Fortuna said the State may want to eliminate all burial of waste except for those items which are not a problem. He said regardless of treatment, recycling, or incineration of waste, there would always be ash or residue for ground disposal.

In closing, Mr. Fortuna said the problems and issues of concern are 99% political and 1% technological. He added that there were few wastes that could not be treated and the capacity existed to attain a phased transition to the primary use of methods that would permanently protect public health and environment. (See Attachment 1)

The next conferee was Mr. Duane Sanders, Wichita, Kansas Farm Bureau. He appeared in support of hazardous waste legislation stating that increased quantities of hazardous wastes were generated in the U.S. annually. He stated the policy position of Farm Bureau was that the producers of hazardous waste be responsible for their waste disposal within the limits governed by county, state and federal regulations. (See attachment 2)

Sharilyn Dienst, Wichita and a resident near Furley, testified in favor of legislation to ban ground burial of hazardous waste (HB 2725). She stated Governor Carlin's proposal was necessary to completely protect the health and environment of every Kansas citizen. Ms. Dienst expressed concern whether closing the Furley site had, in fact, created a hardship on industry in the area. She

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said that in visiting with major companies in the area, Cessna Aircraft, Boeing, and Coleman, had indicated reduced waste generation and the construction of their own treatment facilities to dispose of the waste. Ms. Dienst also felt that comments made by Waste Management, Inc., owners of the Furley site, were not entirely accurate. (See Attachment 3)

The last conferee appearing before the committee was Ms. Sara Jane Bodecker, also a resident near the Furley site. Ms. Bodecker reiterated Ms. Dienst's concerns and felt that reopening the Furley site would be of grave harm to the public and environment in the area.

There being no further business before the committee, the meeting was adjourned at 4:30 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held February 1, 1984 at 3:30 p.m. in Room 519-S.

Rep. David J. Heinemann, Chairman

Date Jan. 31, 1984

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME	ADDRESS	ORGANIZATION
B J. Sabol	Topeka	KDH+E
Randy Rathbun	Wichita	Private Attorney
Jan Johnson	Topeka	Budget Division
Dave Clark	Topeka	AT&SF Ry
Bruce Bodecker	Benton	Citizen
[illegible] Bodecker	Benton	concerned citizen
[illegible]	Benton	Citizen
[illegible]	Benton	
Isabelle Sanders	Valley Center	Citizen
John Paul Loeb	Topeka	KDHE
J. Allan Abramson	"	"
Dennis Murphey	Topeka	"
A. C. Burroughs	Topeka	Visitor

SAME WASTES, NEW SOLUTIONS;

THE MARKET FOR TREATMENT ALTERNATIVES

Richard C. Fortuna

Executive Director

Hazardous Waste Treatment Council

I. INTRODUCTION

Over seven years have passed since the original enactment of the Resource Conservation and Recovery Act (RCRA), the nation's basic authority for preventive management of hazardous wastes. While some progress has been made in establishing a partial program, from the standpoint of ultimate treatment many of the implementing regulations have done little more than legally sanction practices that are the environmental equivalent of illegal dumping. Moreover, the program has failed to meaningfully regulate or restrict the practice that is the leading cause of this nation's hazardous waste problem--land disposal. As a result, the nation has little more to show in the way of a preventive hazardous waste program than it did at the time of

Attachment 1

RCRA's initial passage.

The intervening years from 1976 to the present have taught us far more about the nature, scope, and severity of the problem, than they have witnessed solutions implemented to address them. The fact that the Congress initially allowed only 18 months for the Agency to promulgate all necessary hazardous waste regulations is perhaps the most telling indicator of our matured comprehension of the problem's magnitude. At the same time, it is abundantly clear that we can afford to delay no longer the imposition of meaningful restrictions and prohibitions on the land disposal of hazardous wastes if the treatment goals of the program are to be realized, if treatment is to become the primary method of waste management, and if we are to halt the creation of additional Superfund sites due to unsound present practices. While the goals of the Act and its regulatory program have always acknowledged the desirability of treatment, they have failed to provide any explicit directives or substantive means toward that end.

The Council believes that there is an overriding need for substantive change in national policy, a change that explicitly restricts and prohibits certain land disposal practices and provides the regulatory tools to accomplish this task. In fact, the most important element of the formula for change in this nation's hazardous waste management practices is one which is not currently within the

sole control of the Agency, irrespective of leadership; rather, it lies with the Congress and state legislatures.

The following discussion will examine the reasons why treatment has not been employed as the primary method of waste mangement, and the necessary national policy remedies to make treatment a national reality.

II. THE CAPABILITY AND CAPACITY TO BEGIN THE TRANSITION

Prior to discussing the reasons behind the status quo and the rationale for change, it is important to note that there are few if any wastes that cannot be treated in lieu of or prior to land disposal. Beyond capability, the nation also is fortunate to have a respectable base of existing capacity to begin the transition away from land disposal and toward the primary use of ultimate treatment.

