

Approved 2-11-86
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Senator Werts at
Chairperson

8:00 a.m. ~~XX~~ on February 5, 1986 in room 123-S of the Capitol.

All members were present except:

Senator Thiessen - Excused

Committee staff present:

Ramon Powers - Research
Don Hayward - Revisor
Nancy Jones - Secretary

Conferees appearing before the committee:

Sharad Bhatia - Kansas Department of Health & Environment, Director,
Division of Environment
Kenneth Kern - Conservation Commission

A request by Senator Winter for the committee to introduce a bill relating to solid waste, was read by Chairman Werts. Motion was made to introduce the bill by Senator Hayden, seconded by Senator Langworthy. Motion carried. (Attachment A)

SB 484 - Concerning the State Conservation Commission

Mr. Bhatia, as a proponent of the bill, explained SB 484 would authorize appointment of the Secretary of KDHE as an ex-officio member of the State Conservation Commission. Mr. Bhatia testified to the need of membership on the Commission of a person whose main responsibility, by position, is to protect the environment. Since the State Conservation Commission is responsible for advocating conservation of soil and water, the Commission would benefit from a member who represents water quality protection. This proposal would provide a necessary link between agencies responsible for water quality management and cost sharing programs addressing soil and water conservation. (Attachment B).

Kenneth Kern appeared as an opponent of SB 484 reviewing reasons for opposition as stated in the written testimony (Attachment C). He stated KDHE is represented on the Watershed Review Committee and the Watershed & Evaluation Committee which work very closely with the Commission. Mr. Kern emphasized that farmers view the addition of a regulatory agency to the Commission as another threat to their industry. Mr. Kern further stated a representative of KDHE as an ex-officio member would have voting privileges. Agriculture related ex-officio members of the Commission can also vote, but do not exercise the privilege regularly. (Attachment D).

SB 487 - Concerning public water supply systems

Mr. Bhatia as a proponent of SB 487 stated this bill would provide for the filing and approval of Environmental Protection Plans for new or proposed public water supply impoundments and water wells. A review of background information was given by Mr. Bhatia. The protection plans should reduce likelihood of groundwater contamination. KDHE feels the costs of preparing the plans would not be a significant burden to small cities and for larger cities benefits would outweigh costs.

Under the Safe Drinking Water Act, a permit is required for 10 living units or 20 people or more using one source of water supply over a period of one year. This requirement would not apply to cities that rely on a river as the supply of water.

The Department sees this proposal as a flexible document to be beneficial to municipalities rather than a regulatory measure. The Department also feels it is necessary to have the authority to review issued permits every

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 123-S, Statehouse, at 8:00 a.m.~~p.m.~~ on February 5, 1986

five years. Estimated cost of implementation of the plan is \$24,800 per year with a halftime person who would develop rules and regulations and examine protection plans for issuance of permits over a five year period.

Mr. Bhatia further stated the Department does not yet have accurate data for determining a minimum level of tolerance for contamination.

Joe Harkins testified the provisions of this bill are recommended in the current version of the State Water plan. The issue has been studied carefully by the Water Authority.

No opponents appeared to testify on SB 487.

Meeting adjourned. The next meeting will be February 6, 1986.

Guest List

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Lola Warner	State Conservation Comm.	Topeka
Jan Johnson	Budget Division	Topeka
Connie Tubke	KMRC	Topeka
Bill Anderson	Water Dist #1 of So Co	Mission
Ken Kern	State Conservation Commission	Topeka
Shirrel Buntin	KDHE	"
Charles V. Hamm	KDHE	"
Ben Gaches	EMAC	Wichita
Gyula F Kovach	KDHE	Topeka
Cyr Duffy	KWO	"
George Barbee	Ks Consulting Engneer	"

SENATE BILL NO. 566

By Senator Winter

AN ACT relating to the disposal of solid waste; concerning closure of solid waste disposal facilities; providing for fees and charges and the establishment of certain funds; providing duties and authorities for the secretary of health and environment relating thereto; amending K.S.A. 65-3407 and repealing the existing section.

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

New Section 1. The legislature finds and declares that the proper closure of solid waste disposal facilities is essential to the public health, safety and welfare; that closure activities can require capital expenditures at a time when revenues collected by owners and operators of solid waste disposal facilities are minimal or nonexistent; and that it is necessary to guarantee that adequate funds are reserved to insure such closure. The legislature further finds and declares that the improper operation or closure of solid waste disposal facilities can result in the contamination of surface and groundwaters, including potable water supplies; that the migration of methane gas from solid waste disposal facilities poses a threat to life and property; that private insurers have withdrawn from the solid waste disposal market; that insurance when available at all is available at a cost prohibitive to owners and operators of solid waste disposal facilities; that compensation for the damage resulting from improper operation or closure is, at best, inadequate; and that it is necessary to provide a mechanism for the prompt compensation for these damages.

