

Approved: 3-21-95
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on March 13, 1995 in Room 254-E- of the Capitol.

All members were present except:
Senator Emert, Excused
Senator Martin

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Mike Corrigan, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:
Bill Bider, Director, Bureau of Waste Management, Kansas Department of Health and Environment
Bill Lower, Haskell County Commissioner
Alan Steppat, Pet McGil & Associates
Leary Johnson, Trego County Commissioner
Paul Pavlu, presenting testimony from Frederick P. Flax, Chairman, Ness County Commissioners
Written Testimony only Charles A. Peckham, Northwest Kansas Small Solid Waste Landfill Authority
Written Testimony only William D. Upham, Waste Management of KS, Inc.
Amendment presented by Representative Eugene Shore
Darrel Monte, Legislative Liaison, Department of Wildlife & Parks

Others attending: See attached list

Minutes for March 7, 8, 9 and 10, 1995 were presented for approval.

HB 2457: Concerning solid waste, relating to certain standards for certain solid waste disposal areas

Bill Bider, Director, Bureau of Waste Management, Division of Environment, KDHE, presented testimony on **HB 2457** stating the Department of Health and Environment was concerned with the deletion of the requirement for a leachate collection system for those exempt small landfills demonstrating natural geological conditions which provide sufficient protection against groundwater contamination. (Attachment 1) Mr. Bider stated a leachate collection system would minimize the amount of leachate available to pass through a soil liner and potentially contaminate groundwater, thus providing additional protection. He further stated that if **HB 2457** becomes law in its current form the Department would modify the existing regulations on demonstrating liner equivalency to make it a location demonstration rather than a design requirement.

Bill Lower, Haskell County Commissioner, told committee members his area felt a need for **HB 2457**. A leachate collection system would cause an undue and expensive hardship to a sparsely populated county.

Alan Steppat, Pete McGil & Associates introduced Leary Johnson, County Commissioner, Trego County and Paul Pavlu, Chairman, Ness County Commission.

Leary Johnson, County Commissioner, Trego County, presented testimony on **HB 2457** stating his county had met all EPA criteria in that they have limited annual precipitation and trash collection and the EPA provided an exemption so that their landfill can continue to operate. (Attachment 2) The State of Kansas has mandated a liner

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on March 13, 1995.

requirement which is more stringent than EPA regulations and would cost the county over \$500,000 to comply as a Subtitle D landfill. Mr. Johnson stated the county was in a catch 22 situation and the ultimate solution would be additional expense to the tax payer. He suggested this issue be studied during the summer to hopefully find a more palatable solution and further requested passage of **HB 2457**.

Paul Pavlu, Ness County Commission, presented testimony from the Chairman, Frederick P. Flax, Ness County Commissioners. (Attachment 3) Testimony stated concern for the amended version of **HB 2457** which removed language originally intended to protect small, western landfills from state regulations which were more stringent than federal regulations. Testimony further stated inspection wells indicated no contamination from the landfill which has been in existence for more than twenty years. Additional testing not required by the EPA would be a needless expense of taxpayers' money. Testimony stated the belief that **HB-2457**, if amended to prohibit KDHE regulations more stringent than federal regulation of small landfills, would allow for adequate environmental planning and protection and also provide an economical and common sense approach to solid waste disposal for small, rural counties.

Charles A. Peckham, Northwest Kansas Small Solid Waste Landfill Authority, presented testimony in support of **HB 2457** stating his organization would like to see the bill clearly identify that the landfills being addressed are those that otherwise qualify for the small landfill exemption. Mr. Peckham noted all existing small landfills in operation as of January 1, 1995 have already had to pass groundwater testing as a requirement of the exemption, therefore risk of future contamination is relatively low as most landfills have been in existence for a considerable time. (Attachment 4)

Written testimony from Waste Management of Kansas, Inc. was presented to committee members. (Attachment 5). Waste Management of Kansas, Inc. stated the revised version of **HB 2457** protects the interests of both large and small landfills without jeopardizing environmental and Federal regulatory concerns.