A recent National Academy of Sciences report concluded that there are no current waste streams that cannot be treated by existing technologies either separately or in combination (National Acedemy of Sciences, Committee on Disposal of Industrial Hazardous Wastes, February, 1983). The report's conclusions comport with the Council's views, and, moreover, put to rest the common misconception that the transition to treatment methods must somehow be predicated upon a high-tech revolution in the distant future. To be

certain, new and more efficient methods of treatment are being developed, but rather than await a high-tech revolution we must revolutionize our national policy so as to utilize existing basic technology that has been demonstrated and which is presently available. The perfect must not be allowed to become the enemy of the good.

Regarding the current national capacity to manage wastes in alternative ways, there is no doubt that additional permitted capacity will be needed to cope with the growing restrictions on halogenated organics, corrosives and certain metal-containing wastes that are the subject of actions at the state and national level. However, the majority of the treatment firms that the Council has surveyed reported unused capacity in 1982 between 30-50%. As of late 1983, this trend still holds with the possible exception being those facilities that are permitted to incinerate PCBs. This current high rate of utilization, however, is largely attributable to a liquid PCB storage deadline under TSCA that is unlikely to sustain such demand for more than a few months. In the event that the Congress rectifies the numerous deficiencies in the national program in the manner that will be discussed subsequently, the Council believes that the nation can insure substantial expansion of the commercial (off-site) treatment market for the full range of hazardous wastes. In fact, the Council has recently surveyed its membership and related treatment firms on the likely expansion of existing capacity through the year 1986 in the

event that RCRA policies are rectified to restrict land disposal and in turn require treatment as the primary method of waste management. While the results of this first-of-its-kind survey are not yet final, it is clear that the nation can expect at least a doubling of its current commercial capacity to treat halogenated organic and other hazardous wastes.

These figures and projections are indeed significant, for while only 5% of all hazardous waste generated in the country is managed at commercial facilities, over 80% of all generators rely on commercial facilities to manage at least half of the their wastes (Preliminary Findings of National Survey of Hazardous Waste Generators, conducted for the Office of Solid Waste by Westat Inc, 8/30/83). In addition, the commercial marketplace will continue to manage the wastes the wastes that are uneconomic and difficult treat.

The Council also views treatment capacity availability on a national, or at the very least, regional basis. Just as one does not find a refinery at every drilling site, so too treatment facilities depend upon economies of scale that virtually always require the interstate transportation of hazardous wastes. In fact, with higher overhead and initial capital costs, economies of scale are of even greater significance to treatment facilities.

If there is a base of existing methods and capacity, and the commercial industry is poised to expand to meet the expected demand, why has it taken so long and what is required to bring about the beginning of this long overdue transition to treatment? These questions will be examined in the proceeding sections.

III. IMPEDIMENTS TO THE USE OF TREATMENT AND CONTINUED INCENTIVES FOR DISPOSAL

A. The Market for Treatment and the State of Regulatory Coverage

There are few who would challenge the need for increased use of high-technology hazardous waste treatment. Moreover, based on the actions of several states, few could question whether such a transition is underway. This movement is premised on the belief that treatment, while not being magical in and of itself, when properly conducted provides certainty in two key respects: certainty in knowing what was done to the wastes, and certainty in knowing that future generations will not be exposed to their hazards. While these are compelling and self-evident benefits of treatment, there are equally telling reasons why treatment has not emerged to any significant degree:

* first, and foremost, the bottom line of treatment and disposal is the bottom line. Hazardous wastes are like water running down hill; they will always be disposed of along the path of least regulatory control and least cost. The market alone is an unreliable and indifferent broker when it comes to insuring protective management of hazardous wastes in a cost competitive environment. The forces that establish the lowest marketplace cost also underwrite the methods which provide the least protection for public health and the environment when practiced without restriction. This view shares such wide acknowledgment that even the spokesperson for the nation's largest landfill firm has affirmed the axiomatic correlation between waste disposal practices and cost (Wall Street Journal, 6/10/83):

* second, all forms of waste management must play by the same rules, with the common denominator being equal protection of public health and the environment, and not simply the lowest cost. Only through a consistent and comprehensive national policy and implementing regulations can the nation insure that the drive for the lowest bottom line does not in turn provide an unacceptable minimum level of public health protection. As a recent EPA report concluded, "...the Federal hazardous waste statutes in combination do not cover many of the major sources and types of hazardous wastes." ("Evaluation of

Market and Legal Mechanisms for Promoting Control of Hazardous Wastes," Industrial Economics Inc., prepared for Office of Solid Waste, pursuant to Executive Order 12291, September, 1982)

Present policies must do more than merely "encourage" or create "incentives" for treatment. The disparity in the use of land disposal over treatment is founded in a concomitant disparity between the regulatory requirements for the respective operations which in turn allows cost to be the only factor dictating management choice. These are not solely the observations of the Treatment Council. As one industry analyst recently stated when speaking of the underlying principles by which generators make decisions regarding waste disposal methods, "there is an enormous incentive to dispose of waste cheaply." (Wall Street Journal, 6/10/83)

