

Approved: Carl Dean Holmes 3-15-95  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on February 21, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Kline - Excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Jack Brown - City of Wichita  
David Warren - City of Wichita  
Karl Mueldener - KS Department of Health and Environment  
Leary Johnson - Trego County  
Paul Pavlu - Ness County  
Craig Crosswhite - Jetmore KS  
Anne Spiess - KS Association of Counties  
Bill Upman - Waste Management of Kansas Inc  
Bill Bider - KS Department of Health and Environment

Others attending: See attached list

The Chair opened the Committee meeting to hearings on two bills.

**Hearing on HB 2439:**

**Jack Brown.** (See Attachment #1.) In support of **HB 2439**, Mr. Brown illustrated the problems of the current KDHE policy of allowing the proliferation of small sewage treatment facilities with an incident last year in Sedgwick County. He explained a small community wastewater plant discharge upstream of the City of Wichita created a fish kill in Chisholm Creek, and raised fecal coliform counts in the Big and Little Arkansas River Basin. The levels were to the point that it prompted KDHE to issue a health advisory for Chisholm Creek and its companion stream areas.

Mr. Brown stated this measure does not go far enough and that the City of Wichita would ask that the Committee consider strengthening the bill to include any wastewater treatment facility that a regional wastewater treatment facility can serve economically. Also, that the legislation take effect immediately upon publication in the Kansas Register. He concluded that this legislative change is consistent with KDHE objectives, as set forth in their rules and regulations and would strengthen same.

**David Warren.** (See Attachment #2.) Mr. Warren reiterated Mr. Brown's proposal regarding the strengthening of **HB 2439** by the inclusion of some new language. He said that in recent years the City of Wichita has attempted to negotiate wholesale sewage treatment services with a number of its neighbors. In all cases, the contract with Wichita offered was the most cost effective means of providing sewage treatment services. Nonetheless, Park City and Haysville chose to construct and operate their own wastewater treatment facilities. When Wichita sought support for regional sewer service from KDHE, the City was told that while the state agreed with and supported the City's efforts, that the language on "regionalization" of sewage treatment facilities was a policy statement in the State's Water Quality Management Plan and thus had no legal requirement for enforcement.

Mr. Warren provided possible amendments to the bill as is indicated with his attachment.

**Karl Mueldener.** Mr. Mueldener explained that it is KDHE's policy to attempt to regionalize wastewater systems where possible, and they made an effort to have Park City connect to the City of Wichita. Park City

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on February 21, 1995.

made it clear that regardless of the cost, they wanted to build their own plant. Even with the many years of work put into this particular situation, Mr. Mueldener reported that it ultimately resulted being heard in the courts. He added that KDHE does not believe it is appropriate to allow state and federal financing for the City of Park City to build their own treatment plant.

Mr. Mueldener reported that KDHE has had some successes in the area of regionalization and continues to work to that end where possible.

Mr. Mueldener reported that having perused Mr. Warren's testimony, he viewed it as quite accurate.

### **Hearing on HB 2457:**

Chairperson Holmes referred the Committee to a list of individuals from whom he has received input regarding **HB 2457** via letters, faxes and telephone. The Committee was invited to peruse the communications in his office file. (See Attachment #3.)

Also, the Chair referred to written testimony before them:

**Herschel Betts, et al.** (See Attachment #4.)

**William H. Lewis, et al.** (See Attachment #5.)

**Leary Johnson.** (See Attachment #6.) Mr. Johnson reported that in accordance with EPA requirements, they have installed monitoring wells on their solid waste disposal facilities, and check for contamination periodically. Under the EPA criteria as it pertains to limited annual precipitation and trash collection, he reported that Trego County has met their standards. With the mandate from the State of Kansas for liner requirements, Mr. Johnson said the mandate is unwarranted and can prove very costly to county budgets.

The Trego County landfill site has been at the same location for the past 21 years, and it is anticipated it can last another 15 years. The site has three monitoring wells and is free of water contamination. Mr. Johnson questions why the State of Kansas places additional restrictions on them when there is no threat present - and the situation is periodically monitored.

No matter the alternative solutions, Mr. Johnson said they are a population of 3,600 and each alternative perpetrates its own problems. Any choice they make will increase costs which will (unfortunately) encourage more roadside or farm dumping - defeating the purpose of the program. With the advent of competitive private landfills, Trego County may eventually make a major expenditure and then not be in a position to compete. This could possibly be a subsequent burden to the taxpayers. He solicited the concern and support of the Committee on **HB 2457**, stating that during this period of austere funding, "if it isn't broke, don't fix it."

Mr. Johnson reported Trego County has made initial contact with Waste Management Resources who informed them they have perfected several different marketable resources out of waste. He concluded by recommending that the Committee consider a summer study of the potential technology advances for a profitable trash venture.

**Paul Pavlu.** (See Attachment #7.) On behalf of the Ness County Board of County Commissioners, Mr. Pavlu reported they support **HB 2457**, and believe the bill is of vital importance to smaller, rural counties, particularly those in the western two-thirds of the state. He said that Ness County has been able to comply with federal regulations, but is finding it impossible to comply with state regulations.

Subtitle D of the federal regulations allow for a small landfill exemption, if the disposal is less than 20 tons of trash per day, has less than 25 inches of annual rainfall and has no prior contamination. He reported that their county disposes of less than six tons of trash per day, and has an annual rain fall of less than 25 inches, with proof that no contamination exists. With this record, particularly in light of the fact their landfill has no contamination, Mr. Pavlu said there is no justification for a cost (the County cannot afford) to ship to another site. He said the nearest Subtitle D site is Garden City, Kansas - 85 miles from Ness County. Mr. Pavlu said **HB 2457** offers a common sense approach to solid waste disposal for small, rural counties who simply cannot afford the cost of complying with state mandates, nor the expense of hauling trash great distances.

**Craig Crosswhite.** Mr. Crosswhite stated that each county has monitoring rules as specified by KDHE, and it is important to note that in Jetmore, as well as Trego and Ness Counties, along with others, no contamination has been found in the ground water. It is - simply not a problem. Furthermore, he said there is no indication they are anticipating any problems in this area.

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In answer to KDHE's endeavor to regionalize where possible, Mr. Crosswhite posed the response that small county taxpayers bear the burden for it. He reported that Hodgeman County has approximately 2,100 population and one of the highest mill levies in the state. The average mill levy in Hodgeman County is about 158 mills, which is going to rise another seven mills just for operation of their county landfill. While wanting to work with KDHE, Mr. Crosswhite says they are experiencing frustration when they look at having to pay for non-existing problems, emphasizing again there is no groundwater contamination in their county. In operation for 19 years, complying with all federal standards, they meet the criteria.