An amendment to **HB 2457** by Representative Eugene Shore was handed to committee members. (Attachment 6)

A committee member questioned a statement which noted one-third to one-fourth of the counties had ground water contamination. Mr. Pavlu stated about one-fourth of the counties have had some contamination but they were not over the limit so they technically were not contaminated sites. Mr. Bider stated that any small landfill in any state with any contamination could not be classified as exempt. The department allowed those with a small level of contamination to qualify. He further stated that the landfills of Northwest Kansas Small Solid Waste Landfill Authority and Ness County landfill were not contaminated. He made the point that one day these landfills would be moved and although the present area was satisfactory, it does not necessarily follow that the next cell would be equally protected.

A member stated it was his understanding that it appeared there might be ten county landfills with a contamination problem. Mr. Bider stated those with high levels of contamination were closed. A few with low level contamination continue to operate and it is the opinion of the department that as new areas are opened the level of protection needs to be investigated. Another member stated his disagreement with this issue, stating he did not believe there would be any change. Mr. Bider commented geologists say there is evidence of inconsistencies in the soil types and problems could develop.

A member commented that they understood this bill in its current form says that landfills don't have to have either a liner or a leachate system when they move if they pass the demonstration requirement. Mr. Bider stated that this statement was correct if they passed the demonstration and there were currently grants available to help them pay for such a demonstration. He stated 13 counties have applied for planning grants which would pay up to ninety percent of the cost of a demonstration. The member questioned why they should have to have a leachate system if they do a demonstration. Mr. Bider stated it was the department's opinion that the landfill would still accumulate liquid and it will ultimately seep through. Therefore in western Kansas the cheapest option is to drain the water off and put it back on top of the trash. The best way from a long-term clean-up perspective is to take it to a local waste water treatment plant. A member questioned where the department gets its authority concerning the leachate requirement with Mr. Bider stating it is a department regulation, not a federal regulation.

HB 2478: An act concerning wildlife; amending K.S.A. 32-701, 32-906 and 32-929 and K.S.A. 1994 Supp 32-988 and repealing existing sections

Darrel Montei, Legislative Liaison, Department of Wildlife and Parks presented testimony on **HB 2478** stating this bill would amend several provisions of current law. (Attachment 7) **House Bill 2478** would amend the definition of a private water fishing impoundment found under K.S.A. 32-701 as well as K.S.A. 32-906 which expands the concept of group fishing licenses and addresses fishing license requirements for certain individuals involved in fishing clinics sponsored or co-sponsored by the Department of Wildlife and Parks. (Attachment 7)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on March 13, 1995.

The bill also changes the requirement of being on the Bureau of Indian Affairs membership rolls, which are no longer maintained, to that of being on tribal membership rolls of a federally recognized tribe for those of 1/16 Indian blood to enable them to obtain free and permanent licenses to hunt, fish and furharvest.

The Department of Wildlife and Parks suggested four amendments to **HB 2478**. (1) A change in the effective date from July 1, 1995 to "upon publication in the Kansas Register. (Mr. Montei was advised this element was already in the bill.) (2) An increase of the maximum for a nonresident mussel fishing license from \$400 to \$1500 (page 6, line 38). (3) Add a section (f) on page 7, line 24 to read "on and after the effective date of this act and for the remainder calendar year 1995 the fee for a nonresident mussel fishing license shall be \$1,000. Following years would be dealt with by rules and regulations. (4) Create a fleeing or eluding violation for vessels as contained in **HB 2477**.

The meeting adjourned at 8:58 a.m.