B. Treatment and Disposal--A Study in Contrasts

The specific reasons for low cost unprotective land disposal are numerous: little capital is required up front; there are no inherent limitations on what can be placed into a land disposal facility; many preventive measures such as dual liners and groundwater monitoring are either not required or avoided due to weak regulations and "grandfathering;" ultimate liability for the facility after

closure may be shifted to governmental entities; and protection of public health is predicated solely upon physical barriers that cannot contain many wastes that are so disposed, rather than specifically restricting the types of wastes that can be land disposed. No matter how heroic the engineering effort, there is a wide range of wastes that cannot be contained by land disposal facilities. As such technical standards alone are a necessary though insufficient means of controlling the release of hazardous wastes from land disposal facilities (Montague, P., Princeton University, September, 1982; 46 FR 11128, 2/5/81). This latter recognition has been the single most important factor in crystallizing a concensus on the need for policies that affirmatively bring about the use of primary use of treatment.

However, just as the regulations and the inherent nature of the practice places no restrictions on land disposal, a treatment facility invests the majority of its capital before a single load of waste is ever received. In addition, most forms of treatment operate under stringent standards governing process efficiency and duration, and are specific to given waste streams. Unlike landfills, there is no current treatment process that can process all types of wastes. Most importantly, it will always cost more to permanently render a waste non-hazardous at the time of generation under controlled conditions, than it will simply to bury or inject and hope. The desire for increased

certainty in the protection of public health cannot be separated from the inevitability of increased costs for proper hazardous waste treatment.

While treatment delivers greater certainty that wastes will be prevented from causing future threats to public health and the environment, certainty is a twoway street. The regulations and policies must provide greater certainty that there will be a market for something other than unrestricted land disposal. Without an explicit policy that requires treatment as the primary method of waste management, the envisioned transition is little more than a pipe dream. As an article in the Wall Street Journal (8/15/83 p. 19) recently observed, "There is a lot of risk involved in designing and siting a waste treatment plant. Why should a company take a technological risk along with other risks?"

That same article also observed that treatment methods will not be employed as long there are so many legal ways to dispose of wastes that are not subject to control, when certain facilites are not required to meet public health standards, and when there are no qualitative or quantitative restrictions as to waste placement on the land. It is the overridding view within the treatment community that the market for alternatives cannot be separated from the adequacy of the regulatory system under which we operate. The inadequacies or loopholes in the present system are the

single most important contributor to the improper disposal of wastes and to the undermining fair competition in the hazardous waste management industry. The loopholes alone are more significant from the standpoint of treatment than the combined effect of illegal dumping and the lax enforcement of existing regulations.

In summary, more generators and individual waste streams are exempt from RCRA coverage than are subject to present regulations. Moreover many hazardous waste facilities remain totally exempt. This is particularly true for "recycling" facilities such as industrial boilers, furnaces, and kilns that can burn hazardous wastes for the purpose of energy recovery without regard to emissions limitations or destruction efficiency.

While numerous examples of such loopholes have been previously documented in Congressional hearings and in this text, new ones continue to be discovered. Most notable among these are the cases of ethylene dibromide (EDB) and deepwell injection. The EPA recently imposed a virtually unprecedented suspension of certain pesticide uses of EDB. Nevertheless, the wastes from the production of this very pesticide are neither listed nor identified as hazardous wastes under RCRA. The same situation exists for most species of dioxin-containing wastes. Regarding deepwell injection, it is now clear that more hazardous wastes are managed by this method than all others combined,

approximately 10 billion gallons per year. At the same time, deep wells are not required to carry third party liability coverage like other RCRA facilities, are difficult if not impossible to monitor beyond the injection stack, and frequently inject corrosive and organic wastes that are both incompatible with and erode the injection formation (Sullivan, P.J., "An Assessment of Class I Hazardous Waste Injection Wells," Ball State University, prepared for the EPA Office of Research and Development pursuant to the AAAS/EPA Environmental Sciences and Engineering Fellows Program, 1983). Despite these serious fundamental uncertainties and deficiencies with deep well injection, the report also notes that Regions V & VI expect a doubling of deep well injection activity by 1986. Not surprisingly, deep well injection is frequently less expensive than even direct land burial of the waste.

In light of the continued proliferation of threats to public health if practices are not changed, and given that the emergence of treatment practices requires more specific knowledge of the market sector that will be dedicated to treatment prior to investment, the policy changes that will bring about the use of treatment cannot be left to chance or allowed to occur by happenstance. As with every other environmental statute, unless compliance is required for all types of facilities and generators and within the same general timeframe, few will want to be the first to step forward and incur a competitive disadvantage. Indeed,

without a predictable market for alternative methods, the risks of financial failure and the fear of competitive disadvantage will outweigh any general notion of where the system should be headed and the status quo will persist.