New Sec. 2. As used in this act:

"Closing costs" or "closure" means all activities and costs associated with the design, purchase, construction or maintenance

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of all measures required by the department, pursuant to law or rule and regulation, in order to prevent or minimize pollution or health hazards resulting from solid waste disposal facilities subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the costs of the placement of engineered earthen, membrane or vegetative cover and the installation of methane gas vents, methane collection systems or monitors and leachate monitoring wells or collection systems at the site of any solid waste disposal or facility;

(b) "owner or operator" means and includes, in addition to the usual meanings thereof, every owner or record of any interest in land whereon a solid waste disposal facility is or has been located, and any person or corporation which owns a majority interest in any other corporation which is the owner or operator of any sanitary landfill facility, including political subdivisions of the state of Kansas;

(c) "solid waste disposal facility" means any site used for the disposal of solid wastes as defined by K.S.A. 65-3402, and amendments thereto;

(d) "department" means the Kansas department of health and environment;

(e) "secretary" means the secretary of the Kansas department of health and environment.

New Sec. 3. (a) The owner or operator of every solid waste disposal facility shall deposit, on a quarterly basis, in an interest-bearing account with an accredited financial institution, an amount equal to \$.50 per ton of solids and \$.02 per gallon of liquids for all solid waste accepted for disposal during the preceding quarter year at the solid waste disposal facility. In the event that any solid waste is measured, upon acceptance for disposal, by other than tons or gallons, the amount to be deposited shall be calculated by using equivalents thereof as shall be determined by the secretary. The account established pursuant to this subsection shall constitute an escrow account for the closure of that particular solid waste

disposal facility, and no withdrawals therefrom may be made without written approval of the secretary, or as otherwise authorized by the secretary. The maximum amount to be accumulated in such account shall be \$10,000 per acre, except when the secretary shall determine that closure measures other than the application of earth cover will be necessary to close the facility. In those cases the maximum amount required to be deposited shall be determined at the time a permit is issued by the secretary for the operation of such facility.

(b) Any owner or operator of a solid waste disposal facility who shall fail to deposit funds into an escrow account or uses those funds for any purpose other than closing costs, as approved by the secretary, shall be guilty of a class A misdemeanor. In addition, the secretary may seek a restraining order to prevent the owner or operator from accepting solid waste for disposal in such facility.

(c) Every owner or operator of a solid waste disposal facility shall file with the department an annual audit of the escrow account established for the closure of the facility pursuant to this act. The audit shall be conducted by a certified public accountant, and shall be filed with the department no later than October 31 of each year.

(d) Whenever circumstances such as duration of operation, quantity of materials to be disposed of or other factors make it impractical to establish a closure account, the secretary may accept cash bond, surety bond, letter of credit or other financial assurances as may be prescribed by rule and regulation of the secretary in lieu of a closure account.

(e) The secretary shall adopt rules and regulations prescribing the manner in which closure account records shall be maintained and how a permittee shall make deposits to and withdrawals from the account, and other matters deemed necessary to administer this section.

(f) Any moneys remaining in the escrow account of any solid waste disposal facility subsequent to the proper and complete

closure thereof, as determined by the department shall be paid by the owner or operator thereof into the solid waste disposal facility contingency fund unless the owner or operator has other facilities.

New Sec. 4. (a) The solid waste disposal facility contingency fund is hereby established as a nonlapsing revolving fund in the department. The fund shall be administered by the department and shall be credited with all disposal fee revenues collected by the department pursuant to section 5. The secretary shall remit all disposal fee revenues collected under this subsection to the state treasurer to be credited to such fund. The pooled money investment board may invest moneys in the fund in obligations of the United States or obligations the principal and interest of which are guaranteed by the United States or in interest-bearing time deposits in any commercial bank or trust company located in Kansas or, if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than 30 days' duration with a Kansas bank for direct obligations of, or obligations that are insured as to principal and interest by the United States government or any agency thereof. Any income of interest earned by such investments shall be credited to the fund.

The maximum amount of the fund shall be \$6,000,000 plus all interest income accruing to the fund. Whenever the secretary determines that projected receipts for any quarter minus outstanding claims against the fund will exceed the upper limit as herein provided, the collection of fees authorized in section 5 shall be suspended until such time as the fund needs replenishing, and no charges shall be levied for such purpose until replenishment of the fund is needed. During any such period a permit holder shall deposit any excess moneys that would have been paid into the fund into the closure account established in section 3 as provided in such section.