The next meeting is scheduled for March 14, 1995.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to
Senate Energy and Natural Resources Committee
by
The Kansas Department of Health and Environment
House Bill 2457

Mr. Chairman and members of the committee, the Department of Health and Environment appreciates this opportunity to provide testimony on House Bill 2457. The Department has one concern with the amended version of the bill as passed by the House. That concern is related to the deletion of the requirement for a leachate collection system for those exempt small landfills which demonstrate that naturally occurring geological conditions provide sufficient protection against groundwater contamination. It may help to provide some background information on leachate and leachate collection systems. Leachate is the liquid that results from rainfall percolating through solid waste in a landfill. The water picks up contaminants as it passes through the solid waste and thus is a potential source of groundwater contamination. The leachate collection system is a system of gravel and pipes that is placed on top of the liner, but below the waste. It collects and transports the leachate to a holding tank or lagoon where it may be evaporated, hauled to a waste water treatment plant for treatment, or recycled by applying it to the top of a landfill cell. The leachate collection system therefore minimizes the amount of leachate available to pass through a soil liner and potentially contaminate the groundwater. This provides additional insurance that an exempt small landfill will not lose the exemption due to a groundwater contamination problem.

With assistance from the state solid waste advisory group, KDHE developed and adopted state landfill regulations in 1994. These regulations, which replaced the federal Subtitle D regulations adopted by reference in 1993, included small landfill liner standards. Because evidence existed which proved that several small landfills have already contaminated groundwater in western Kansas, KDHE and the advisory group developed small landfill liner standards which provided some degree of groundwater protection by requiring two feet of compacted soil and a leachate collection system. In developing this standard, KDHE and the advisors balanced the cost of a full Subtitle D liner system with the lesser potential for contamination presented by small landfills in arid areas. As an alternative to constructing a small landfill soil liner, the current state regulations allow for a demonstration that in place soils provide an equivalent degree of protection as the compacted soil. However, regardless of whether the liner is constructed or consists of natural soil, a leachate collection system is required and believed to be necessary to maintain desirable conditions within the disposal cell. House Bill 2457 would allow small landfills with natural soil liners to eliminate the leachate collection system. We recommend that the committee consider an amendment to the bill which would remove this exemption for the leachate collection system.

If House Bill 2457 becomes law in its current form, the Department would modify the existing regulations on demonstrating liner equivalency to make it a location demonstration rather than a design requirement. We believe that this approach would better reflect the current language in the proposed law that deletes the requirement for the leachate collection system. In addition, we would still advise all exempt landfill operators of the benefits associated with constructing an engineered soil liner and a leachate collection system.

Thank you for your time and consideration.

Testimony presented by: Bill Bider
Director, Bureau of Waste Management
Division of Environment
March 13, 1995

Senate Energy & Nat'l Res
March 13, 1995
Attachment 1

Testimony: Senate Energy and Natural Resources Committee 3-13-95

Mr. Chairman, members of the Senate 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 a 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

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Attachment 2

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 additional 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. Even if an alternate solution can be determined our existing site will have to remain open to receive construction debris and white goods.

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 Energy and Natural Resources Committee give it their attention this coming summer.

In closing let me say that this is not a rural-urban issue, nor is it an issue between the small counties and the sub-title D landfills who are established or in the process of being established. We simply can not afford the expense with our small population and budgets. To give you some prospective the state office building next door employes more people than the total population of two of our western counties combined.

We ask for your favorable support on 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 CONCERNING HB 2457

To: Senate 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 concern on HB 2457, as amended by the House. The original form of this bill was of vital importance to smaller, rural counties, particularly those in the western two-thirds of this state. We have some concerns, however, that the amended version removed language originally intended to protect us from state regulations which were more stringent than federal regulations.

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 regulations, however, are not now the 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, without a needless waste of taxpayer's dollars. We at the local level feel that KDHE should not be allowed to have regulations more stringent than federal regulations in this area. We believe the original of this bill was designed to do exactly that. We are concerned that the amended version sanctions additional regulation by KDHE, rather than prohibiting additional regulation.

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, as shown by testing of inspection wells. Essentially, that is all that is required by federal regulation to continue to operate with a small landfill exemption. 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.