The following examples vividly illustrate the manner in which wastes are being shifted to the environmental medium of least control, and the relationship between regulations, cost, and the conditions that will bring about protection of public health through treatment rather than disposal:

* the Agency has documented (48 FR 14489) where a generator accumulated emissions control dust from steel production (hazardous waste K061) for over eight years without recycling, properly treating, or disposing of the waste. At present, over 40,000 tons are now piled in the open in an abandoned quarry near a drinking water source;

* the recent release of the "Surface Impoundment Assessment" (Office of Drinking Water, July, 1983) clearly shows that the overwhelming preponderance of the nation's surface impoundments either leak or are likely to. Fully 39% of the 8,000 active impoundments used for the storage and disposal of wastes were determined to have a high potential to contaminate groundwater. Included in the impoundment study are those used in treating wastewaters for the purpose of complying with the requirements of Clean Water Act discharge limitations. It is sobering and at the same time

ironic to learn that the cost of protecting one environmental medium, surface water, is the contamination of another medium, groundwater; a medium where contamination is tantamount to irrevocable destruction of the resource. As a recent study concluded, "prevention of groundwater contamination is a more effective strategy than cure." (Science, 8/19/83, 713);

* the much discussed prohibition on landfill disposal of containerized liquids has done little more than spur the use of kitty litter. For example, rather than taking a barrel of methlene chloride to be treated it is instead mixed with kitty litter to remove free standing liquids and then landfilled, increasing the total cost by little more than $5 per drum from what land disposal otherwise would have cost and with no greater protection of the public health;

* to add insult to injury, there are no restrictions whatsoever on the bulk disposal of liquid wastes into landfills and other land disposal facilities, which accounts for far more waste than containerized liquid disposal. The restrictions on containerized liquids do not apply to bulk because codisposal of liquid hazardous wastes with solid waste is not considered to be a form of bulk landfill disposal. This particular perversity has had a significant adverse affect on the use of treatment. For example, operators of inorganic liquid treatment facilities

have seen the costs of land disposal at certain competing facilities drop by almost 70%, thereby maintaining an untouchable cost advantage over the treatment facility. This example is particularly telling because the landfill involved practices codisposal, merely spreading wastes over trash without proper treatment. Morover, the treatment facilities involved were initially cost competetive with the landfill, separated by only pennies per gallon for the respective processes. When the lack of substantive requirements or preventive measures allows such slack in the cost structure, it is easy to see how the majority of wastes continues to be land disposed;

* regarding the initial cost to construct a treatment versus disposal facility, in one situation a treatment facility operator has expended over one million dollars on blueprints alone to develop a state-of-the-art facility. For far less exposure, the operator could have designed and installed several no-tech surface impoundments for solar evaporation and still have been within the regulations;

* both the threshold decision to choose treatment over disposal and the decision on the scale of the facility are totally dependent upon the policies which insure that wastes must be managed in a protective manner. For example, if a landfill is built with either too much or too little

capacity, it will last a little bit longer or a little bit less than projected. If, however, a treatment plant is improperly scaled because of an overestimate of waste volume, it may well spell financial ruin for that facility;

IV. A POLICY OF PROHIBITIONS

A. Presumptive Prohibitions and Statutory Directives

In 1976 the Congress and the nation recognized in a very general sense the need for national minimum standards governing the management of hazardous wastes to protect public health and to prevent the creation of waste havens in neighboring states. By 1983, the information base has truly matured, and our understanding of the scope and severity of the problem we face has advanced to the point of defining the true parameters of the problem. With the necessary changes in policy the nation can embark upon the implementation of a program that will bring about ultimate, rather than deferred, solutions to the management of hazardous wastes.

Unless and until wastes are presumptively prohibited by statute and until a conscious national policy is enacted that places treatment at the top of the hazardous wastes management hierarchy, treatment on any significant

scale will not occur. Until all forms of hazardous waste management are forced to play by the same rules be it incineration and burning in boilers, metal fixation and land disposal, thereby providing equivalent levels of public health and environmental protection we will continue to witness little more than a warmed over version of the status quo.

The institution of this policy not only calls for the closing of current regulatory loopholes, but more importantly, requires a change in the structure by which these issues are approached, and regulations subsequently promulgated. To merely rely on the Agency's ability to sort through the maze of potential problems without specific guidance and presumption is a de facto invitation to failure. Rather, what is needed is a structured and specific presumption against unrestricted land disposal, with prohibitions on those wastes that are the most frequent and predictable causes of groundwater contamination, such as halogenated organics, cyanides, and several types of corrosive and inorganic metal wastes. The Agency should have the discretion to make distinctions for certain waste under given management conditions, but the presumption must be clear, and the burden must be shifted. Should the Agency fail to make the necessary decision on variances within a specified period of time, the prohibitions would take effect for the entire category except where alternative treatment capacity does not exist.

It has been argued that this approach may punish the disposer in the event that the Agency fails to act on variances for legitimate circumstances in a timely manner. In this context it is frequently cited that the EPA has not met one single regulatory deadline imposed upon it.