He suggests that **HB 2457** has an over-broad reach. He explained that if Sub Section D were interpreted at face value, it could be construed to apply to everyone in the State of Kansas. In anticipation of testimony against this bill, Mr. Crosswhite recommended that the language be narrowed or focused to keep KDHE managing groundwater contamination safety, but still allow the exemption already in place by the federal government.

Mr. Crosswhite said he recognizes the value of KDHE's involvement in this process; he is asking only that the Committee give them some aid in paying in some rational manner.

**Ann Spies.** (See Attachment #8.) Reporting that the Kansas Association of Counties is going to have difficulty taking a definitive position on this bill, since some counties will be supportive and others will oppose it. She said there is some obligation to share some of their thoughts with the Committee regarding this issue.

Ms. Spies said that KAC has worked extensively with KDHE and the process has not always been harmonious and seldom easy. Countless hours and resources have been invested from staff and officials in the Association in search of a sensible solution.

Siting an example of obvious discrepancy, Ms. Spies referred to Ellis County who transfers their trash to a landfill in Topeka, for a round trip distance of more than 400 miles. She contends with this type of scenario something is amiss. There are other counties, however, that have worked closely with KDHE and have moved forward, investing time and money on certain assumptions about the regulatory environment. She asks if it is fair to those counties to change the ground rules at this point in the process.

Ms. Spies suggested to the Committee that **HB 2457** be assigned to a subcommittee where the issues could be discussed more fully and some acceptable alternative found.

**Bill Upman.** (See Attachment #9.) Speaking on behalf of the Waste Management's facilities throughout Kansas, Mr. Upman explained in detail to the Committee three primary concerns:

- If enacted, this will cause Kansas to lose EPA program approval, which carries with it a number of troubling consequences.
- Not requiring a landfill to have a liner system, if the facility can prove it has no groundwater contamination today, does not protect against potential problems in the future.
- Not requiring Kansas landfills to meet minimal standards is bad for the environment.

**Bill Bider.** (See Attachment #10.) In explaining a brief history of the development of this regulation, Mr. Bider said a great deal of time has been devoted to this issue. There were approximately ten small Kansas counties participating in an advisory group working toward a solution. Although there was not total agreement, he said a consensus was reached that some type of liner was warranted in any landfill that exists - or a demonstration was required that the soils that were there naturally provided an equivalent grade of protection to the groundwater. Mr. Bider said that is what the regulations do.

Under the scenario wherein KDHE eliminates soil compaction requirements for all landfill liners and caps, EPA would be forced by federal law to withdraw state approval to administer the Subtitle D program. Without the KDHE approval, it is probable that the exempt status of many small landfills would be brought into question by third parties because KDHE utilized maximum flexibility in granting exempt status to counties. This would be particularly with respect to the evidence of groundwater contamination and the existence of a practical alternative.

Mr. Bider said it is their recommendation to maintain the existing small landfill liner design standards which offer some degree of assurance that disposal activities will only take place in appropriate locations. He said these regulations allow counties to demonstrate that they do not need a compacted soil liner if native soils offer

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equivalent protection. This demonstration consists of soil borings and tests which are currently funded under their planning grant program. If the demonstration fails, a compacted soil liner would be required after October 9, 1996.

He reported that it is uncertain whether **HB 2457** is retroactive. Because the recently adopted landfill regulations already establish soil permeability standards, they are uncertain as to whether the amendment to the law would cause existing regulations to be repealed. If, he concluded, it is not retroactive, the bill would have no effect on the landfill design and permitting program.

**Action on HB 2044:**

Representative Lawrence made a motion to take **HB 2044** off the table. Representative Feuerborn seconded. Motion carried.

Representative Lawrence moved to adopt the proposed amendment as **Substitute HB 2044**. Representative Freeborn seconded. Motion carried. (See Attachment #11.)

Representative Lawrence moved to report **Substitute HB 2044** favorable for passage, as amended. Representative Freeborn seconded. Motion carried.

**Action on HB 2474:**

Representative Freeborn moved to adopt the proposed KCC amendment to **HB 2474**. Representative Alldritt seconded. Motion carried. (See Attachment #3 of February 20 Committee Minutes.)

Representative McKinney made a motion to report **HB 2474** favorable for passage, as amended. Representative Hutchins seconded. Motion carried.

**Action on HB 2521:**

Representative Alldritt moved to report **HB 2521** favorable for passage. Representative Myers seconded. Motion carried.

**Action on HB 2522:**

Representative Lloyd made a motion on Page 1, lines 39 and 40; and Page 6, line 2, amend language to read *Division of Water Resources of the State Board of Agriculture*. Representative McClure seconded. Motion carried.

Representative Lawrence moved to report **HB 2522** favorable for passage, as amended. Representative Lloyd seconded. Motion carried.

There being no further business to come before the Committee, the meeting adjourned at 5:40 p.m.

The next meeting is scheduled for February 22, 1995.

# ENERGY AND NATURAL RESOURCES COMMITTEE GUEST LIST

**DATE: February 21, 1995**

NAME	REPRESENTING
Elizabeth Webster	Hodgeman County
Lewis D. Webster	Hodgeman County
Renton Weltmer	Smith County
CRAIG S. Crosswhite	Hodgeman County
Loyal Kettner	Smith County
Forbes Matterson	Phillips County
Red Kessler	KDHE
Clint <del>Wright</del>	Senator Burke
CLAUD S. SHELOR	VBP, Inc
Kathleen Brown	House Committee
Jack Brown	City of WICHITA
DAVID R WARREN	City of Wichita
Karl Muelchner	KDHE
Bill Bider	KDHE
Don Mader	League of KS Man.
Jim Kays	City of Topeka/Hays
Shirley Allen	SWBT
George Barber	KCE
Bill <del>Spencer</del>	Waste Mgmt of Kansas

Team E+NR

2-21-95.

STEVE KEARNEY

ALAN COBB  
Leary Johnson

Paul O'Leary  
Fred Flax

Alan STEPPAT  
Alan Holme

Ron Creagh  
Arlene Eveleigh

Anne Spiess

WMX TECHNOLOGIES

City of Wichita  
Frego County

Wass County  
Noss County

PETE McWILL & Assoc.  
Division of Budget

Frego Co.  
Frego Co.