(b) The solid waste disposal contingency fund shall be liable for damages proximately resulting from the operation of

any solid waste disposal facility whose operator is a participant in the fund. These damages shall include, but not be limited to:

(1) The cost of providing an individual health assessment for any person found to be consuming a drinking water source or a food chain product or who is exposed to an air emission found to be contaminated by solid waste disposal facility.

(2) The cost of restoring, repairing or replacing any real or personal property damaged or destroyed.

(3) The cost of restoration and replacement, where possible, of any natural resource damaged or destroyed, including any potable water supply.

(4) The costs of the design, construction, installation, operation and maintenance of any device or action deemed necessary by the department to cleanup, remedy, mitigate, monitor or analyze any threat to the public health, safety or welfare of the citizens of this state, including the installation and maintenance of methane gas monitors and vents and leachate monitoring wells and collection systems and the sampling and analysis of any public or private potable water supply.

(c) In the event that the total of claims awarded exceeds the current balance of the fund, the immediate award shall be paid on a prorated basis, and all claimants paid shall be paid, as determined by the department, on a pro rata share of all moneys deposited in the fund until the total amount of the proven damages is paid to the claimants. The department may also provide, by rule and regulation, priority for the payment of claims based on extreme hardships or extreme existing or imminent hazard.

(d) Claims against the fund shall be filed within one year of the date of discovery of damage, and in the manner as shall be prescribed by the department.

(e) Moneys in the funds shall be disbursed by the department for the following purposes and no others:

(1) Administrative costs incurred by the department pursuant to section 5 of this act; and,

(2) damages as provided in paragraphs 1 to 4, inclusive.

Allocations from the fund for damages shall be reviewed and approved by the state finance council as provided for in K.S.A. 75-3711 and 75-3711c, and amendments thereto.

New Sec. 5. (a) The secretary shall establish a fee for each owner or operator not to exceed \$.50 per ton for solids and by \$.01 per gallon of liquids to be deposited in the solid waste disposal facility contingency fund.

(b) Every owner or operator of a solid waste disposal facility shall on or before April 20 and October 20 render a return under oath to the secretary on such form as may be prescribed by the secretary indicating the number of cubic yards of solid wastes and gallons of liquid waste accepted at the solid waste disposal facility and at such time the owner or operator shall pay the full amount of disposal fee due.

(c) If a return required by this act is not filed or, if a return when filed is incorrect or insufficient in the opinion of the secretary, the amount of fee due shall be determined by the secretary from such information as may be available. Notice of such determination shall be given the person liable for the fees. Such determination shall finally and unrevocably fix the fee unless the person shall apply to the secretary for a hearing or unless the secretary shall redetermine the same.

(d) The solid waste disposal facility permit of any person liable for the fee shall be cancelled if any fee remains unpaid for a period of 60 days past its due date, and the secretary may begin proceedings in any court of competent jurisdiction to recover any amounts due the fund. Past due amounts shall bear interest at 12% per annum. For any site permitted for less than six-months' duration, an estimated disposal fee shall be billed and collected at the time the permit is issued.

(e) Any person failing to file a return, failing to pay, or filing or causing to be filed, or making or causing to be made, or giving or causing to be given, any return, certificate, affidavit, representation, information, testimony or statement

required or claim authorized by this act, or rules and regulations adopted hereunder, which is willfully false, or failing to keep any records required by this act, or rules and regulations adopted hereunder, shall, in addition to any other penalties prescribed, be guilty of a class A misdemeanor.

(f) The certification of the secretary to the effect that a fee has not been paid, that a return has not been filed, that information has not been supplied or that inaccurate information has been supplied pursuant to this act or rules and regulations adopted hereunder shall be presumptive evidence thereof.

New Sec. 6. Payment of any damages from the solid waste disposal facility contingency fund shall be conditioned upon the department acquiring, by subrogation, all rights of the claimant to recovery of the damages from any owner or operator of a solid waste disposal facility.

New Sec. 7. Nothing in this act shall be deemed to preclude the pursuit of any other civil or injunctive remedy by any person. The remedies provided in this act are in addition to those provided by existing statutory or common law, but no person who received compensation for damages pursuant to any other state or federal law shall be permitted to receive compensation for the same damages or cleanup costs under this act.