While it is true that the Agency has not met a single statutory deadline under the existing regulatory structure, there is ample evidence that an approach which presumptively prohibits wastes by statutory directive not only will succeed, but that it is the only manner in which to proceed if results are to be forthcoming. In fact, isn't the undisputable record of regulatory delay and dalliance in itself the very reason to try a different approach? Do we continue to employ procedures that insure delay, or do we approach the problem from a different perspective which molds the accrued experience of the past seven years into a presumption against those activities that are the leading cause of groundwater contamination? Do we allow another deadline to go by and force the Agency to be sued by those who seek protection of the public health, or do we continue a regulatory procedure that underwrites the incentive for people to sit back and benefit from prolonged delay in the promulgation of regulations? Do we force the Agency to go through a formal proceeding for each and every waste stream to be restricted irrespective of waste similarities, or do we institute a categorical rule of general

applicability based upon the evidence of past "Superfund" experience and state regulatory actions and place the burden on the disposer to provide a compelling demonstration regarding a potential variance from the such a general rule? Lastly, can the nation afford not to act and thereby continue the presumption that land disposal can be made safe for all wastes?

The Treatment Council believes that the answers to these questions are clear. If we are agreed that a meaningful approach to and restrictions on land disposal are the highest priority of the national hazardous waste program, if we indeed want decisions made in a timely manner, and if we want to insure, rather than hope, that treatment becomes the primary method of waste management, then we are bound to do something other than trust regulatory proceedings and statutory directives that are at best nebulous and naive.

The reasons for the projected success of this alternative approach are based on the experience with similar regulatory situations under RCRA and the Toxic Substances Control Act (TSCA). Three case studies are particularly instructive:

* in the 1980 RCRA amendments, the Agency was given an unstructured, open ended directive to conduct studies on five categories of "special wastes," that would not be listed or identified as hazardous wastes until the

completion of these studies and subsequent determinations by the Agency. The merits of these exemptions withstanding, purely as a structure for decisonmaking, the provision has been an abysmal failure. Few of the studies have been completed, some have not even been funded, and no decisions have been made. As a result, these wastes remain exempt. Some of the affected industries have even begun to push for funding of these studies to make nationally consistent and applicable decisions under RCRA. As it turns out, several states have taken to regulating many of these materials, all using slightly different mechanisms and approaches. Despite the specific naming of the wastes, the provision failed to include a time deadline, it lacked a presumption in favor waste listing, and most importantly, it had no sanction in the event that the Agency did not act. In short, it allowed the Agency to do nothing, and that is precisely what has happened, nothing;

* turning to another aspect of the RCRA program, listing and delisting of hazardous wastes, one sees that the Agency has been substantially more successful at deregulating hazardous wastes than bringing new wastes into the system. As was mentioned previously, over 250 permanent and temporary delistings have been granted since May, 1980 without one new waste being listed, and without any statutory directive to delist wastes. The case here is not against delisting per se. It is a normal part of the process of regulatory review and refinement. Rather, these data

strongly suggest that the process has been responsive in those instances where the regulated community has a direct stake in correcting the application of a general rule to their specific situation;

* while there has been only one previous statutory prohibition of a waste material, the experience from this one case study is instructive in several respects. In 1976, the same year of RCRA's enactment, the Toxic Substances Control Act prohibited the manufacture and directly governed the disposal of polychlorinated biphenyls (PCBs). The implementation has not been perfect by any means. PCB transportation is not manifested, storage facilities are not permitted, and many PCBs in "totally enclosed uses" are not being removed from the market. However, PCBs are largely being disposed of in a proper and ultimate manner. The regulations promulgated pursuant to this prohibition in 1979 require that liquid PCBs must be incinerated to a destruction efficiency of 99.9999 %. That is, for every million gallons of PCB material incinerated, only one gallon can go uncombusted. This statutory directive and its regulations not only have brought about increased protection of public health and the environment, but also have been the single most important factor behind the emergence of a domestic incineration market for PCBs and other hazardous wastes. Without these types of prohibitions on PCBs, it is fair to say that domestic incineration capacity would be a minor fraction of that which is presently

available. Without similar prohibitions on other waste streams, one can reasonably predict how much of non-PCB hazardous wastes will be ultimately destroyed and treated. Does anyone believe that PCBs would be incinerated to 99.9999 % destruction efficiency if it we not a regulatory requirement? Does anyone doubt that PCBs would still be on the regulatory back burner if it were not for a clear and unequivocal Congressional directive? In addition, since 1979, several other thermal and chemical destruction methods have emerged, which have substantially increased the available capacity for PCB treatment and decreased its cost in the process.

Even in the State of California, which has instituted one of the most comprehensive land disposal prohibition programs, there was a recognition that a simple general directive without presumption or contstraint would fail. It was for this reason that a general presumption against land disposal was instituted. There was no need to recreate the wheel for every situation, but rather allow the general presumption to overturned in specific situations where compelling demonstrations could be made.

B. A De Facto National Policy Already in Place

In many respects, the move to restrict land disposal goes beyond considerations of public health alone.