Ks. Assoc. of Counties

Testimony presented to  
House Energy and Natural Resources Committee  
by  
City of Wichita, Kansas  
regarding  
House Bill 2439  
on  
February 21, 1995

Chairman Holmes and members of the House Energy and Natural Resources Committee, I am Jack Brown, Director of Environmental Health for the Wichita-Sedgwick County Department of Community Health. I am here today to provide testimony in support of House Bill 2439.

From an environmental perspective it is our experience that many small wastewater facilities tend to be located along small receiving streams. In situations of plant upsets due to industrial discharges or other operations failures concentrated sewage and chemicals may discharge into these streams without benefit of treatment or dilution thus polluting the receiving stream and ultimately impacting the adjacent major river basin.

In 1994 in Sedgwick County a small community wastewater plant discharge upstream of the City of Wichita created a fish kill in Chisholm Creek and raised fecal coliform counts in the Big and Little Arkansas River Basin to levels that prompted the Kansas Department of Health and Environment to issue a health advisory for the Chisholm Creek and both the the Big and Little Arkansas Rivers as they pass through the City of Wichita. Unfortunately this incident and advisory occurred during the opening of the Wichita River Festival as thousands of citizens in the metropolitan area were preparing to participate in various recreational activities in and adjacent to the Arkansas River.

I mention this incident as an example to illustrate the problems of the current KDHE policy of allowing the proliferation small sewage treatment facilities and the fact that many of the existing systems across the state of Kansas are often out of compliance, lack strong pre-treatment programs to monitor industrial discharges and consequently are a source of degradation to overall surface water in our Kansas River Basins.

Legislation promoting the regionalization of wastewater facilities not only would allow for the use of bigger more efficient treatment facilities that would have less impact on surface water quality but it would also make local government more efficient, provide for consolidated public services, promote local governmental partnerships and reduce sewage disposal costs to users.

The bill which this committee is reviewing today does not go far enough, however, therefore, the City of Wichita would ask that this committee consider strengthening the bill to include any wastewater treatment

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ility that a regional wastewater treatment facility can server economically and that the legislation take effect immediately upon publication in the Kansas Register.

We feel that this legislative change is consistent with KDHE goals and objectives as set forth in their rules and regulations and would put more teeth behind those rules and regulations.

Thank you for your consideration of Wichita's comments and support of HB 2439.



Testimony presented to  
House Energy and Natural Resources Committee

by

City of Wichita, Kansas

regarding

House Bill 2439

on

February 21, 1995

Chairman Holmes and honorable members of this House committee, I am David Warren. I am director of Wichita's water and sewer department. I appear before your committee today in support of HB 2439.

The City of Wichita has constructed advanced secondary sewage treatment facilities to serve its needs and those of the significant metropolitan area surrounding Wichita. Federal grant money was invested in these facilities to provide facilities of the required complexity and capacity to protect water quality in this area of Kansas.

In recent years, Wichita has attempted to negotiate wholesale sewage treatment services with a number of its neighbors. In all cases, the contract which Wichita offered was the most cost effective means of providing sewage treatment services. Nonetheless, Park City and Haysville chose to construct and operate their own wastewater treatment facilities. The decision to do so was apparently based on the fear of reasonable and necessary growth restraints which Wichita sought in the contract agreements. When Wichita sought support for regional sewer service from KDH&E, the City was told that while the state agreed with and supported the City's efforts, that the language on "regionalization" of sewage treatment facilities was a policy statement in the State's Water Quality Management Plan and thus had no legal requirement for enforcement.

Wichita believes that the proliferation of small sewage treatment facilities where a large regional facility exists and is capable of providing such service is not in the best interests of Kansas, either economically or environmentally.

While Wichita supports HB 2439 in its present form, the City would ask that this committee consider strengthening the bill to include any wastewater treatment facility that a regional wastewater treatment facility can serve economically. Also, that the committee make this legislation effective immediately upon

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Testimony of Wichita, KS

By: David Warren

Re: HB2439

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its publication in the Kansas Register. Wichita offers possible amendments to the bill in the mark-ups attached to this testimony.

Thank you for your consideration of Wichita's comments and support of HB 2439.

## HOUSE BILL No. 2439

By Committee on Energy and Natural Resources

2-8

9 AN ACT concerning sewage; relating to issuance of permits to discharge  
10 sewage; amending K.S.A. 65-165 and repealing the existing section.  
11

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

13 Section 1. K.S.A. 65-165 is hereby amended to read as follows: 65-  
14 165. (a) Upon application made to the secretary of health and environ-  
15 ment by the public authorities having by law the charge of the sewer  
16 system of any municipality, township, county or legally constituted sewer  
17 district, or any person, company, corporation, institution, municipality or  
18 federal agency, the secretary of health and environment shall consider  
19 the case of such a sewage discharge or sewer system, otherwise prohibited  
20 by this act from discharging sewage into any of the waters of the state, or  
21 the extension of a sewer system and whenever it is the secretary's opinion  
22 that *The secretary of health and environment shall issue a permit for the*  
23 *extension of the sewer system or for the discharge of sewage, or both, if*  
24 *the secretary determines that: (1) The general interests of the public*  
25 *health would be served thereby; or that or the discharge of such the*  
26 *sewage would not detract from the quality of the waters of the state for*  
27 *their beneficial uses for domestic or public water supply, agricultural*  
28 *needs, industrial needs, recreational needs or other beneficial use and*  
29 *that such; (2) the discharge meets or will meet all applicable state water*  
30 *quality standards and applicable federal water quality and effluent stan-*  
31 *dards under the provisions of the federal water pollution control act and*  
32 *amendments thereto, as in effect on January 1, 1980; the secretary of*  
33 *health and environment shall issue a permit for the extension of a sewer*  
34 *system or for the discharge of sewage, or both; and 1995; (3) the design*  
35 *of the system is simple, reliable and energy efficient; (4) if the treatment*  
36 *facility is new, there is reasonable evidence that the waste to be treated*  
37 *would exceed the capacity of existing treatment facilities in the area or is*  
38 *incompatible with the waste being treated at such facilities; (5) if the*  
39 *system is a small municipal or industrial waste treatment system, the*  
40 *system utilizes nonoverflow facilities to the maximum extent possible; and*  
41 *(6) if the system is a new, very small waste treatment system, in a met-*  
42 *ropolitan area, there is no other practicable alternative to the new system.*  
43 *The secretary shall stipulate in the permit the conditions on which such*

2-2

1 discharge will be permitted and shall require such treatment of the sew-  
 2 age as determined necessary to protect beneficial uses of the waters of  
 3 the state in accordance with the statutes and rules and regulations defin-  
 4 ing the quality of the water affected by such discharge and may require  
 5 treatment of the sewage in accordance with rules and regulations predi-  
 6 cated upon technologically based effluent limitations. Indirect dischargers  
 7 shall comply with all applicable pretreatment regulations and water qual-  
 8 ity standards.