New Sec. 8. The secretary shall prepare an annual report on the condition of the solid waste disposal contingency fund on September 1 of each year. The report shall list receipts to, and disbursements from the fund, claims processed and pending and any other information relevant to the fund. The report shall be sent to all depositors to the fund.

Sec. 9. K.S.A. 65-3407 is hereby amended to read as follows: 65-3407. (a) It shall be unlawful for any person to construct, alter or operate a solid waste processing facility or a solid waste disposal area of a solid waste management system without first obtaining a permit from the secretary.

(b). Every person desiring to obtain a permit to construct, alter or operate a solid waste storage, treatment or processing

facility or disposal area shall make application for such a permit on forms provided for such purpose by the rules and regulations of the secretary and shall provide the secretary with such information as necessary to show that the facility or service will comply with the purpose of this act. Upon receipt of any application and payment of the fee, the secretary, with advice and counsel from the local health authorities and the county commission, shall make an investigation of the proposed solid waste processing facility or disposal area and determine whether it complies with the provisions of this act and any rules and regulations and standards adopted thereunder. When the investigation reveals that the facility or area does conform with the provisions of the act and the rules and regulations and standards adopted thereunder the secretary shall approve the application and shall issue a permit for the operation of each solid waste processing or disposal facility or area set forth in the application. In the event that the facility or area fails to meet the rules and regulations and standards required by this act the secretary shall issue a report to the applicant stating the deficiencies in the application. The secretary may issue temporary permits conditioned upon corrections of construction methods being completed and implemented.

(c) The annual fee for a solid waste processing or disposal permit shall be, \$50 and no refund shall be made in case of revocation. All fees shall be deposited in the general fund in the state treasury. A city, county, other political subdivision or state agency shall be exempt from payment of the fee but shall meet all other provisions of this act.

(d) Plans, designs and relevant data for the construction of solid waste processing facilities and disposal sites shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, alteration or operation of such facility or area. In adopting rules and regulations, the secretary may specify sites, areas or facilities where the

environmental impact is minimal and may waive such preparation requirements provided that a review of such plans is conducted by a professional engineer licensed to practice in Kansas.

(e) Each permit granted by the secretary, as provided in this act, shall be subject to such conditions as the secretary deems necessary to protect human health and the environment and to conserve the sites. Such conditions shall include approval by the secretary of the types and quantities of solid waste allowable for processing or disposal at the permitted location.

(f) As a condition of granting a permit to operate any processing facility or disposal area for solid waste, the secretary ~~shall~~ may require the permittee to provide surety bond, cash bond or a secured trust fund and liability insurance, including coverage against non-sudden occurrences, or any combination thereof, in such amount as determined necessary by the secretary to insure the financial responsibility of the permittee for any liability incurred in the operation of the facility or area and to insure that, upon abandonment, cessation or interruption of the operation of the facility or area, all appropriate measures are taken to prevent present or future damage to human health and the environment. Any such liability insurance as may be required pursuant to this subsection or pursuant to the rules and regulations of the secretary shall be issued by an insurance company authorized to do business in Kansas or by a licensed insurance agent operating under authority of K.S.A. 40-246b, and amendments thereto, and shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance pursuant to K.S.A. 40-216, and amendments thereto, except as authorized by K.S.A. 40-246b, and amendments thereto. Nothing contained in this subsection shall be deemed to apply to any political subdivision, state agency, department or agency of the federal government or to any independent contractor operating a solid waste disposal area as a part of an approved solid waste management plan for which equivalent surety is provided to a political subdivision or

federal or state agency.

(g) Permits granted by the secretary, as provided in this act, shall be revocable or subject to suspension whenever the secretary shall determine that the solid waste processing or disposal facility or area is, or has been constructed or conducted in violation of this act or the rules and regulations or standards adopted pursuant to the act, or is creating a hazard to persons or property in the area or to the environment, or is creating a public nuisance.

(h) In case any permit is denied, suspended or revoked the person, city, county or other political subdivision or state agency may request a hearing before the secretary in accordance with K.S.A. 65-3412, and amendments thereto.

Sec. 10. K.S.A. 65-3407 is hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON S.B. 484

PRESENTED TO SENATE ENERGY AND NATURAL RESOURCES COMMITTEE ON FEBRUARY 5, 1986

This is the official position taken by the Kansas Department of Health and Environment on S.B. 484.

BACKGROUND INFORMATION:

S.B. 484 would amend K.S.A. 2-1904 to include the Secretary, Kansas Department of Health and Environment, as a member of the State Conservation Commission. The Commission currently consists of nine members. Although KDHE presently has a very good working relationship with the Commission, the Commission's membership does not include a person whose main responsibility by position is to protect the environment. Agricultural nonpoint sources of pollution can have a significant effect on Kansas surface water quality.