In essence, land disposal must be restricted if it is to be saved. By this I mean that the citizens of this country have already established a de facto policy that there will be few if any new land disposal facilities in the country. Landfills in particular have been and continue to be viewed with such disfavor because they remain as the repositories for all things large and small, liquid and solid. If land disposal facilities were restricted to take only non-liquid wastes and pretreated wastes and residues, then the conditions that created leakage and migration would likely not occur. We will always need landfills for those wastes that truly cannot be treated and for the residues of treatment operations. In addition, simply as a matter of sound planning in an industrial society, we cannot wait until the last landfill has closed before contemplating treatment alternatives. With restrictions and prohibitions in place the society can virtually asssure itself of doubling the existing life of most land disposal facilities.

V. CONCLUSIONS

We stand at a watershed point in the development and evolution of the national hazardous waste program. Seven years of experience have revealed the full extent and nature

of the problem and have demonstrated the deficiences of previous legislative and regulatory approaches to the problem.

The nation is long past due for a conscious and comprehensive program of waste-specific restrictions on all forms of land disposal to protect future generations from the hazards and uncertainties associated with land disposal, and at the same time to insure that the the public has enough confidence in the nature of the practices in order to accomidate those land disposal facilities that will be required.

The problems before us are 99% political and 1% technological. There are few wastes that cannot be treated, and the capacity now exisits to begin a phased yet deliberate transition to the primary use of methods that permanently protect public health and the environment. The legislative decisions made in the months ahead will determine whether we are on the road to achieving this objective, or whether 4 years from now we will continue to bemoan the lack of progress. Toward this end, the Members of the Hazardous Waste Treatment Council welcome the end of the beginning for the national hazardous waste program, and inturn the beginning of the end for unrestricted land disposal.

TESTIMONY
by
KANSAS FARM BUREAU
Duane Sanders
January 31, 1984

Increasing quantities of hazardous wastes are generated in the U.S. annually. The improper transportation and disposal of these wastes can significantly damage the environment, public health, fish and wildlife habitat and resources. American Farm Bureau supports research and development for alternate methods to handle hazardous wastes.

The technology for the safe disposal of nuclear waste is now available. We recommend that producers of hazardous waste be responsible for its waste disposal within the limits governed by county, state and federal regulations.

That is American Farm Bureau Policy.

We are all well aware of the fiasco created at the Furley site. The Kansas Geological Society has long ago declared the Furley site unfit and according to the media mountains of money and time has been spent trying to clean up the site and halt the continuing spread of hazardous materials into the substrata and ground water and they aren't finished yet.

Perhaps many of you read the article a few months ago in the Wichita Eagle Beacon of the statements made by representatives of several industries in the Wichita area who said their operation had not been curtailed or hampered by the closing of the local burial site.

This was certainly a surprise to many in the area because we had been led to believe quite differently.

Attachment 2

If the neutralization of hazardous waste at the point of origin should raise the price of the finished product, so be it. Consumers have always paid the cost of production one way or another. I believe we can be quite certain that the cost of the clean up work at the Furley site will be paid by the public eventually.

When the Furley Dump was first opened the Dept. of Health and Environment told the public that if there were no place for industry to dispose of their waste 75% of the plants in the Wichita area would have to shut down. Now 8 years later these same plants say they are operating very well without the Furley site. Why? Because of changes of operation and treatment of wastes.

With technology developing at this speed its difficult to reason why we would need more sites in the state when the only one in existance really isn't needed.

I favor the passing of ~~HB 2525~~ 2725.

GOOD AFTERNOON. MY NAME IS SHARILYN DIENST. I AM HERE TO URGE YOUR SUPPORT OF HB2725, THE BILL THAT WILL PROHIBIT GROUND BURIAL OF HAZARDOUS WASTE IN THE STATE OF KANSAS.

AS A NATIVE KANSAN, I AM VITALLY INTERESTED IN OUR STATE'S NATURAL RESOURCES. FOR THE PAST SEVEN YEARS, I HAVE HAD A FRONT-ROW SEAT FROM WHICH TO WATCH THE DEGRADATION OF THESE RESOURCES BY A FULLY LICENSED, "STATE OF THE ART" HAZARDOUS WASTE LANDFILL.

RECENTLY, THE WICHITA EAGLE-BEACON CONDUCTED A STATE-WIDE SURVEY TO DETERMINE INTERESTS OF ALL KANSANS. HAZARDOUS WASTE RANKED SECOND IN THE POLL. YOUR CONSTITUENTS SEND YOU THIS MESSAGE, NOT BECAUSE OUR PRESENT METHODS OF DEALING WITH HAZARDOUS WASTE HAVE BEEN RIGHT, BUT BECAUSE OTHER KANSANS DO NOT WISH TO SHARE THE ENVIRONMENTAL HAVOC THAT PEOPLE OF THE FURLEY AREA HAVE BEEN VICTIM TO. KANSAS NOW REALIZES THAT WHAT WAS THOUGHT A PROPER SOLUTION IN 1976--LANDFILLING--HAS TURNED INTO A NIGHTMARE FOR CITIZENS, HEALTH AUTHORITIES, FEDERAL AND STATE LEGISLATORS.