9 (b) If, in the opinion of the secretary of health and environment,  
 10 issuance of general permits is more appropriate than issuance of individ-  
 11 ual permits, the secretary may establish, by rule and regulation, proce-  
 12 dures for issuance of general permits to the following sources and facilities  
 13 if such sources and facilities involve similar types of operations, discharge  
 14 the same types of wastes or engage in the same types of sludge use or  
 15 disposal practices, require similar monitoring requirements or require the  
 16 same effluent limitations, operating conditions, or standards for sewage  
 17 sludge use or disposal: (1) A category of point and nonpoint sources of  
 18 sewage such as storm water; (2) other categories of point and nonpoint  
 19 sources of sewage; or (3) categories of facilities treating domestic sewage.  
 20 Availability of general permits shall be limited to areas defined by geo-  
 21 graphical or political boundaries such as, but not limited to, city, county  
 22 or state boundaries, state or county roads and highways or natural bound-  
 23 aries such as drainage basins. The secretary may establish, by rule and  
 24 regulation, procedures for the issuance, revocation, modification and  
 25 change, reissuance or termination of general permits in the manner pro-  
 26 vided by law.

27 (c) Every permit for the discharge of sewage shall be revocable, or  
 28 subject to modification and change, by the secretary of health and envi-  
 29 ronment, upon notice having been served on the public authorities hav-  
 30 ing, by law, the charge of the sewer system any municipality, township,  
 31 county or legally constituted sewer district or on the person, company,  
 32 corporation, institution, municipality or federal agency owning, maintain-  
 33 ing or using the sewage system. The length of time after receipt of the  
 34 notice within which the discharge of sewage shall be discontinued may  
 35 be stated in the permit, but in no case shall it be less than 30 days or  
 36 exceed two years; if the length of time is not specified in the permit, it  
 37 shall be 30 days. On the expiration of the period of time prescribed, after  
 38 the service of notice of revocation, modification or change from the sec-  
 39 retary of health and environment, the right to discharge sewage into any  
 40 of the waters of the state shall cease and terminate, and the prohibition  
 41 of this act against such discharge shall be in full force, as though no permit  
 42 had been granted, but a new permit may thereafter again be granted, as  
 43 hereinbefore provided.

1 Sec. 2. K.S.A. 08-108 is hereby repealed.  
 2 Sec. 3. This act shall take effect and be in force from and after its  
 3 publication in the statute book.

↑  
Kansas Register

7-2  
 7-4

**Energy and Natural Resources Committee  
Letters, Faxes & Phone Message Received by Chair  
Support HB 2457  
February 21**

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Rush County Commission  
Robb Tammen, Chair  
George Kenner, Member  
Lon E. Wells, Member

Elmer Ridder  
Wichita County Commission

Jerry J. Fear  
City Administrator  
City of Oberlin

Board of County Commissioners  
Logan County  
Douglas Mackley, Chair  
Virginia B. Beamer, Member  
William M. Robinson, Member

Jeff Raile  
City of Saint Francis

Dave Grothusen  
Scott City

Mike Irvin  
Scott City

Bill Barber  
Scott City

Commissioner Ralph Ostmeyer

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Attachment #3

Herschel B. Betts  
Doyle B. Brown  
Ralph D. Unger  
*Commissioners*  
913-475-8101

Marilyn Horn  
*County Clerk*  
913-475-8102

Pat Fringer  
*County Treasurer*  
913-475-8103

Steven W. Hirsch  
*County Attorney*  
913-475-8104

Patricia M. Whetzel  
*Register Of Deeds*  
913-475-8105

Ken Badsy  
*County Sheriff*  
913-475-8100

Bert Cool  
*EPA Director*  
913-475-8100

John E. Bremer  
*Magistrate Judge*  
913-475-8108

Charlotte Meints  
*Clerk Of The District Court*  
913-475-8107

Bob Keenan  
*Road Supervisor*  
913-475-8111

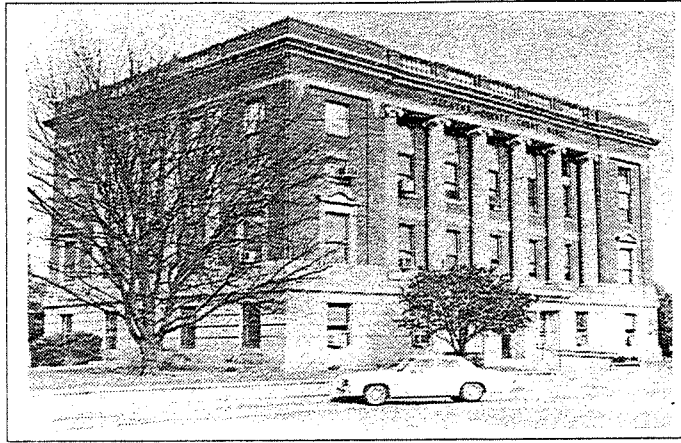
Charles F. Votapka  
*County Weed Director*  
913-475-8128

Eugene W. Wurm  
*County Appraiser*  
913-475-8109

Dean Aldridge  
*County Health Nurse*  
913-475-8118

John Barrett  
*Ambulance Director*  
913-475-8126

Jeanne Pachner  
*Chief Dispatcher*  
913-475-8110



# County Of Decatur

P.O. Box 28

Oberlin, Kansas 67749-0028

February 17, 1995

Chairman Carl Holmes  
House Energy & Natural Resources Committee  
Room 115-S  
State Capitol  
Topeka, KS 66612

Dear Chairman Holmes & Committee Members:

This letter is for the purpose of letting you know that Decatur County Commissioners are unanimous in our support of HB 2457! Further, we urge each of you as a Committee Member to not only support this bill, but to use all of your powers of persuasion to get it thru the full House, and hopefully in to law.

The bill follows the Federal Register relating to small county landfills. Now is the time to get the KDHE in Kansas in harmony with the Federal mandate.

The fifteen Northwest Kansas Counties that are members of the Northwest Kansas Planning Commission have worked diligently with the KDHE for over three years, attending endless meetings all over the area and state trying to make sense and to justify the closing of good, small county landfills.

We hope to accomplish the safety net intended without spending thousands of dollars we do not have, to meet mandates that we cannot justify or explain to our people. House Bill 2457 would finally enable some small counties "that haven't given up" to qualify for the small county exemptions and give them an opportunity to continue to handle the waste in a manner that is safe for the people of our counties and yet meets reasonable guidelines imposed by our state.

