

Approved _____
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Ross Doyen at _____
Chairperson

8:03 a.m. ~~p.m.~~ on March 17, 1992 in room 423-S of the Capitol.

All members were present except: All members were present.

Committee staff present:

Pat Mah, Legislative Research Department
Raney Gilliland, Legislative Research Department
Don Hayward, Revisor of Statutes
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:

Ron Hammerschmidt, Kansas Department of Health and Environment

The Chairman called on Ron Hammerschmidt, Kansas Department of Health and Environment for a briefing on HB 2801 - concerning solid waste management; relating to local solid waste management committees and plans.

Ron Hammerschmidt's briefing included the review and updating of the Kansas Solid Waste Act. He said the adoption of the federal Subtitle D regulations, changes in the technology of solid waste management and environmental needs required that this act be examined (Attachment 1). He also distributed a map of the general availability of groundwater and normal annual precipitation in Kansas (Attachment 2). During the briefing he responded to questions regarding the propose changes.

A motion was made by Senator Frahm to adopted the minutes of February 5 and 6. Senator Sallee seconded the motion. Motion carried.

Chairman Doyen announced the hearing on HB 2801 would be on March 24 and possibly March 25.

The meeting adjourned at 8:58. The next meeting will be March 18, 1992.

1991 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date March 17, 1992

PLEASE PRINT

GUEST LIST

<u>NAME</u>	<u>REPRESENTING</u>
Rich McFee	KLA
Ron Hammarschmidt	KDHE
Shari L. Wilson	KDHE
Clayton S. Suter	Ks Dept Comm.
Marie Pentz	City of Leavenworth
Charlie Sedlock	Hamm
Woody Moses	ICPPA Topeka
DAVE WALKER	WALKER STONE & INC
DAVID C. VAN PARKS	LEAVENWORTH COUNTY
GERRY RAY	Johnson County Commission
JIM HEWITT	LEAVENWORTH COUNTY
Joyce A. Wolf	Ks. Audubon Council
JOE DANIELS	LEAVENWORTH Co. HEALTH DEPT.
Ed Sass	Easton Township
Sy Nyhart	Leavenworth County
William L. Mitchell	KANSAS Recyclers ASSN.
PAT CURRY	KDHE
Mary Ann Bradford	League of Women Voters
TERRY LEATHERMAN	KCCI
STEVE KEARNEY	PETE McGILL & ASSOCIATES

1991 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date March 17, 1992

PLEASE PRINT

GUEST LIST

<u>NAME</u>	<u>REPRESENTING</u>
HARVEY LEAVER	LEAVENWORTH CO
Scott Andrews	Sierra Club
Chiquita Cornelius	K.S. B.I.R.P.
Pat Hubbell	K.S. Railroad Assn.
Doug Bark	Kansas City, KS
Wm Singer	Liberal, KS
Glen E. McNamee	Coffeyville KS,
John Torkent	KAC
ED SCHAUB	KPC
JOHN C. BOTTENBERG	City of Kansas City
Jerry Szelen	Attorney
Don Aaron	Heavenworth Country Club
MIKE WOSCIUK	DOB
Mark Splitter	Buhler High School
Shawn McGrath	KWRC
Chris Wilson	KFCA



Department of Health and Environment

Azzie Young, Ph.D., Secretary

296-1535

Reply to:

Testimony presented to

Senate Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

HB 2801

I. Introduction

Good morning, members of the Committee on Energy and Natural Resources. My name is Ron Hammerschmidt. I am the Deputy Director of the Division of Environment for KDHE. I am here today to present testimony in support of House Bill 2801.

In the early 1970's Kansas took a very progressive step with the passage of the Solid Waste Act. This act established a process for local governments to use in planning for solid waste management. In addition, this act established authorities for the Secretary of Health and Environment to regulate solid waste management activities within the state. For its time this act has proven to be an effective law. The major shortcoming of the planning and regulatory process has been a lack of funding for support of the local planning efforts and the regulatory and technical assistance programs of the agency.

