

Approved: 4-4-97
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson David Corbin at 8:00 a.m. on March 18, 1997 in Room 254-E of the Capitol.

All members were present.

Committee staff present: Raney Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Lila McClafin, Committee Secretary

Conferees appearing before the committee:

Representative Susan Wagle
Bill Bider, Director of Waste Management, Kansas Department of Health and Environment
Duane Sanders
Virgil Uhlman
Betty Ziegler
Bruce Bodecker
Wilmer Freund
Willie Martin, representing, Sedgwick County Commissioners
Charles Benjamin, former County Commissioner
Mike Taylor, City of Wichita

Others attending: See attached list

Chairperson Corbin opened the hearing on Sub. For HB 2331 - Solid waste permits; requiring certification that facility is consistent with official solid waste plan. A fiscal note was distributed.

Representative Susan Wagle supported HB 2331. She said the land for the proposed landfill was very quietly purchased. The city of Wichita plans to put in a landfill, and the proposed bill calls for any structures improvements or equipment thereon, shall be subject to all permit and other requirements of the solid waste management laws of the state. She distributed a package of clipping from the Wichita Eagle reporting the controversy surrounding the proposed landfill site and the lack of public input (Attachment 1). Representative Wagle responded to questions. She said what they are requesting could be done by Rules and Regs, but the proposed bill would make it a part of statutes.

Duane Sanders supported the proposed legislation. The people in Furley cannot vote for the Wichita City Council therefore they must rely on the legislature to change the statutes to strike a clause that would allow the City Council of Wichita to be the final decision on a solid waste plan (Attachment 2).

Virgil Uhlman read Dan Wendell's testimony supporting Sub for HB 2331 (Attachment 3). And he presented his own testimony stressing the importance of changing the variance clause and putting the governmental control with people whom you have a right to vote on. He suggested that the rights he fought in Korea have been taken away (Attachment 4).

Betty Ziegler supported the bill and reviewed the history of the way the city of Wichita had purchased the land. She asked that the bill be passed (Attachment 5).

Bruce Bodecker supported Sub.for HB 2331. The decisions of the courts have allowed for a concept of island annexation, wherein a city can purchase annex and zone without any input from the county. This leaves rural residents without political representation in these very important land use issues. Today the city of

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 254-E Statehouse, at 8:00 a.m. on March 18, 1997.

Wichita has the right to ask and receive a variance from the secretary of KDHE for a landfill, without any representation for rural residence (Attachment 6).

Wilmer Freund said he wholeheartedly supported the bill, and he listed four reasons for supporting and suggested the bill as amended would prevent reckless ravaging of valuable land simply to satisfy the needs of society (Attachment 7).

Bill Bider, Director, Waste Management, Kansas Department of Health and Environment presented testimony supporting the concept established in the substitute bill, but he thought some amendments were necessary and he handout a balloon bill of those amendments (Attachment 8). He responded to several questions.

Willie Martin, representing Sedgwick County, supported the bill.

Charles M. Benjamin, a former county commissioner, testified as a proponent for **Sub. for HB 2331**. He said under present law, counties can do all the solid waste planning in the world but they cannot compel the cities in their county to comply with the solid waste plan (Attachment 9).

Mike Taylor, city of Wichita, opposed the bill. He said the legislation was drafted to settle the dispute of a local issue, but **Sub for HB 2331** goes far beyond that local situation. It affects every city and county in the state, and it weakens the authority of the Secretary of Health and Environment to deal with unusual or exceptional circumstances. His question to the committee was "is it sound public policy to pass a law which has statewiede impacts" (Attachment 10). He also distributed a fact sheet on Venture Land and Trust Company and how it came to be formed (Attachment 11). Web site page www.southwind.net sedgwick under "Solid Waste Update", was also distributed (Attachment 12).

On a motion by Senator Biggs, seconded by Senator Morris the minutes of March 13 and 14 were adopted.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 19, 1997.