Ness County disposes of less than 6 tons of trash per day and has an annual rain fall of less than 25 inches. Our landfill has been in operation since 1974 and we installed an inspection well shortly after the landfill was opened. KDHE began testing this well on February 18, 1982. In 1994, because of federal regulations, we drilled and installed 4 additional inspection wells at considerable cost to taxpayers. These wells were drilled and located at the recommendation of KDHE. Test results from these wells establish proof that after more than twenty years of operation at our landfill site, no contamination exists.


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Notwithstanding this proof of twenty years of contamination free operation, current regulations, and presumably this amended bill, would require us to perform certain percolation testing and/or soil compaction studies, all in an effort to prove our site is not susceptible to contamination. We feel a 20 year history of no contamination, as proven by testing of our inspection wells, which were mandated by federal regulation and installed at the recommendation of KDHE, absolutely proves the reliability of our site. Requiring additional tests not mandated by Federal regulations is not only needless but is also an additional waste of taxpayers' money and is another example of overregulation.

We desire to maintain our small landfill exemption. It is, in the view of our local authorities, the least costly option. 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.

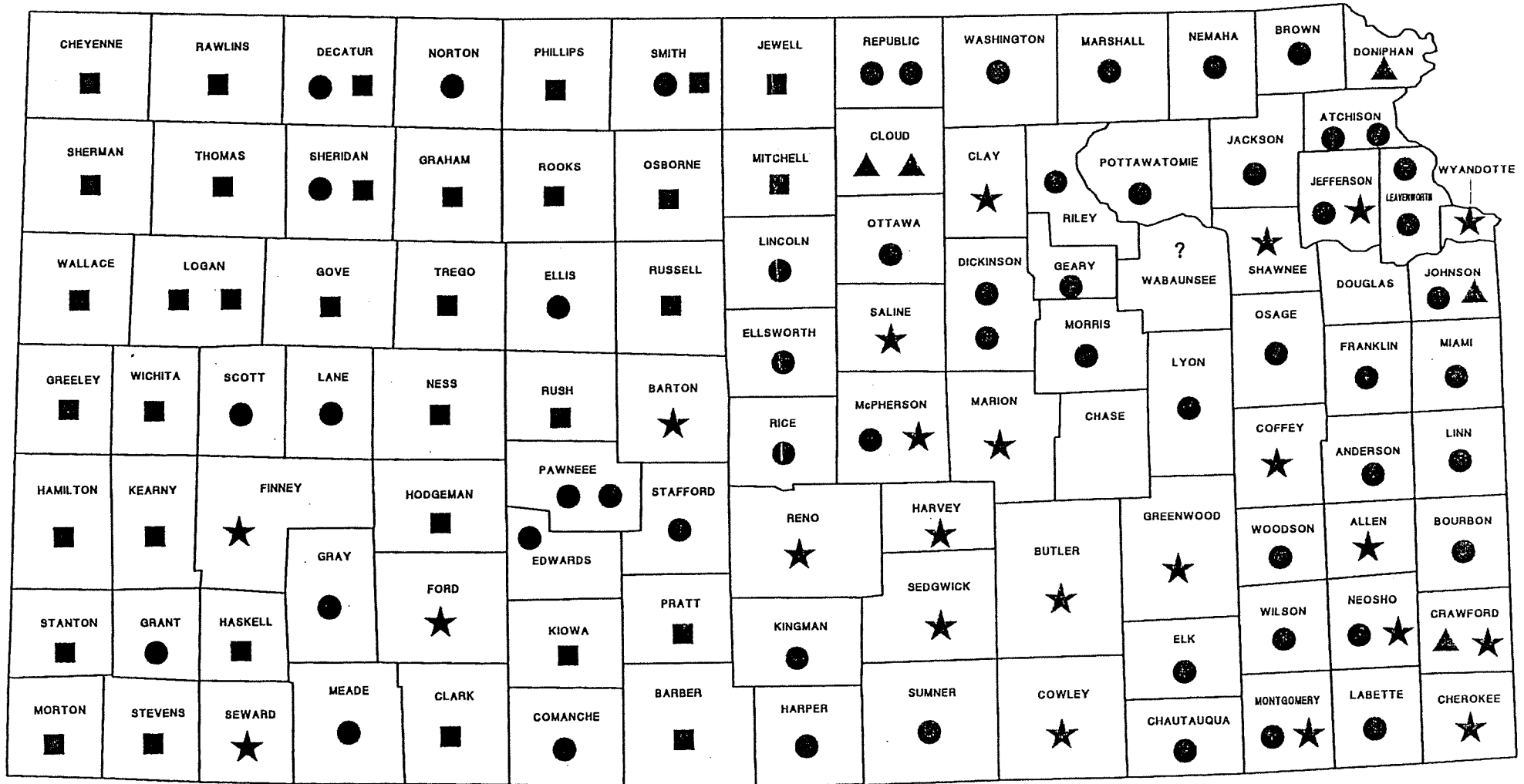
We believe this bill, if amended to prohibit KDHE regulations more stringent than federal regulation of small landfills, would allow for adequate environmental planning and protection, but at the same time would be an economical, common sense approach to solid waste disposal for small, rural counties who simply cannot afford the cost of complying with state mandates, nor the expense of hauling trash great distances.