In recent years, the Environmental Protection Agency and surrounding states have re-discovered solid waste as an issue. Until the promulgation of the Federal Subtitle D regulations last fall, the EPA had little regulatory interest in solid waste management. Many states including Missouri, Iowa, and Nebraska have passed new solid waste laws in recent years. These statutes have led to very intensive planning and regulatory activity in these states.

It is time to review and update the Kansas Solid Waste Act. The adoption of the federal Subtitle D regulations, changes in the technology of solid waste management, and environmental needs require that we examine this act and make both minor and major amendments to the Solid Waste Act. House Bill 2801 is the vehicle for this examination and discussion. We have prepared an outline of the provisions of HB 2801 to facilitate your review of the bill.

E.F.N.R.
3-17-92

Attachment 1
1-1

Before I go through this outline, I will describe the KDHE vision of the future of the solid waste program. We aspire to establish state of the art systems for the management of solid waste in Kansas which include reduction, recycling, and material reuse in preference to land burial. The first task that we must accomplish is a revision, actually a total redrafting, of the state solid waste management plan. This document together with new or revised rules and regulations will serve as the guide for counties or regions in their planning efforts. Second, we view the counties and regions as the key players in the solid waste management process. In HB 2801 we have retained current responsibilities for solid waste management and have established some new ones. We have however attempted to avoid any prescriptive language such as bans on yard waste in order that the counties or regions maintain a maximum amount of flexibility in developing and implementing effective solid waste management systems at the local level. Solid waste is generated at the local level. The responsibility for management should be at the same level. The counties and regions will have to review and revise their existing solid waste plans. In addition, we must begin to address the issue of enforcement, remediation, and other environmental concerns. The adoption of the federal Subtitle D regulations will force many existing landfills out of business. There will be a need to either direct responsible parties in the performance of the necessary closure and possible remediation work, or in limited cases for the state to perform remediation to protect the public health and the environment.

House Bill 2801

SECTION ONE

Definitions:

- "Solid waste" definition modified to exclude hazardous waste as defined in K.S.A. 65-3430.
- "Solid waste processing facility" definition broadened to include "reclamation facility."
- "Person" definition modified with technical changes.
- "Closure" definition added. (Subtitle D)
- "Post closure" definition added. (Subtitle D)
- "Reclamation facility" definition added.

SECTION TWO

- Cleanup of planning language.
- Allowance for regional planning through interlocal agreement.
- Removal of "opt out" provision for cities.
- Redefinition of solid waste management committee membership.

Current Statute

HB 2801

One County Commissioner
County engineer
County health officer
County planner

County Designees including
county engineer, county health
officer, county planner or any
other commission appointees.

One representative from
each city and township.

One representative of each
class of city.

Two representatives from
the public at large.

Representatives of the public,
citizens organizations,
private industry, private solid
waste industry, private scrap
dealer or recycler.

County recycling coordinator

- Responsibilities of solid waste management committee
 - Preparation of plan or plan revisions.
 - Annual review of plan.
 - Public hearing on plan at least every five years.

- County or regional responsibilities
Adoption and implementation of solid waste management plan.
Demonstrated communication with other counties or regions which may be affected by plan.
- Addition to plan requirements
Identification of public education components.
Waste reduction goals to be established by local solid waste management committee.

SECTION THREE

- New section (a)(9) allows secretary to assist in developing regional plans.
- New section (a)(12) is explicit language for permitting of solid waste disposal areas. (Subtitle D)
- New section (a)(17) gives the secretary authority over transporters of solid waste.
- Amended section (a)(18) extends post-closure requirement from 10 to 30 years. (Subtitle D)
- New section (a)(19) authorizes cooperative agreements between KDHE and Department of Commerce for recycling and market development.
- New section (b) requires the secretary to allow the federal Subtitle D exemption for certain design and monitoring requirements for "arid regions."