KANSAS LAWS GOVERNING THE HANDLING OF HAZARDOUS WASTE HAVE GROWN FROM VIRTUALLY NONE IN 1976, TO NOW BEING AMONG THE MOST COMPREHENSIVE IN THE NATION. GOVERNOR CARLIN'S PROPOSAL IS NOT "UNACCEPTABLE", AS WASTE MANAGEMENT, INC., STATED, BUT RATHER THE NECESSARY NEXT STEP FORWARD TO COMPLETELY PROTECT THE HEALTH AND ENVIRONMENT OF EVERY KANSAS CITIZEN.

I HAVE HEARD CRITICISM OF THIS BILL BECAUSE IT DOES NOT OFFER ANY ALTERNATIVE. KANSAS STATUTES HAVE BEEN IN EFFECT FOR SOME TIME THAT SPECIFICALLY ADDRESS THE ALTERNATIVE, BUT HAVE NOT BEEN FULLY IMPLEMENTED. KSA 65-3431 DIRECTS THE SECRETARY OF HEALTH AND ENVIRONMENT TO "CONDUCT AND CONTRACT FOR RESEARCH AND INVESTIGATIONS IN THE OVERALL AREA OF HAZARDOUS WASTE PROGRAMS INCLUDING, BUT NOT LIMITED TO, NEW AND NOVEL PROCEDURES." THAT LAW IS ALREADY IN THE BOOKS--WE JUST NEED TO DEMAND IMPLEMENTATION.

I WAS INTERESTED IN MR. DONALD WALLGREN'S STATEMENT TO THIS COMMITTEE. MR. WALLGREN IS A VICE PRESIDENT OF WASTE MANAGEMENT, INC., AND HAS APPEARED FREQUENTLY ON BEHALF OF REOPENING THE LEAKING N.I.E.S. FACILITY. MR. WALLGREN MADE SOME INACCURATE STATEMENTS TO THIS COMMITTEE, AND I WOULD LIKE TO CLARIFY SUCH.

Attachment 3

FIRST, I WOULD LIKE TO TALK ABOUT MR. WALLGREN'S CONCERNS ABOUT WHAT EFFECT THE CLOSURE OF THE NIES SITE HAS HAD ON KANSAS INDUSTRY. AN ARTICLE IN THE WICHITA EAGLE-BEACON, 18 MONTHS AFTER THE SITE WAS CLOSED, REVEALS THE CLOSURE'S IMPACT ON GENERATORS. INDUSTRIES HAVE INCREASED RECYCLING EFFORTS AND CUT THE AMOUNT OF WASTES THEY GENERATE. EVEN BEFORE THE SITE CLOSED, THE NEWS ARTICLE RELATES THAT KANSAS INDUSTRIES WERE LOOKING FOR WAYS TO CUT THE COST OF GENERATING AND DISPOSING OF HAZARDOUS WASTES. COMPANIES HAD ALREADY BEGUN CUTTING BACK ON THE AMOUNT OF WASTES SENT TO NIES--FROM A HIGH VOLUME OF 1.1 MILLION CUBIC FEET IN 1978 DOWN TO LESS THAN ONE-HALF MILLION CUBIC FEET IN 1981.

A SPOKESMAN FOR CESSNA AIRCRAFT SAID CESSNA--FORMERLY ONE OF NIES' LARGEST CUSTOMERS--PROBABLY WOULDN'T USE THE NIES SITE EVEN IF IT WERE TO REOPEN. CESSNA BUILT A WATER TREATMENT SYSTEM TO REDUCE THE AMOUNT OF WASTES AND BEGAN A STUDY ON HOW TO REUSE SOLVENTS.

THE BOEING COMPANY REDUCED ITS USE OF SOLVENTS BY 25%. KANSAS PLATING COMPANY BUILT A WASTE TREATMENT PLANT TO TREAT LIQUID WASTES THAT WERE ONCE SENT TO NIES.

THE COLEMAN COMPANY IS NOW DEHYDRATING LIQUID WASTES AND HAS REDUCED THEIR WASTE TO ONE-TENTH WHILE SAVING THE COMPANY NEARLY $30,000 IN THE PROCESS.

EVEN THE WICHITA CHAMBER OF COMMERCE ADMITTED THAT NO AREA COMPANIES HAD COMPLAINED ABOUT THE CLOSED LANDFILL, AND SAID THEY WEREN'T AWARE OF ANY COMPANIES THAT HAD DECIDED AGAINST RELOCATING IN THE AREA BECAUSE THERE WAS NO LANDFILL.

AT THE TIME THAT THE STATE CLOSED THE FURLEY SITE, ONLY ONE-THIRD OF THE WASTES AT NIES CAME FROM KANSAS--AND HALF OF THE KANSAS WASTES CAME FROM SEDGWICK COUNTY.