BOARD OF COUNTY COMMISSIONERS
NESS COUNTY, KANSAS



Frederick P. Flax,
Chairman

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.

SOLID WASTE

Costs

| | | |
|------------------------|-----------------------------|--------------|
| Mark's Salary | | \$16,728 |
| Mark's Benefits | | 4,920 |
| State Tipping Fee | \$1.50/ton x 2,190 ton | 3,285 |
| Cost To Replace Loader | \$85,000 - 15 years | 5,666 |
| Water Sample Testing | \$ 1,000 per well x 5 wells | 5,000 |
| Lease on Landfill | | <u>1,200</u> |
| | SUB TOTAL | \$36,799 |

| | | |
|---|------------|------------------|
| Estimated Cost To Haul Trash to Garden City: | | |
| \$3.00 per loaded mile x 85 miles = \$255 per load | | |
| x 260 loads | | 66,300 |
| Tipping Costs @ \$20. per Ton, 2,190 Ton per year = | | 43,800 |
| | SUB TOTAL | <u>\$110,100</u> |
| | TOTAL COST | \$146,899 |

County Receipts

| | | |
|--|----------------|-----------|
| (1100 Pick Ups) Receipts from City Residence Pick Up | \$ 13,200 | |
| (\$200 per week) Receipts from Gate Dumping County Residence | 10,400 | |
| Receipts from Schaben Tipping Fee | | |
| (6 Ton Per Day 365 Days per year @ \$40. per ton) | 87,600 | |
| Estimated Receipts from Schaben Commercial | | |
| (200 Commercial @ \$2.00) | <u>4,800</u> | |
| | SUB TOTAL | 116,000 |
| Transfer from General Fund | <u>24,000</u> | |
| | TOTAL RECEIPTS | \$140,000 |
| Total cost | \$146,899 | |
| Less Total Receipts | <u>140,000</u> | |
| | -\$ 6,899 | |

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

March 9, 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.

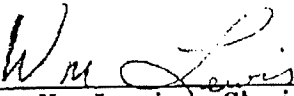
We do not want to create a situation that may jeopardize the future of our groundwater. However, we feel that we don't have the resources to fix a problem that does not exist. Very simply put, if the small landfills are required to put in place the same liner as a sub-title "D" landfill, they cannot 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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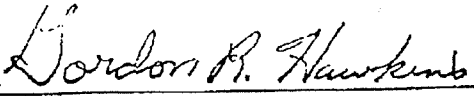
appears that by the time everything is understood, by all parties and finally accepted and approved, we will again have placed much time and money into our landfills to probably prove what we already knew----which is that areas of very low rainfall and deep water tables are not very good candidates for 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.

