

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by SENATOR MERRILL WERTS at _____
Chairperson

8:00 a.m./p.m. on FEBRUARY 14, 1985 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Ramon Powers - Research Department
Don Hayward - Revisor's Office
Nancy Jones - Committee Secretary

Conferees appearing before the committee:

SB 1 - Prohibiting the underground burial of hazardous waste.

Chairman Werts referred the committee to a balloon copy of SB 1 for discussion. (Attachment A), which included the revisor's language for the amendment previously adopted.

Don Hayward explained the word "person" was being proposed in lieu of "party" to broaden the meaning of those who could intervene in an appeal. Senator Kerr expressed the opinion that the word "person" may have too broad a meaning and could encourage the appeal of an order by persons unrelated to the particular case, thus slowing down the entire process. Secretary Sabol stated the word "person" is defined in the hazardous waste statute and has not caused a slowing down of the process. It does allow any person who feels affected the opportunity to appeal within the stated time period which is 10 days following the issuance of an order issued by the Secretary or a court. The word "person" is proposed for consistency, as it appears in the provisions of current law, and with the addition of the word aggrieved, would limit those who could appeal. This has not affected the giving or denying a permit. Senator Feleciano feels "person" is needed as the word "party" is restrictive and there should be utilization of present law since the word aggrieved as written limits those who could appeal.

Charles Hamm stated that K.S.A. 65-3450 defines aggrieved person and the Department wants consistency with existing law to avoid interpretation problems.

Motion was made by Senator Feleciano to strike the word "party" and replace it with the word "person" on line 78. Seconded by Senator Martin. Motion failed on a hand count(5-5).

Discussion and action by the committee on proposed amendments to the bill were as follows; Line 33 - addition of "units of the facility in which". Motion by Senator Yost for adoption. Seconded by Senator Hayden, and the motion carried. Line 89 - include the word "disposal"; Line 117 - include "mound landfill". Motion by Senator Gordon to adopt. Seconded by Senator Vidricksen, and the motion carried.

Amendments proposed by Secretary Sabol (Attachment B) were reviewed. 3(a) is a requirement to comply with RCRA. Motion was made by Senator Hayden to adopt. Seconded by Senator Thiessen, and the motion carried. 3(b) brings county or district attorney or attorney general into plaintiffs civil enforcement action rather than simply the Secretary. Motion by Senator Vidricksen to adopt. Seconded by Senator Langworthy and the motion carried.

Further discussion was held on amendments proposed by James Young of the Chemical Waste Management, Inc. (Attachment C). Secretary Sabol feels (b) (2) is not needed. Chairman Werts suggested there might be a conflict between a secretary's order and a court order as addressed in this section of the bill. Secretary Sabol stated that no order would be issued that would be inconsistent with the statute, and if the Secretary would be issuing an order

CONTINUATION SHEET

Minutes of the SENATE Committee on ENERGY & NATURAL RESOURCES ¹⁹ Feb. 14, 1985

To bury hazardous waste, that could in fact be an exception. In response to a question from the Chairman, Secretary Sabol stated that in the event a person who was ordered to dig up and rebury hazardous waste pursuant to a remedial action, clean-up spill response, closure or post-closure plan by the secretary or a court, a new application for exception would not be required for the reburial. Senator Hayden said he did not think the court would override the secretary's orders and issue some other guideline.

Motion was made by Senator Feleciano to recommend favorably SB 1 as amended. Seconded by Senator Kerr, and the motion carried.

The meeting adjourned at 9:00 a.m. Next meeting will be announced.

2-14-85

Guest List

Rob Hodge	Topeka	KCCI
Margaret Walls	Topeka	Ks Water Office
Dennis Murphy	Topeka	KDHE
Ed Reinert	Topeka	KLWVs
Chip Weelen	Topeka	Waste Mgmt, Inc.
B/S A BOL	"	KDHE
MaryAnn Bumgarner	"	Gen. Burke-intern
Charles V. Hamm	"	KDHE
Allan Abramson	"	"
Sharon J. McAtee	"	KNRC

SENATE BILL No. 1

By Special Committee on Energy and Natural Resources

Re Proposal No. 20

12-18

0018 AN ACT concerning hazardous waste; prohibiting the under-
0019 ground burial of hazardous waste; providing for exceptions to
0020 such prohibition; amending K.S.A. 1984 Supp. 65-3443 and
0021 repealing the existing section.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 New Section 1. (a) The underground burial of hazardous
0024 waste produced by persons generating quantities of such waste
0025 greater than those specified in K.S.A. 1984 Supp. 65-3451 is
0026 prohibited except as provided by order of the secretary of health
0027 and environment issued pursuant to this act. Such prohibition
0028 shall not be construed as prohibiting mound landfill, above-
0029 ground storage, land treatment or underground injection of haz-
0030 arduous waste. Any existing hazardous waste disposal facility
0031 which utilizes underground burial shall cease such practice and,
0032 with the approval of the secretary, shall implement closure and
0033 post-closure plans for all hazardous wastes which have been
0034 disposed of underground.