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KDHE has worked very hard, trying to please the legislature, EPA, large KS counties, and small KS counties. Many good things have happened due to their efforts: 1) matching grants for tire disposal 2) monitoring wells in most county landfills 3) developing county plans to project into the 2000's for our landfills 4) education of our people for the many needs related to landfills (Hazardous wastes, recycling, composting, etc.) Now it is time to give the counties an opportunity to put this mass of information in place in a manner that relates to the needs of individual counties, understanding that no 2 of the 105 are exactly alike.

Please support this most important bill, with particular emphasis on the last 15 items of Bill 2457! If the bill goes all the way thru, we will finally know that the light at the end of the tunnel is truly not a locomotive.

Sincerely yours,

A handwritten signature in cursive script that reads "Herschel Betts". The signature is written in black ink and is positioned above the typed name.

Herschel Betts, Commission Chairman

ON BEHALF OF THE DECATUR COUNTY COMMISSIONERS:

Member, Ralph D Unger  
Member, Doyle Brown

NORTHWEST KANSAS SMALL SOLID WASTE  
LANDFILL AUTHORITY

Charles A. Peckham  
P.O. Box 46  
308 Main  
Atwood, KS 67730-0046  
913-626-3295  
Fax 913-626-9448

February 17, 1995

We the members of the Northwest Kansas Small Solid Waste Landfill Authority would like to present our comments in support of House Bill 2457.

First we would like to see the bill clearly identify that the landfills being addressed are those that otherwise qualify for the small landfill exemption. In those cases, the groundwater of the landfill has already been tested and identified not to have existing groundwater contamination as previously spelled out in the small landfill exemption.

We feel that House Bill 2457, properly written would revert to the EPA regulations as prescribed in the Federal Register, October 8, 1991, page 50991. This EPA regulation exempts small solid waste landfills from design and groundwater monitor requirements of sub-title "D". The groundwater monitoring exemption has since been overturned by the Federal Courts.

The Federal Register is very clear that its reasoning for giving this exemption is to eliminate financial hardship to small communities of less than 10,000 people who are in low risk areas (less than 25" annual rainfall and generally deep groundwater.)

Since all of the existing small landfills in operation as of January 1, 1995 have already had groundwater testing and had to pass as a requirement of the exemption, we feel that the risk of future contamination is relatively low considering some of these landfills have been in operation for a considerable time. Also since we will be required to do periodic monitoring of the groundwater, it would seem logical that contamination could be determined and corrected before creating a serious problem.

We do not want to create a situation that may jeopardize the future of our groundwater. However, we feel that we don't have the resources to fix a problem that does not exist. Very simply put, if the small landfills are required to put in place the same liner as a sub-title "D" landfill, they cannot afford to do it. The permeability studies as written and presently presented, are designed for a landfill to prove that the soil under the landfill in its natural state percolates leachate at a rate equivalent to that of a compacted clay liner. The idea itself is good, but it

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appears that by the time everything is understood, by all parties and finally accepted and approved, we will again have placed much time and money into our landfills to probably prove what we already knew----which is that areas of very low rainfall and deep water tables are not very good candidates for groundwater contamination.

Presently in the western part of the State that qualifies by rainfall amounts, there are approximately 35 small landfills representing about 35 counties. This is not a large area of population base but we hope that the rest of the State could recognize how the impact of House Bill 2457 could ease the burden of solid waste management to a large geographic area of the State of Kansas.

RAWLINS COUNTY COMMISSIONERS

Wm Lewis  
William H. Lewis, Chairman

Gordon R. Hawkins  
Gordon R. Hawkins

Charles E. Unger  
Charles E. Unger

Testimony: House Energy and Natural Resources Committee 2-21-95

Mr. Chairman, members of the House Energy and Natural Resources Committee, ladies and gentlemen, I am Leary Johnson, a County Commissioner from Trego County.

Mr. Chairman, I am here today to hopefully establish a dialogue between the committee and some of my colleagues who are in the audience. By making my testimony brief, I hope we can reserve some time for questions and answers to assist the committee in formulating their decision on House Bill 2457.

Everyone in this room will agree that the preservation of our water supply is of extreme importance. I assure you, that as County Commissioner, we have the ultimate responsibility to insure the public safety of those we serve. Just part of this responsibility deals with the integrity of our solid waste disposal facilities. In accordance with EPA requirements, we have installed monitoring wells on these facilities and check for contamination periodically. We have met all the EPA criteria in that we have limited annual precipitation and trash collection. Under this criteria the EPA has provided an exemption in which many western Kansas landfills can continue to operate. However, the State of Kansas has mandated a liner requirement as specified in KAR 28-29-103(e). Non compliance can result in closure of our existing sites this coming October. We feel that this mandate is unwarranted and can prove very costly to county budgets.

In the case of Trego County, our landfill site has been at the same location for the past twenty-one years. We project that this site can last another fifteen years. The site has three monitoring wells and is free of water contamination. We, therefore, ask why the State of Kansas places addition restrictions on us when no threat is present and the situation is periodically monitored. It puzzles us that KDHE should invoke this requirement when past legislative intent has been to insure that the state wasn't more restrictive than the Federal Government. The past changes and inconsistencies have already proved costly on already burdened budgets.

There are alternative solutions to our dilemma. However, they don't come without additional expenditures. It may cost us, a small county with less than 3,600 population, approximately \$500,000 to comply as a Subtitle D landfill. This represents about a 18 mill levy increase.

There are cheaper alternatives, however, each perpetrates its own problems. Any choice we make will increase costs which will unfortunately encourage more roadside or farm dumping. This defeats the very purpose of the program.

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The unfortunate nature of the landfill issue is that regardless of what actions we take we are caught in this catch 22 situation. While we have the responsibility to provide a landfill we do not own the trash. With the advent of private landfills, there is a noticeable competition in the field. If we, as a county, should decide to make a major expenditure we might not be able to compete and consequently end up with a white elephant on our hands - all at the expense of the tax payer.

We are convinced that as technology advances trash will someday be a profitable venture. We have already been in contact with Waste Management Resources which has a representative in Wichita. They claim to have perfected nine different marketable resources out of waste. We believe that we should provide time to study this prospect and would highly recommend that the House Energy and Natural Resources Committee give it their attention this coming summer.

We solicit your concern and support as you consider House Bill 2457. We think that during this period of austere funding that if it isn't broke, don't fix it.