SECTION FOUR

- Adds language that allows the secretary to include a review of the need for a facility which is consistent with the waste management plan in considering an application for a permit.
- Adds language for civil and criminal background investigations as part of the permit application review process.
- Establishes an application fee of up to \$ 5,000 for a new permit.
- Increases the annual renewal fee from \$50 to an amount up to \$ 2,000.
- Removes the local and state agency exemption from payment of permit fees.
- Adds mechanisms for financial assurance including trust fund, letter of credit, insurance or financial test. (Subtitle D)
- Extends requirements for coverage to include sudden occurrences.
- Adds requirement for political subdivisions to demonstrate financial responsibility when they operate a landfill. (Subtitle D)

- Adds requirement for financial assurance for "operational activities". (Subtitle D)
- Section (i) is amended to clarify that permits are not transferable.
- Section (i) is strengthened to include enforcement for threatened acts, failure to pay fees and continual acts. (Subtitle D)

SECTION FIVE

- Planning assistance grants for cities is revoked.
- Adds authority for secretary to grant up to 90% of funds needed to prepare regional solid waste plans.
- Grants to be made from solid waste management fund subject to legislative appropriations.

SECTION SIX

- Increases maximum civil penalty from \$500 to \$5,000. (Subtitle D)
- Eliminates language concerning appeals which is inconsistent with KAPA.
- Adds "threatened or actual violations" as a basis for administrative actions.
- Modifies the authorities for prosecution to include the attorney general, district or county attorney, and secretary of health and environment.

SECTION SEVEN

- Creates a dedicated solid waste management fund.
- Revenue into fund:
 - Solid waste tipping fee of \$1.50 per ton.
 - Application and renewal fees.
 - Gifts and non-federal grants.
- Expenditures from fund:
 - Planning grants to regions and counties.
 - Costs for plan reviews and technical assistance.
 - Environmental monitoring of sites.
 - Payment of post closure cleanup costs, i.e. erosion control, if substantial threat exists.
 - Emergency remediation of sites closed before effective date of act.
 - Emergency acts to protect public health and the environment.
 - Non-emergency corrective actions.
 - Payment of program costs.
- Section (d) creates a cost recovery mechanism for funds expended from the solid waste management fund.

SECTION EIGHT

- Establishes the authority for collection of a tipping fee of \$1.50 per ton.
- Establishes authority for regions to charge an out-of-region tipping fee.
- Establishes a county collected fee of \$25 per ton on all out of state waste.

III. Discussion

There are a number of controversial features of HB 2801.

This bill eliminates the ability of individual cities to opt out of the county planning process. It was our intent in drafting this proposal to move the state toward regional solid waste management planning with the county as the smallest unit. The design and operational requirements of federal Subtitle D will require the development of sophisticated solid waste management and disposal systems. The regional model appears to be the most effective and efficient.

A second controversial issue is the statewide tipping fee. House Bill 2801 establishes this fee at \$ 1.50 per ton or equivalent volume. The expenditures from the fund approved by the legislature through the appropriation process as is currently done for the petroleum storage tank release trust fund. The annual fiscal impact for this bill are:

1. Regulatory program (16 FTEs)	\$ 945,500
2. Planning grants to counties/ regions.	\$1,541,000 *
3. Remedial program	8 FTEs \$ 363,500
Cleanup contracts	\$ 850,000

Estimated annual total \$3,700,000

* A small amount of these funds may be spent on public education.

Testimony - HB 2801
Page Seven

It is estimated that the amount of municipal solid waste generated in Kansas is 2.5 million tons per year. A tipping fee of \$1.50 would generate approximately \$3.75 million in revenue. The approximate distribution of a fee of \$1.50 per ton would be:

Regulatory program	\$ 0.38
Aid to counties/regions	0.62
Remedial program	0.15
Cleanup contracts	0.34
Rounding factor	0.01
TOTAL	\$ 1.50

The cost for any program could be reduced through a reduction in the expectation for the program. If for instance, the budget process reduced the remedial contract expenditures from \$850,000 to \$250,000 the per ton cost would be reduced from \$0.34 per ton to \$0.10. The number and magnitude of remedial projects would be reduced.

The priorities of the agency for the program expenditures authorized in this bill in order of decreasing priority are:

- Regulatory/Technical Assistance Program Development
- Planning Grants for Counties and Regions
- Remediation Oversight
- Remediation Contracts

House Bill 2801 was amended by the House of Representatives to impose a fee of \$25 on out-of-state solid waste. The intent of this amendment was to give counties funds to pay for closure and post-closure activities at landfills. While this is a laudable goal, it appears to be in direct conflict with a number of United States Supreme Court rulings on restriction of interstate commerce.