More effective steps should be taken to reduce pollutant loads from nonpoint sources. The localized nature of nonpoint source pollution makes a national strategy ineffective by not providing enough flexibility and specificity to solve local problems. State management of nonpoint source control programs is one of the key controlling measures to achieve better water quality protection. The Department of Health and Environment, as the state's manager of water quality programs, must establish whether a water quality problem is related to nonpoint sources and should assist in determining which of these problems should receive priority attention. It is at the state level that local conditions can be properly weighed to determine what type of corrective strategy is needed, whether progress toward achievement of objectives is being made, and what adjustments are needed for a more effective strategy.

The following points should be emphasized:

1. The State Conservation Commission is responsible for advocating conservation of soil and water.
2. The Kansas Department of Health and Environment is responsible for advocating water pollution control and water quality protection.
3. Agricultural soil conservation would result in water quality protection.
4. The State Conservation Commission would greatly benefit from a member who represents water quality protection.
5. Making this change would formalize the relationship between the two agencies and would be an effective step in enhancing Kansas water quality protection and soil conservation programs without additional costs incurred.

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STRENGTHS:

The proposal would provide the necessary link between the state's water quality management program and the agency responsible for policy and cost sharing programs addressing soil conservation.

WEAKNESSES:

The weakness may be in that the membership of the Commission would be expanded.

DEPARTMENT'S POSITION:

The Department supports S.B. 484, which would provide for representation of the Secretary, Department of Health and Environment, on the State Conservation Commission.

Presented by: Sharad V. Bhatia, Director
Division of Environment
Kansas Department of Health
and Environment



State Conservation Commission

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PRESENTATION BY
KENNETH F. KERN
EXECUTIVE DIRECTOR

SENATE ENERGY AND NATURAL
RESOURCES COMMITTEE

SB-484

February 5, 1986

Thank you Chairman Werts and members of the committee for the opportunity to respond to Senate Bill No. 484.

The State Conservation Commissioners have directed me to testify in opposition to the provisions of this bill which would add the Secretary of Health and Environment or person designated by the Secretary to the State Conservation Commission.

The Commissioners' reasons for opposing this portion of the bill are:

1. The current nine member commission has been operating very effectively with primary advisors from closely related agricultural and farm related agencies.
2. The state water plan has developed a very close working relationship between state agencies.
3. The State Conservation Commission programs are fully coordinated and utilize the expertise of other state agencies.
4. All Commission meetings are open meetings and any agency, organization or individual can submit information or make presentations.
5. Invitations have been extended to the water related state agencies to participate in the Commission meetings.
6. All state water related agencies are involved in various planning, review and implementation phases of the Commission programs.
7. The farm community is under a very high degree of stress and the addition of a regulatory agency to the Commission would appear as another threat to the existence of farmers.

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KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON S.B. 487

PRESENTED TO Energy and Natural Resources Committee

March 5, 1986

This is the official position taken by the Kansas Department of Health and Environment on S.B. 487.

BACKGROUND INFORMATION:

S.B. 487 would require the filing and approval of environmental protection plans for all new or proposed public water impoundments and water wells. This proposal was adopted as part of the Kansas Water Plan as recommendations 56 and 57.

An environmental protection plan would outline a strategy for protection of drinking water sources and provide necessary backup information for the municipal agencies responsible for its implementation. This would include a review of existing information on the quality of the municipal drinking water, the location of potential contaminant sources, identification of remedial measures and protection strategies, evaluation of existing regulations and management practices and amendments or new measures where appropriate.

The Authority took a strong position that increases in population will result in greater dependence on surface and groundwater resources in the state. Pesticides have been detected in surface water samples taken from city lakes. Organic chemicals are being found in city wells. The procedures used by the state in approving protection plans for city water supplies are not adequate. The proposed legislation would require the preparation of environmental protection plans for all new sources of public water supplies. In addition, in order to phase in existing sources, a water supply permit would be issued or reissued on a five-year cycle.

STRENGTHS:

The environmental protection plans, if prepared and implemented in a prudent way, should reduce the likelihood of groundwater contamination. Likewise, potential sources of contamination within the zone of influence would have been identified, characterized and could be identified more readily in the case of groundwater contamination.

WEAKNESSES:

Local units of government may argue that the plans are costly and that they lack authority to implement.

DEPARTMENT'S POSITION:

The Department supports S.B. 487.

Presented by: Sharad V. Bhatia, Director
Division of Environment
Kansas Department of Health
and Environment

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