BOARD OF COUNTY COMMISSIONERS  
NESS COUNTY, KANSAS

Ness City, Kansas 67560

STATEMENT OF SUPPORT OF HB 2457

To: House Energy and National Resources Committee

From: Board of County Commissioners of Ness County, Kansas

The County Commissioners of Ness County, Kansas, wish to voice their support for HB 2457, a bill concerning solid waste disposal. This bill is of vital importance to smaller, rural counties, particularly those in the western two-thirds of this state.

Disposal of solid waste has been a concern for many years. Recent federal regulations, however, including, but not limited to Subtitle D, have brought the issue to the forefront. Stringent federal regulations have caused the closure of many small landfills. The federal regulators, however, are not the only problem. In a time when state and local authorities are demanding Washington loosen its regulations, we find the Kansas Department of Health & Environment to be even more strict than the federal regulations. While we in Ness County have been able to comply with federal regulations, we are finding it impossible to comply with state regulations. We at the local level feel that the State of Kansas should relax its regulations in this area. We believe this bill is designed to do exactly that.

Subtitle D of the federal regulations allow for a small landfill exemption if the landfill disposes of less than 20 tons of trash per day, has less than 25 inches of annual rainfall and has no prior contamination. Ness county has met those requirements and has been operating under a small landfill exemption since October 9, 1994. As of April 10, 1994, 34 landfills in 33 counties west of U.S. 81 have been granted federal small landfill exemptions. Please refer to the attached map compiled by KDHE.

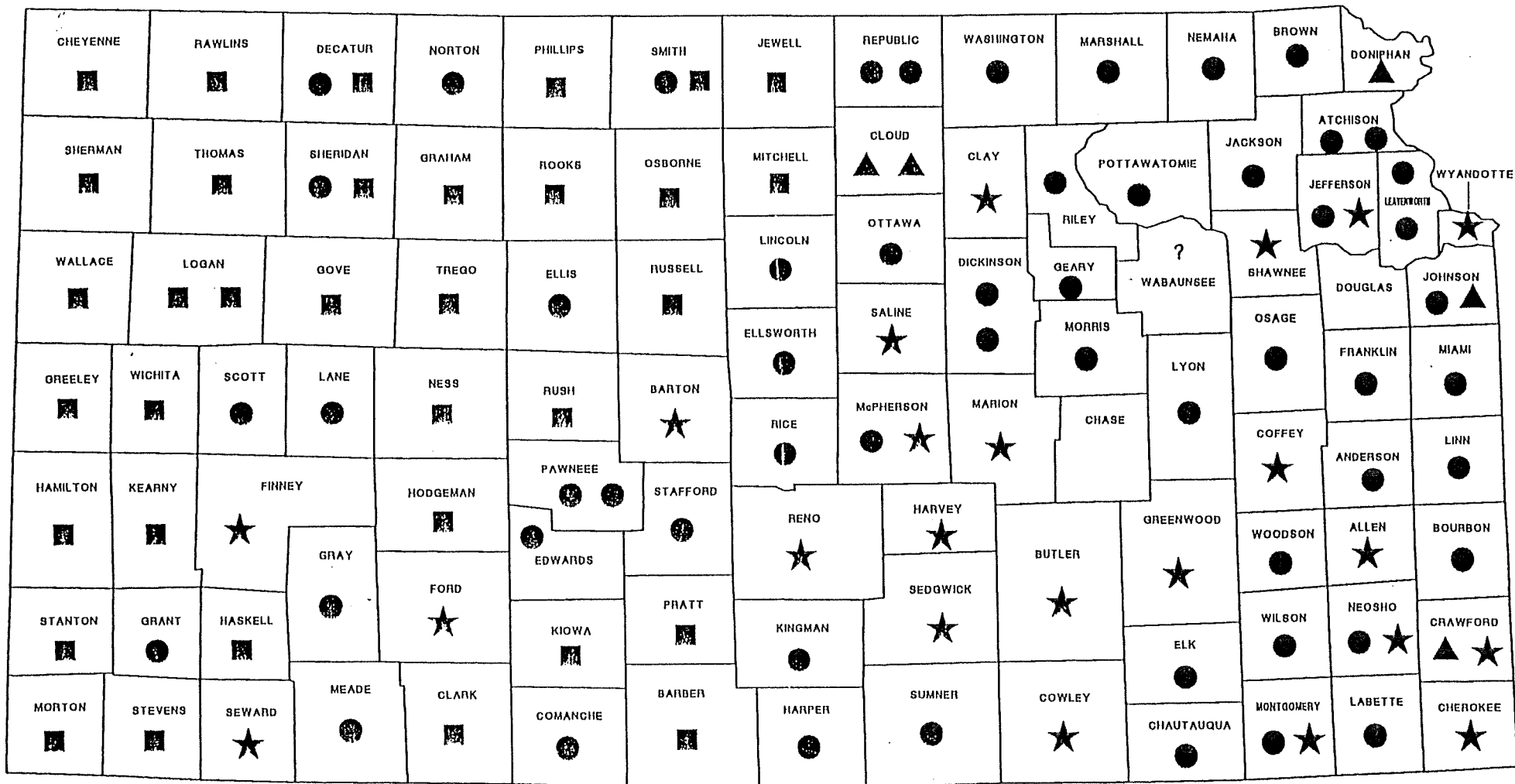
Our county disposes of less than 6 tons of trash per day and has an annual rain fall of less than 25 inches. We have installed five ground water monitoring wells at our landfill site and have proven to KDHE that no contamination exists. The nearest Subtitle D site is in Garden City, Kansas, which is more than 85 miles from Ness City, the county seat of Ness County. We are simply unable to afford the transportation costs of such a haul, particularly in light of the fact that we have a landfill that has no contamination and meets the requirements of the federal regulations. We feel as though the State of Kansas is giving us an unfunded mandate, in much the same manner as the State of Kansas feels the federal government is doing to it.

We believe this bill, if passed and signed into law, would allow for adequate environmental planning, but at the same time would be an economical, commonsense approach to solid waste disposal for small, rural counties who simply cannot afford the cost of complying with state mandates, nor the expense of hauling trash great distances.

*Frederick P. Allen*  
Chairman, Ness Co. Comm.

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# LANDFILLS IN KANSAS



## LEGEND

- LANDFILL CLOSED PRIOR TO SUBTITLE D
- ▲ FLOOD EXTENSION LANDFILL
- ★ SUBTITLE D LANDFILL
- SMALL LANDFILL EXEMPT LANDFILL
- ? STATUS PENDING LEGAL ACTION

Compiled by Kansas Department of Health & Environment, Bureau of Waste Management utilizing information from Bureau of Waste Management and Bureau of Environmental Remediation records as of April 10, 1994.