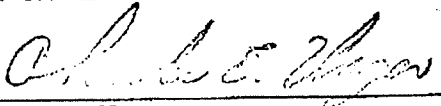
RAWLINS COUNTY COMMISSIONERS



William H. Lewis, Chairman



Gordon R. Hawkins



Charles E. Unger

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend House Bill No. 2457, as amended by House Committee, on page 3, in line 20, after "system", by inserting "and may be designed with trenches or units which have straight vertical walls"

_____ District.

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Attachment 6

STATE OF KANSAS



DEPARTMENT OF WILDLIFE & PARKS

OFFICE OF THE SECRETARY

900 SW Jackson St., Suite 502 / Topeka, Kansas 66612 - 1233
(913) 296-2281 / FAX (913) 296-6953

House Bill 2478

Testimony Presented To: Senate Energy and Natural Resources Committee
Provided By: Kansas Department of Wildlife and Parks
March 13, 1995

H.B. 2478 would amend several provisions of current law. Those amendments and a description of each is as follows:

1) It amends the definition of a private water fishing impoundment found under K.S.A. 32-701. Individuals fishing on a private water fishing impoundment are privileged to do so without a fishing license under K.S.A. 32-906. Individuals in possession and control of a private water impoundment, pursuant to K.S.A. 32-974, may propagate or raise fish in the impoundment for private or commercial use without any state license, permit or stamp and without limitation as to numbers, time or manner of taking fish from the impoundment. Thus, the definition of a private water fishing impoundment has bearing on those issues.

The current definition requires that an impoundment be entirely isolated from any other surface water and have no connection, except during periods of flood, with streams or other bodies of water that would permit fish to move between the private water fishing impoundment and streams or other bodies of water. They can be connected to a stream or other body of water by a pipe or conduit no larger than 8 inches in diameter if the pipe or conduit is screened to prevent the movement of fish.

The definition was likely prepared to apply to a traditional "farm pond". Although a few commercial fish growers utilize farm ponds, many use a pit or dugout for the raising of fish and generally these are in a series of interconnected pits or dugouts. For those using "farm ponds", these are also often constructed in series. The present definition appears to apply to a private water impoundment, not to a series of otherwise qualified impoundments. Each of the

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Attachment 7

impoundments would have to be isolated or connected only by the screened pipe or conduit as previously mentioned.

Recreational fishing also occurs on some of the impoundments used by commercial fish growers and there are several locations around the state where similar private impoundments are operated strictly for recreational fishing as a business. Under the current definition, these areas may require a fishing license.

The Department's primary interest in private water fishing impoundments is twofold. The first is one of protection of native or "wild" fish species through prevention of release of fish from private water fishing impoundments. The second interest is ensuring that native or "wild" fish species existing in the wild as a public resource are not removed from the public sector and used in a private operation. Thus a definition should address proper inflow and outflow controls, but allow for interchange of water, if needed, between private water impoundments that are located within an ownership.

The proposed amendment would recognize the interchange of water between private water fishing impoundments within an ownership. The amendment would maintain that these impoundments not have any connection with streams or other bodies of water, but would remove the reference to pipe or conduit size. It would also recognize other means which would prevent movement of fish into or out of the impoundment or impoundments.

The Department is not aware of any existing private water fishing impoundment that would lose that status as a result of this bill. It would however, allow several known impoundments, which for all practical purposes are private water fishing impoundments, to qualify as private water fishing impoundments.

2) It amends K.S.A. 32-906 to expand the concept of group fishing licenses and address fishing license requirements for certain individuals involved in fishing clinics that are sponsored or co-sponsored by the Department.

Current law provides for the issuance of institutional group fishing licenses to facilities under the jurisdiction of or licensed by the Secretary of Social and Rehabilitation Services and to any veterans administration medical center in the state. The institutional fishing license allows any individual residing in such center or facility to fish without a license. They are limited to not more than 20 individuals at one time and all laws and regulations

regarding seasons, methods of take, size limitations, creel and possession limits, etc. are applicable.