0035 (b) ~~(1) There is established the underground hazardous~~
0036 ~~waste disposal review board which shall be composed of seven~~
0037 ~~members as follows: The secretary of health and environment,~~
0038 ~~the state geologist, a member appointed by the president of the~~
0039 ~~senate, a member appointed by the minority leader of the senate,~~
0040 ~~a member appointed by the speaker of the house of representa-~~
0041 ~~tives, a member appointed by the minority leader of the house of~~
0042 ~~representatives and a member appointed by the governor. The~~
0043 ~~term of office of the appointed members shall be three years.~~
0044 ~~Upon the expiration of the term of office of the appointed~~
0045 ~~members, the appointing authorities shall each appoint a suc-~~

units of the facility in which

J. ENR 2/14/85
Attachment A

ATTACHMENT A

0046 .cessor. If a vacancy occurs among the appointed members for any
 0047 reason other than the expiration of a member's term of office, the
 0048 appointing authority making the original appointment shall ap-
 0049 point a successor to fill the unexpired term of office. The secre-
 0050 tary of health and environment shall serve as chairperson of the
 0051 board. All budgeting, purchasing and related management func-
 0052 tions of the board shall be administered under the direction of
 0053 the secretary of administration. All vouchers shall be approved
 0054 by the chairperson of the board and the secretary of administra-
 0055 tion. Three members of the board shall constitute a quorum for
 0056 the transaction of business by the board. The state agencies
 0057 which have officers serving on the board shall provide such staff
 0058 assistance to the board as may be requested by the board.
 0059 Appointed members of the board attending regular or special
 0060 meetings of the board shall be paid compensation, subsistence
 0061 allowance, mileage and other expenses as provided in K.S.A.
 0062 75-3223, and amendments thereto.

0063 (2) The duty of the underground hazardous waste disposal
 0064 review board shall be to decide whether or not an exception to
 0065 the prohibition against underground burial of hazardous waste
 0066 shall be granted for a particular hazardous waste. No decision to
 0067 grant an exception shall be rendered unless it is demonstrated to
 0068 the board that, except for underground burial, no economically
 0069 reasonable or technologically feasible methodology exists for the
 0070 disposal of a particular hazardous waste. The procedures for
 0071 obtaining an exception to the prohibition against underground
 0072 burial of hazardous waste shall be as established and prescribed
 0073 by the board.

0074 (3) Whenever the underground hazardous waste disposal re-
 0075 view board decides to grant an exception to the prohibition
 0076 against underground burial of hazardous waste, the secretary of
 0077 health and environment shall issue an order so providing. Any
 0078 party aggrieved by the failure to issue an order under this section
 0079 shall have the right to appeal in the manner provided by K.S.A.
 0080 1985 Supp. 65-3440, and amendments thereto.

0081 Sec. 2. K.S.A. 1984 Supp. 65-3443 is hereby amended to read
 0082 as follows: 65-3443. (a) If the secretary finds that the generation,

(1) The secretary shall

secretary

include a public hearing and shall

rules and regulations adopted by the secretary. Such rules and regulations shall include requirements for the form and contents of a petition desiring an exception.

(2) Within 90 days after submission of a petition desiring an exception, and if the secretary

person

issuance of an order or the

0083 accumulation, management or disposal of a hazardous waste by
0084 any person is or threatens to cause pollution of the land, air, or
0085 waters of the state or is or threatens to become a hazard to
0086 persons, property or public health or safety or that the provisions
0087 of this act or any rule or regulation adopted pursuant thereto
0088 have been otherwise violated, the secretary may order the per-
0089 son to modify the generation, accumulation ~~or~~ management ~~of~~
0090 the hazardous waste or to provide and implement such hazard-
0091 ous waste management procedures as will prevent or remove the
0092 pollution or hazard or take any other action deemed necessary.
0093 The secretary may order any person having a permit issued
0094 under this act, and who operates a public or commercial hazard-
0095 ous waste management facility, which the secretary finds suit-
0096 able to manage the hazardous waste, to provide and implement
0097 hazardous waste management procedures to prevent or remove
0098 such pollution or hazard. Such order shall specify a fair com-
0099 pensation to the owner or permittee for property taken or used
0100 and shall specify the terms and conditions under which the
0101 permittee shall provide the hazardous waste management ser-
0102 vices. Any order issued shall specify the length of time after
0103 receipt of the order during which the person or permittee shall
0104 provide or implement hazardous waste management procedures
0105 or modify the generation, accumulation or management of the
0106 hazardous waste.

0107 (b) If the secretary finds that there is an environmentally
0108 more desirable procedure available other than ground burial for
0109 the disposal of a particular type of hazardous waste, the secretary
0110 shall order that the use of ground burial for the disposal of that
0111 type of hazardous waste be discontinued. The secretary in de-
0112 veloping such finding may require the generator to provide
0113 information and plans for potential environmentally more desir-
0114 able procedures.