IV. Possible Modifications

The City of Kansas City has raised a pertinent question concerning the ability of a county to delegate its responsibility for solid waste management planning to a "designated city." This is the current practice in both Wichita and Kansas City although the approach is different. The department has no objection to clarify language in HB 2801 under the following conditions:

1. The county must take an affirmative action to delegate responsibility to a city by interlocal agreement.
2. The "designated city" assumes responsibility for the solid waste management planning for the entire county.

We have discussed this issue with representatives of Kansas City and should be able to develop a suitable language for your consideration.

Second, the livestock industry has raised the issue of agricultural waste and its inclusion as "solid waste". There is concern that the exemptions for agricultural wastes under K.S.A. 65-3409 may not be sufficient to cover composting and other beneficial uses of these wastes. The department has no opposition to addressing these concerns in HB 2801 as long as the agricultural wastes are kept out of sanitary landfills and their management does not cause an environmental hazard. In some states significant amounts of agricultural wastes are beginning to enter sanitary landfills. The department would be concerned about creating exemptions for these wastes which are too broad. Again development of suitable language for your consideration is possible.

Third, members of the solid waste management industry are concerned that the department does not have sufficient authority to regulate "special wastes" which enter the landfills. These wastes are those materials which are not typical solid waste. More specifically, these wastes include waste from asbestos removal projects, remediation projects related to underground storage tanks, contaminated or spoiled foods, and industrial or manufacturing wastes which are not hazardous wastes. The department has previously managed these wastes under the general powers of the secretary for solid waste regulation. As you might suspect, the department has no objection to adding clarifying language on this issue.

One issue which was discussed at length during the House deliberations was recycling. Recycling facilities were originally included in the revised definition of "solid waste processing facility" in Section 1 (c). As noted previously this term has been replaced by "reclamation facility." The department is seeking a means to regulate a small number of firms that handle hazardous

Testimony - HB 2801
Page Nine

substances yet are not subject to regulation. It was never our intent to regulate the Girl Scouts, 4-H clubs and others who perform valuable services in collecting recyclable materials. The agency worked with the House subcommittee to develop the current language.

In addition, the House removed from the allowed expenditures for the Solid Waste Management fund the authority to use money from this fund for market development. While we feel that market development is important, there may be other avenues to provide these market incentives. We urge the legislature to continue to consider market development for recycled materials as a high priority. From a fiscal standpoint, the funds identified in the fiscal note for market development would be transferred to the planning grants for counties and regions.

Conclusion:

As I stated in my introductory remarks, we attempted to develop an approach in HB 2801 which sets guidelines for the counties and regions in preparing and implementing their solid waste management plans. The agency does not support the idea of prescriptive bans on certain portions of the solid waste stream such as yard waste. Rather we support the concept that county and regional solid waste management should address local issues in the manner that is the best for their locality. Therefore, we urge you to reject any suggestions that will impose statewide bans on designated materials or added more restrictive language to HB 2801.