Compiled by Kansas Department of Health & Environment, Bureau of Waste Management utilizing information from Bureau of Waste Management and Bureau of Environmental Remediation records as of April 10, 1994.



# KANSAS ASSOCIATION OF COUNTIES

"Service to County Government"

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##### Executive Director

John T. Torbert, CAF

February 21, 1995

#### Testimony

To: House Committee on Energy and Natural Resources

From: Anne Spiess  
Director of Legislation

Subject: House Bill 2457

House Bill 2457, as it is currently written would prohibit the secretary of KDHE from adopting rules or regulations establishing soil compaction or percolation standards for any landfill with an operating permit that was in existence prior to 1995. This prohibition would only apply to those landfills that had monitoring wells in place indicating no groundwater pollution from the disposal area.

From the perspective of the Kansas Association of Counties, we are going to have a difficult time taking a definitive position on this bill. Frankly, we have counties that will be supportive of it and some counties that will be opposed to it. We do feel some obligation though to give you as legislators a feel of the "lay of the land" with respect to the proposed legislation.

KAC has worked extensively with KDHE on the issue of solid waste landfills since the Subtitle D Solid Waste Landfill standards were promulgated by the United State Environmental Protection Agency several years ago. That process has not always been harmonious and it has seldom been easy. KAC has invested countless hours of staff time on this one issue and county officials from across the state have also given of their limited time and resources to try and find a sensible way through this issue. It is an almost impossible task. We have regulations that were written with the very populace east coast in mind that we are trying to "fit" into a Kansas scenario. It just doesn't work.

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We believe that KDHE has done a decent job of being accommodating to the concerns expressed by local governments. Their efforts to find workable solutions have been sincere. We recognize that it is no easy task to balance federal regulation on one hand, concern for the environment on another hand, and then, if you will, throw in a third hand which is a standard that evolves around the concepts of common sense and reasonable cost. This is a scenario that, by design, should fail.

This bill is indicative though that there are issues that are still unresolved. The bill is well intentioned. There are a number of counties that have indicated support for it. When you have situations such as you do in Ellis County where the county is transferring their trash to a landfill in Topeka for a round trip distance of more than 400 miles, than something is amiss. That kind of ridiculous scenario is what gives rise legislation like this.

On the other hand though, there are counties that have worked closely with KDHE and tried to do the best they could to get into compliance and have a landfill that meets all state and federal regulations. Those counties have moved forward and invested time and money on certain assumptions about the regulatory environment. Is it fair to those counties to change the ground rules at this point in the process?

That unfortunately is your dilemma as legislators. This bill has some very positive aspects to it and there is no doubt that it would be of benefit to some counties. Like any other piece of legislation though, these benefits must be carefully weighed. We do think that it is appropriate that the legislature continue to work with KDHE to make sure that their regulations are reasonable and necessary. Whether this particular bill is the best way to do that is not a question that KAC is prepared to answer at this time.

We might make a suggestion that this bill be assigned to a subcommittee where the issues could be discussed more fully and some acceptable alternatives found.

Legislative Testimony  
Before the  
House Energy and Natural Resources Committee  
by  
Waste Management of Kansas, Inc.

Presented by  
Bill Upman  
Environmental Engineer  
Waste Management of Kansas, Inc.

Mr. Chairman, members of the committee, my name is Bill Upman, Environmental Engineer for Waste Management of Kansas, Inc. I am responsible for environmental compliance at Waste Management's facilities throughout Kansas. I am here this afternoon to outline Waste Management's concern with HB 2457 which seeks to exempt certain landfills from minimum requirements regarding liner compaction standards.

We have three primary concerns about HB 2457.

- If enacted, this bill will cause Kansas to lose United States Environmental Protection Agency program approval, which carries with it a number of troubling consequences.
- Not requiring a landfill to have a liner system, if the facility can prove it has no groundwater contamination today, does not protect against potential problems in the future.
- Not requiring Kansas landfills to meet minimal standards is bad for the environment.

First, HB 2457 would cause Kansas to lose United States Environmental Protection Agency program approval.

Kansas currently has in place environmentally sound standards regarding the environmental protection systems at landfills. The current regulations were the result of nearly two years of hard work by the KDHE, the Solid Waste Advisory Committee and county governments from throughout the State. In fact, the state's regulations allow for much more flexibility than the Federal requirements. This flexibility would be jeopardized under HB 2457.

In addition, HB 2457 seeks to eliminate the State's minimal requirement of recompacted clay liner systems. To do this means that Kansas would no longer meet USEPA's minimal requirements -- losing USEPA's program approval.

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The consequences of losing Federal program approval include:

- A loss of flexibility. Kansas took USEPA's Subtitle D regulations and "fine tuned" them to meet the geology, hydrogeology and climate that is unique to Kansas. For example, under the State's regulations, landfill operators have the ability to use alternative liner systems and alternate groundwater monitoring programs. However, if HB 2457 were enacted, the flexibility Kansas has built into its own regulations would be lost and instead the State would be required to revert to compliance with Federal Subtitle D regulations. All landfills, including the smaller facilities which seek relaxed compliance requirements, would have to comply with Federal standards which are more rigid and costly than current Kansas regulations.
- Kansas would also lose primacy. This is especially disconcerting because KDHE would lose its ability to enforce, not only its own regulations, but Federal regulations as well. Additionally, a loss of primacy would mean Subtitle D would become self-implementing with minimal control by the USEPA.

Furthermore, not requiring a landfill to have a liner system, if the facility can prove that it has no groundwater contamination one time, does not protect against potential problems in the future.

Because there is no groundwater problem today, does not mean there will never be a problem in the future. Exempting a landfill from installing a liner system provides for no protection against future potential groundwater problems.

The purpose of installing environmental protection systems at landfills, such as liner system, is not just to protect the surrounding environment today or even next year, but to ensure that the surrounding environment is safe for decades into the future.

Finally, relaxing Kansas' current regulations is not in the best interest of the environment.

In the 1970's landfills were basically holes in the ground. Landfill technology has come a long way over the past three decades. Today, Subtitle D regulations and adopted state programs signify the continued evolution of the industry -- and this is good for the environment. We must maintain this forward momentum and we respectfully ask that you address the concerns set before you today.

Mr. Chairman, and committee members, thank you for your time and attention. If you have any questions, I would gladly address them at this time.