0115 (e) (b) The secretary shall adopt rules and regulations pro-
0116 viding for approval of closure and post-closure plans, establish-
0117 ing standards for underground injection, land treatment and
0118 above ground storage of hazardous waste.

0119 (d) (c) Any party aggrieved by an order under this section

OR DISPOSAL

, mound landfill

0120 shall have the right of appeal in accordance with the provisions
0121 of K.S.A. 1985 Supp. 65-3440, and amendments thereto.
0122 Sec. 3. K.S.A. 1984 Supp. 65-3443 is hereby repealed.
0123 Sec. 4. This act shall take effect and be in force from and
0124 after its publication in the statute book.

2. We would also like to have assurances in the bill that the wording "no economically reasonable or technologically feasible methodology exists for the disposal of a particular hazardous waste" starting on Line 68 addresses not only what is economically reasonable for the person submitting the request for exception but also what is economically reasonable on behalf of the state's interest. This would include such factors as cost to the state for post-closure care or monitoring and the potential for costs associated with failure of the below ground containment system. The test for "economically reasonable" should consider the potential long term costs of allowing land burial of a hazardous waste (with its particular mobility, toxicity, or other characteristics) rather than taking a narrow perspective only upon the front-end costs of utilizing alternative disposal methods.

3. As a result of a November 27, 1984 public hearing on the department's application to EPA for final RCRA authorization, two problems with current statutory authority were identified which will delay EPA granting authorization to KDHE. We would suggest that SB 1 be amended to also include the following:

a) K.S.A. 65-3441(c) be amended to clearly state that criminal penalties are subject to per day penalties by adding the following language:

"Any person who knowingly violates any provisions of paragraphs (i) to (ii), inclusive, of subsection (a) shall be guilty of a class C felony and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation, and upon conviction thereof shall be punished as provided by law."

RCRA

b) Amend K.S.A. 65-3450 as follows to also provide citizen intervention in cases brought by county or district attorneys or by the attorney general:

"If the secretary, county or district attorney, or attorney general brings civil enforcement action pursuant to this act, any person who has an interest which is or may be adversely affected, upon timely application, shall be allowed to intervene in such action pursuant to K.S.A. 60-224, and amendments thereto."

These two amendments would eliminate the issue of statutory equivalency with RCRA and would overcome the last hurdle identified by EPA which is delaying the delegation of the RCRA program to the state of Kansas.

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ATTACHMENT B

0046 ~~essor. If a vacancy occurs among the appointed members for any~~
 0047 ~~reason other than the expiration of a member's term of office, the~~
 0048 ~~appointing authority making the original appointment shall ap-~~
 0049 ~~point a successor to fill the unexpired term of office. The secre-~~
 0050 ~~tary of health and environment shall serve as chairperson of the~~
 0051 ~~board. All budgeting, purchasing and related management func-~~
 0052 ~~tions of the board shall be administered under the direction of~~
 0053 ~~the secretary of administration. All vouchers shall be approved~~
 0054 ~~by the chairperson of the board and the secretary of administra-~~
 0055 ~~tion. Three members of the board shall constitute a quorum for~~
 0056 ~~the transaction of business by the board. The state agencies~~
 0057 ~~which have officers serving on the board shall provide such staff~~
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 0059 ~~Appointed members of the board attending regular or special~~
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0074 ~~(3) Whenever the underground hazardous waste disposal re-~~
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 0076 ~~against underground burial of hazardous waste, the secretary of~~
 0077 ~~health and environment shall issue an order so providing. Any~~
 0078 ~~party aggrieved by the failure to issue an order under this section~~
 0079 ~~shall have the right to appeal in the manner provided by K.S.A.~~
 1985 Supp. 65-3440, and amendments thereto.

0082 Sec. 2. K.S.A. 1984 Supp. 65-3443 is hereby amended to read
 as follows: 65-3443. (a) If the secretary finds that the generation,

underground burial of hazardous waste shall be established by rules and regulations adopted by the secretary in accordance with K.S.A. 77-415 et seq. and amendments thereto. Any person who has been ordered to dig up and re-bury hazardous waste pursuant to a remedial action, clean-up, spill response, closure or post-closure plan by the secretary or a court shall comply with the terms of the order in lieu of this section.

(2) In adopting rules and regulations the secretary shall require that any person seeking an exception must file a written petition with the secretary in a form and with such content as the rules and regulations shall prescribe. The secretary shall issue an order approving or disapproving the exemption request within 60 days of the filing of the petition and shall include in the order the specific reason or reasons for the approval or disapproval. Any party aggrieved by an order issued under this section shall have the right to appeal to the district court of the county of residence of the appellant in the manner provided by K.S.A. 1985 Supp. 65-3440, and amendments thereto."

ATTACHMENT C

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 ATTACHMENT C