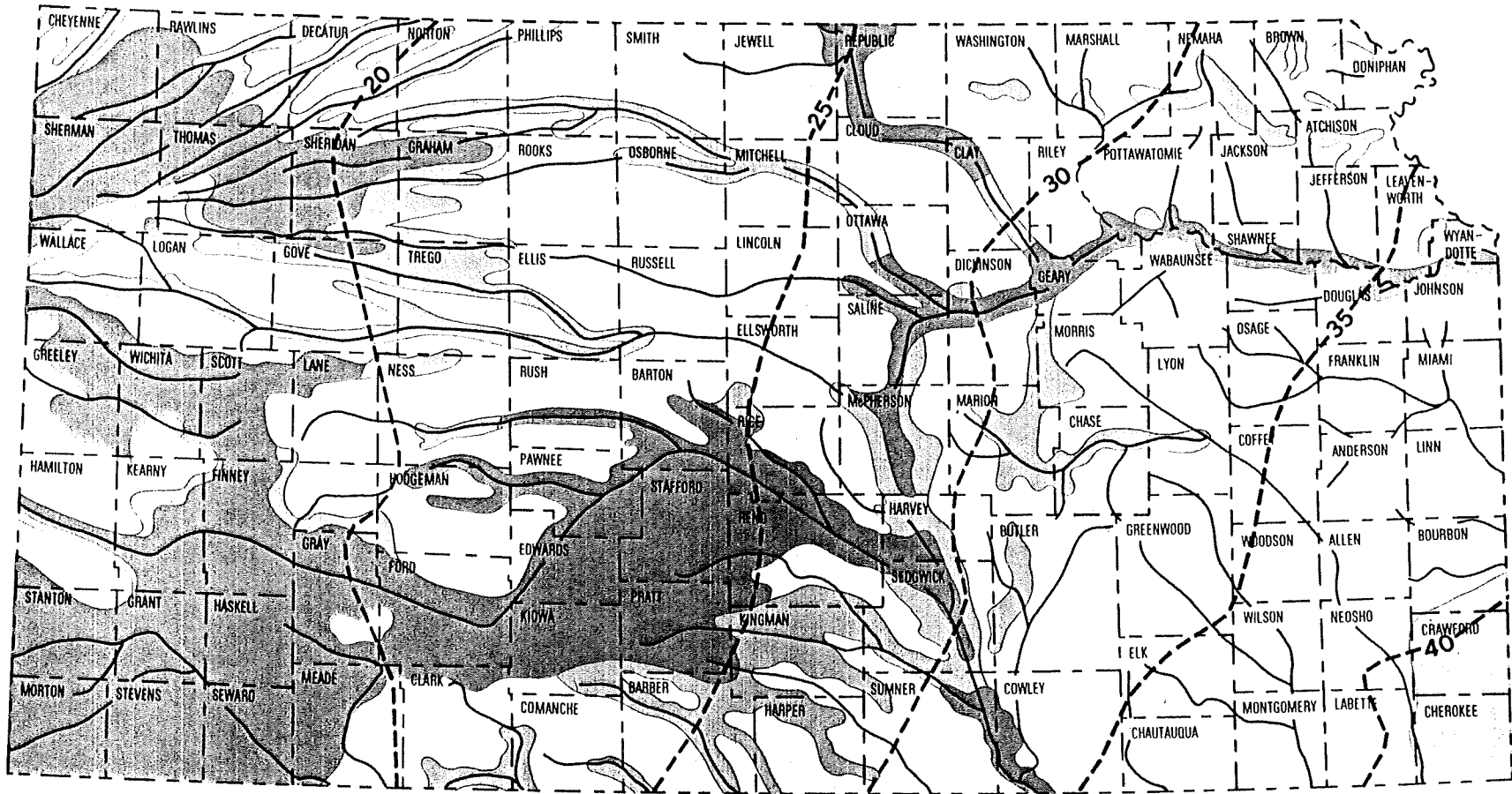
The passage of HB 2801 is important to all citizens of Kansas. It is imperative that we develop a comprehensive system for the management of solid waste in Kansas. While the federal Subtitle D regulations will drive many of our actions in the next two years, we should not lose sight of our ultimate goal, the protection of public health and the environment and the maintenance of a productive society in Kansas. We must plan for solid waste management and implement these plans. It is very important for you to approve this legislation.

Mr. Chairman, members of the committee, I realize that my testimony on HB 2801 has been rather lengthy. I hope that the intent of the agency and our plans for improving solid waste management in Kansas are evident. I will attempt to answer any questions that you may have.

Testimony presented by: Ronald F. Hammerschmidt, Ph.D.
Division of Environment
March 17, 1992

General Availability of Groundwater and Normal Annual Precipitation in Kansas

Handwritten notes:
 F+NR
 8-17-92
 pg 1
 Attachment 2
 2-1



Yield of greater than 500 gallons per minute
 Yield of 100-500 gallons of water per minute
 Yield of less than 100 gallons of water per minute

Precipitation contours in inches per year

0 100 mi