A number of community, civic and charitable organizations are becoming more active in working with developmentally disabled individuals through group fishing activities. Under current law, a fishing license would be required for each individual involved, unless otherwise exempted such as by age. The amendment would allow these groups to secure a "group fishing license" for use during a group fishing activity. Amendment of K.S.A. 32-988 to establish a fee range for such group fishing license is included as is establishment of a \$50 fee for calendar year 1995.

Staff of the community, civic or charitable organization would be authorized to assist individuals involved in the group during the group's fishing activity. A fishing license would not be required of a staff member while assisting group members during the activity. Those provisions regarding staff are not included in current law pertaining to institutional fishing licenses. Proposed amendments to K.S.A. 32-906 would also extend the same privileges to staff assisting under an institutional fishing license.

The Department is involved in many fishing clinics throughout the state, but most are conducted in and around urban centers. The primary purposes of these clinics are to expose people to fishing and teach techniques and ethics. It is the Department's position that such exposure will provide a wholesome recreational alternative to those involved and some will eventually become license buyers. Generally, the audience is made up of individuals who are under 16 years of age and do not need a fishing license, but there are occasions when participants are over 16 years of age. The amended language would allow individuals who are participating in a fishing clinic sponsored or co-sponsored by the Department to do so without a fishing license.

3) Pursuant to K.S.A. 32-929, the Secretary is required to issue, free of charge, a permanent license to hunt, fish and furharvest in Kansas to any resident individual who is at least 1/16 Indian by blood and who is enrolled as an American Indian on a tribal membership roll maintained by the Bureau of Indian Affairs of the United States Department of Interior or who has been issued a certificate of degree of Indian blood by such Bureau of Indian Affairs.

The Bureau of Indian Affairs no longer issues certificates of degree of Indian blood nor does the BIA continue to maintain membership rolls of the various tribes. Tribal membership rolls are now maintained by the respective tribes and the tribes have the latitude, pursuant to their respective constitutions, to determine membership and to issue membership cards.

Applications for a permanent license to hunt, fish and furharvest are being received by the Department from resident Native Americans who might otherwise qualify for the permanent license, but who unable to comply with the statutory requirements of K.S.A. 32-929 and therefore their applications must be rejected.

The amendments to K.S.A. 32-929 would establish two criteria for eligibility to apply for and receive a permanent license to hunt, fish and furharvest. The minimum requirement of 1/16 Indian by blood would be maintained as one criteria and the other requirement would be membership on a tribal membership roll maintained by a federally recognized tribe. Upon submission of satisfactory proof of the two above requirements, a permanent license would be issued.

A definition of a "federally recognized tribe" would mean any American Indian group that has petitioned for and obtained recognition by the United States Department of the Interior under the standards set out in 25 C.F.R. Part 83, as amended.

The Department is suggesting four amendments to H.B. 2478.

- A change in effective date from July 1, 1995 to upon publication in the Kansas Register. This is to accommodate any non-profit groups wishing to utilize the group fishing license this spring.
- Increase the maximum for a nonresident mussel fishing license from \$400 to \$1500 (pg 6, line 38). That license is currently set at the maximum and recent information received by the Department shows a large discrepancy between Kansas and surrounding states. Indications are that we may have an influx of nonresident harvesters, resulting in a substantial harvest increase and disruption to the detriment of the resource and resident mussel harvesters.
- Add a section (f) on page 7, line 24 to read "on and after the effective date of this act and for the remainder of calendar year 1995, the fee for a nonresident mussel fishing license shall be \$1,000."
- Create a fleeing or eluding violation for vessels as contained in H.B. 2477.