A SIMILAR SITUATION OCCURRED IN COLORADO A YEAR AGO WHEN ANOTHER WMI LANDFILL WAS CLOSED. A SPOKESMAN FOR THE COLORADO ASSOCIATION OF COMMERCE AND INDUSTRY SAID HIS ORGANIZATION OF 140 COMPANIES WOULD OPPOSE RESUMPTION OF CHEMICAL DUMPING AT THE LOWRY LANDFILL, AND IF THAT WMI FACILITY WERE REOPENED, THE ASSOCIATION'S MEMBERS WOULD NOT USE THE CHEMICAL DUMPING FACILITIES.

SOME OTHER STATEMENTS BY MR. WALLGREN NEED TO BE CORRECTED. YOU WERE TOLD THAT RESIDENTIAL WELLS SURROUNDING THE SITE WERE NOT AFFECTED BY THE SITE DISPOSAL ACTIVITIES. IN AUGUST OF 1983, I TOLD AN INTERIM STUDY COMMITTEE THAT FIVE RESIDENTIAL WELLS HAD SHOWN CHEMICAL CONTAMINANTS. TODAY THAT NUMBER IS ELEVEN. ELEVEN PRIVATE WELLS AT HOMES SURROUNDING THE NIES SITE ARE SHOWING DETECTABLE AMOUNTS OF THE SAME CHEMICAL CONTAMINANTS THAT ARE BEING DETECTED IN THE CONTAMINATED GROUNDWATER IN THE NIES MONITORING WELLS. KDHE SAMPLING ANALYSES REVEALED THIS.

MR. WALLGREN ALSO TOLD YOU THAT THE CHEMICAL MIGRATION IS PRIMARILY CONFINED TO THE "A"-ZONE WATER LEVEL. ALL KDHE, EPA AND WILSON LABORATORY ANALYSES HAVE ALWAYS SHOWN--AND SHOW TODAY--CONTAMINATION OF THE SECOND AQUIFER, OR B-ZONE. THIS B-ZONE IS THE AQUIFER THAT SUPPLIES AREA WATER WELLS. THE B-ZONE CONTAMINATION IS A MAJOR CONCERN OF THE ENVIRONMENTAL PROTECTION AGENCY AS WELL AS KDHE. IT DOES NOT APPEAR TO BE SUCH TO THE COMPANY.

YOU WERE TOLD THAT THE DECOMMISSIONING OF THE EVAPORATION PONDS WAS DELAYED DUE TO KDHE'S LACK OF APPROVAL OF AN UNDERGROUND INJECTION WELL. AT ANY GIVEN TIME DURING THE PAST TWO YEARS, WMI COULD HAVE REMOVED THE FLUIDS FROM THE PONDS AND TRUCKED THE FLUIDS TO THEIR OWN INJECTION WELL IN OKLAHOMA. TWO ITEMS HAVE PRECLUDED THE TIMELY DISPOSITION OF THESE FLUIDS. #1. WMI CONSIDERS THE COST OF SENDING THE FLUIDS TO THEIR WELL IN OKLAHOMA TOO EXPENSIVE -- and #2. WMI IS RELUCTANT TO INSTALL A DEEP WELL WITHOUT ASSURANCE THAT THEY WILL BE PERMITTED TO REOPEN THE FURLEY SITE AND USE THE DEEP WELL ON AN ON-GOING COMMERCIAL BASIS. THAT IS WHY THE PONDS REMAIN.

MR. WALLGREN'S STATEMENT THAT THE LANDFILL DESIGN PROPOSED BY WMI "MUST PREVENT MIGRATION OF ANY LIQUIDS OUT OF THE DISPOSAL CELL" LOOKS GOOD ON PAPER, BUT AN EVER-INCREASING NUMBER OF EXPERTS--INCLUDING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY--SAY IT CAN'T BE DONE. LAST JULY, ANOTHER WASTE MANAGEMENT VICE-PRESIDENT, PETER VARDY, SOMEWHAT CONFUSED THE ISSUE BY TELLING A CONGRESSIONAL COMMITTEE THAT "ALL LANDFILLS DO NOT LEAK", AND THEN SAYING "EVERYTHING LEAKS" BUT HIS COMPANY WOULD ATTEMPT TO MINIMIZE LEAKS.

HB2725 IS DESIGNED TO PROTECT THE HEALTH AND ENVIRONMENT OF EVERY KANSAN. I URGE YOU TO SUPPORT THIS BILL.

IN CLOSING, I WOULD LIKE TO PUBLICLY QUESTION THE PROPRIETY OF A CHICAGO COMPANY DEEMING OUR KANSAS GOVERNOR'S CONCERN FOR HIS STATE AS "UNACCEPTABLE".

WASTE MANAGEMENT, INC., IS A LARGE COMPANY. THEY OWN AND OPERATE LANDFILLS SIMILAR TO FURLEY ACROSS THE UNITED STATES. I HAVE BECOME ACQUAINTED WITH CITIZENS LIVING NEAR OTHER WMI HAZARDOUS WASTE LANDFILLS, AND I HAVE ACCUMULATED QUITE A SCRAPBOOK. I AM GOING TO SHARE SOME OF THIS INFORMATION WITH YOU.

THANK YOU.