State of Kansas



Department of Health and Environment

Testimony presented to

House Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

House Bill 2457

The Kansas Department of Health and Environment appreciates this opportunity to provide testimony in opposition to House Bill 2457. To the best of our knowledge, this bill was introduced to provide some regulatory relief to western Kansas counties which operate small landfills which qualified for the exemption to certain Subtitle D requirements. Specifically, it is our understanding that this bill is intended to eliminate the liner requirement for the 34 landfills which received "exempt" status from KDHE approximately one year ago. The state solid waste regulations which became effective on October 24, 1994 include a liner standard for small exempt landfills. This standard was developed by KDHE in cooperation with the state Solid Waste Advisory Group. The small landfill liner standard is less stringent than the standard established for large landfills in that the degree of soil compaction is less and counties may demonstrate that in-place naturally occurring soils provide an equivalent degree of protection as the constructed liner.

As currently worded, the proposed amendment to the statute would apply to all Kansas landfills, not just small exempt landfills. KDHE would be prohibited from adopting any "soil compaction or soil percolation standards for any solid waste disposal areas" which existed on January 1, 1995. This includes all large municipal solid waste (MSW) landfills and all industrial landfills regardless of the types of waste disposed. Also, KDHE could not adopt soil compaction standards for the final caps placed on all closed landfills. Low permeability caps are required to minimize the infiltration of precipitation and the generation of contaminated leachate that may impact groundwater quality.

The elimination of soil compaction/permeability standards at all landfills would make the KDHE regulations less stringent than the federal regulations. Although some regulatory flexibility is permitted for states which have been approved by EPA to administer the Subtitle D program, states may not eliminate major core requirements of the federal regulations, such as the soil permeability standards for liners or caps. KDHE has utilized this flexibility to ease the regulatory impacts in several areas including such things as groundwater monitoring, allowances for vertical expansions, and establishing the point of compliance for groundwater monitoring.

Under the scenario wherein KDHE eliminates soil compaction requirements for all landfill liners and caps, EPA would be forced by federal law to withdraw state approval to administer the Subtitle D program. Because Subtitle D is self-implementing, third-parties would be able to file lawsuits against any landfill owner or operator not in full compliance with the federal requirements. Lesser state standards would be meaningless in terms of protecting landfill owners and operators from liabilities. Without KDHE program approval, it is probable that the exempt status of many small landfills would be brought into question by third parties because KDHE utilized maximum flexibility in granting exempt status to counties, particularly with respect to the evidence of groundwater contamination and the existence of a practical alternative. Other neighboring states such as Nebraska and Oklahoma have not granted any small landfill exemptions for several reasons including the determination that "practical alternatives" existed for all small landfills (i.e. transferring waste to a regional site).

Groundwater sampling results indicate that at least 17 landfills west of the 25-inch rainfall line have identified some level of groundwater contamination attributable to the landfill. Most of these landfills were receiving only a few tons of waste per day. Based upon this

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information, we and our advisory committee established standards for small landfills. Without these minimal standards, existing small landfills could be operated and expanded in areas with poor soil containment properties or with very shallow and valuable groundwater supplies.

Unlike many areas of regulation, the federal government left it up to the states to determine if liner standards were warranted for their small landfills located in areas of low rainfall. In western Kansas, we depend almost entirely on groundwater to meet our needs. Soil characteristics and the depth to groundwater vary greatly. In some states such as Utah or Nevada, a blanket exemption on liners and leachate collection systems at small landfills may be appropriate because groundwater depths are nearly 1000 feet. However, in much of western Kansas, we find groundwater at shallow depths of 50 feet or less and sandy, high permeability soils may exist above those groundwater supplies. In addition, soil characteristics may not be uniform across short distances. While there may be good clay soil underlying an existing disposal cell in a small landfill, 100 yards away where a new cell is planned, sandy or gravel soil types may exist and offer a direct pathway for contaminants to travel to the groundwater.

It is our recommendation to maintain the existing small landfill liner design standards which offer some degree of assurance that disposal activities will only take place in appropriate locations. These regulations allow counties to demonstrate that they do not need a compacted soil liner if native soils offer equivalent protection. This demonstration consists of soil borings and tests which are currently funded under our planning grant program. If the demonstration fails, a compacted soil liner would be required after October 9, 1996.

Finally it is uncertain as to whether this bill is retroactive. Because the recently adopted landfill regulations already establish soil permeability standards, we are uncertain as to whether this amendment to the law would cause existing regulations to be repealed. If it is not retroactive, the bill would have no effect on the landfill design and permitting program.

Thank you for this opportunity to provide testimony on House Bill 2457.

Testimony presented by: Bill Bider  
Director, Bureau of Waste Management  
Division of Environment  
February 21, 1995

## PROPOSED SUBSTITUTE FOR HOUSE BILL NO. 2044

By Committee on Energy and Natural Resources

AN ACT concerning oil and gas well operators and contractors; relating to qualifications for licensure; amending K.S.A. 55-155 and repealing the existing section.

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

Section 1. K.S.A. 55-155 is hereby amended to read as follows: 55-155. (a) Operators and contractors shall be licensed by the commission pursuant to this section.

(b) Every operator and contractor shall file an application or a renewal application with the commission. Application and renewal application forms shall be prescribed, prepared and furnished by the commission.

(c) No application or renewal application shall be approved until the applicant has:

(1) Provided sufficient information, as required by the commission, for purposes of identification;

(2) submitted evidence that all current and prior years' taxes for property associated with the drilling or servicing of wells have been paid; and

(3) demonstrated to the commission's satisfaction compliance of the following with all requirements of state and federal statutes and rules and regulations and all written commission directives, commission orders and enforcement agreements with the commission: (A) The applicant; (B) any officer, director, partner or member of the applicant; (C) any stockholder owning in the aggregate more than 5% of the stock of the applicant; and (D) any spouse, parent, brother, sister, child, parent-in-law, brother-in-law or sister-in-law of the foregoing;

(4) paid an annual license fee of \$100, except that an applicant for a license who is operating one gas well used strictly for the purpose of heating a residential dwelling shall

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pay an annual license fee of \$25; and

~~(4)~~ (5) paid an annual license fee of \$25 for each rig operated by the applicant. The commission shall issue an identification tag for each such rig which shall be displayed on such rig at all times.

(d) Upon the approval of the application or renewal application, the commission shall issue to such applicant a license which shall be in full force and effect until one year from the date of issuance or until surrendered, suspended or revoked as provided in K.S.A. 55-162, and amendments thereto. No new license shall be issued to any applicant who has had a license revoked until the expiration of one year from the date of such revocation.

(e) The commission shall remit all moneys received from fees assessed pursuant to this section to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. Twenty percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the conservation fee fund created by K.S.A. 55-143, and amendments thereto.

Sec. 2. K.S.A. 55-155 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.