\$
1,000

STATE OF KANSAS



DEPARTMENT OF WILDLIFE & PARKS

OFFICE OF THE SECRETARY

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House Bill 2477

Testimony Presented To: House Energy and Natural Resources Committee
Provided By: Kansas Department of Wildlife and Parks
February 23, 1995

Law enforcement officers have the authority under K.S.A. 32-1179 to enforce the provisions of the state's boating laws and to stop and board any vessel which is subject to the state's boating laws. This is similar to a law enforcement officer's authority to stop motor vehicles for certain reasons. Under K.S.A. 8-1568, which applies to motor vehicles, attempting to flee from or elude a law enforcement officer is a violation subject to penalty. There is no similar provision under boating law which applies to vessels, thus a vessel operator who attempts to flee from or elude an officer has not committed a violation.

H.B. 2477 involves enactment of a fleeing or eluding provision patterned after K.S.A. 8-1568, except it would apply to vessels. Each vessel operator willfully failing to stop upon proper signal by hand, voice, emergency light or siren would be in violation and subject to penalty. Any officer giving such signal would be required to be in uniform and prominently displaying the officer's badge of office. A violation of the statute would be a class C misdemeanor.

The number of attempts to flee or elude during the course of a year is not large, but it does happen occasionally. It is the policy of the state and goal of this Department to provide the citizens of Kansas with recreational boating opportunity. H.B. 2477 will enable Department law enforcement personnel to better administer the state's boating laws and regulations. And further, to provide boating opportunity in a safe and secure manner.

HOUSE BILL No. 2477

By Committee on Energy and Natural Resources

2-14

9 AN ACT relating to boating; prohibiting certain acts and providing pen-
10 alties for violations; amending K.S.A. 32-1125 and repealing the exist-
11 ing section.

12

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

14 Section 1. K.S.A. 32-1125 is hereby amended to read as follows: 32-
15 1125. (a) No person shall operate any motorboat or vessel or manipulate
16 any water skis, surfboard or similar device in a reckless or negligent man-
17 ner so as to endanger the life or property of any person.

18 (b) No person shall manipulate any water skis, surfboard or similar
19 device while under the influence of alcohol or drugs, or both.

20 (c) No person shall operate any motorboat or vessel for pleasure rid-
21 ing or pull any water skis, surfboard or similar device in any waters of this
22 state marked by buoys or otherwise designated as a mooring, launching,
23 fishing or hunting nonboating area by a county or other political subdivi-
24 sion or by the secretary, except that a motorboat or vessel used for
25 fishing may be operated in a mooring or launching nonboating area.

26 As used in this subsection, "waters of this state" includes, but is not
27 limited to, any water storage reservoir impoundments over which the
28 secretary has been granted jurisdiction by the proper agency or official
29 of the United States government.

30 (d) No person shall operate or moor a vessel within a water area
31 which is marked, by buoys or some other distinguishing device, as a bath-
32 ing or swimming area or as an all-boats-prohibited area. No person shall
33 operate a vessel for purposes other than fishing in areas marked by buoys
34 or otherwise designated as fishing areas, and no person shall operate a
35 vessel for purposes other than hunting in areas marked by buoys or oth-
36 erwise designated as hunting areas, and in areas designated for combined
37 use of fishing and hunting, vessels may be used for both purposes unless
38 prohibited by federal law.

39 (e) No owner or person in possession of a vessel shall permit a person
40 under 12 years of age to operate a motorboat unless accompanied and
41 under the direct and audible supervision of a parent or other person over
42 17 years old.

43 (f) *No operator of a vessel shall willfully fail or refuse to bring such*

- 1 *vessel to a stop, or otherwise flee or attempt to elude a pursuing law*
- 2 *enforcement vehicle or vessel, when given a visual or audible signal to*
- 3 *bring the operator's vessel to a stop. The signal may be given by hand,*
- 4 *voice, emergency light or siren and shall be given by a uniformed law*
- 5 *enforcement officer prominently displaying the officer's badge of office.*
- 6 Sec. 2. K.S.A. 32-1125 is hereby repealed.
- 7 Sec. 3. This act shall take effect and be in force from and after its
- 8 publication in the statute book.