SENATE ENERGY & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: 3-18-97

NAME	REPRESENTING
William H. Chesnut	Self
Mary A. Chesnut	Self
Blaine Bodecher	NE Sedgwick Voters
Joseph Bodecher	" " "
Ralph Parish	" " "
Orpha Parish	" " "
Wayne Miller	" " "
Pat Miller	" " "
David Black	" "
Judy Wendell	" " "
Glenda Gott	" " "
Wayne Eck	" " "
Jeff Eck	" " "
Justin Eck	" " "
Jay Uhlman	" " "
Vigie Uhlman	Self
Debra Sanders	Sedg. Co. Township Ass'n <small>Concerned Citizens</small>
Betty Ziegler	self
Wilmer Freund	Sedg. Co. Conserv. Dist.

SENATE ENERGY & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: 3-18-97

NAME	REPRESENTING
Freddie Peters	NE Sedg County ^{Citizens For} Responsible Government
Vivian Smith	^{Furley} Citizens for Responsible Govt
Alan Peters	Citizens For Responsible Government
Phillip Martin	Sedgewick County
Ron Hummelbust	KDHE
Bill Bider	KDHE
Mike Taylor	City of Wichita
Kim Gulley	League of KS Municipalities
Hisa Meyer	KS Gov. Consulting
E. L. Moses	Ks. Aggregate Producers
John C. Bottentuy	Bottentuy Assoc
Wayne Kitchen	Western Resources
ED SCHWAB	WESTERN RESOURCES
DAVID B SCHLOSSER	PETE MCGILL & ASSOC
Bruce Bodecker	Self - Furley, KS
JASON PISCHNER	KGC
Martha Jean Smith	KMHA

Date: Wed. 8-14-96

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| <input type="checkbox"/> Topeka Capital Journal | <input type="checkbox"/> Hutchinson News | <input type="checkbox"/> Olathe Daily News |
| <input checked="" type="checkbox"/> Wichita Eagle | <input type="checkbox"/> Iola Register | <input type="checkbox"/> Parsons Sun |
| <input type="checkbox"/> Kansas City Star | <input type="checkbox"/> Johnson County Sun | <input type="checkbox"/> Pittsburg Morning Sun |
| <input type="checkbox"/> Emporia Gazette | <input type="checkbox"/> Kansas City Kansan | <input type="checkbox"/> Salina Journal |
| <input type="checkbox"/> Garden City Telegram | <input type="checkbox"/> Lawrence Journal World | <input type="checkbox"/> Winfield Daily Courier |
| <input type="checkbox"/> Hays Daily News | <input type="checkbox"/> Manhattan Mercury | |

Wichita zeroing in on landfill property

Angry Sedgwick county officials ready to take control

What did Wichita officials do Tuesday?

They informed Sedgwick County leaders Tuesday that the city has purchased options on 1,200 acres of land three miles south of Furley for possible use as a landfill.

City officials also have sent out requests for proposals for establishment of a trash transfer station — an alternative to a new landfill.

By Jean Hays and Bill Bartel
The Wichita Eagle

Wichita city officials dropped a political bomb on Sedgwick County leaders Tuesday, telling commissioners that the city has been quietly buying options on farmland near Furley for possible use as a landfill.

The news is particularly upsetting to county leaders who had no idea what was going on even though, they say, Wichita Mayor Bob Knight had promised they would be kept in the loop regarding plans for the future of waste disposal in the county.

And commissioners had been assuring scores of rural residents that even though Wichita was leading the planning on solid waste disposal, the county leaders would protect their interests.

Commissioner Betsy Gwin, whose district includes the pro-

WHAT HAPPENS NEXT?

County commissioners, upset with the city's handling of trash disposal planning — particularly its consideration of a new landfill — are meeting today to discuss whether they should take back control. The county gave the planning power to the city three years ago.

WHAT DOES IT MEAN?

If the county takes back control of planning, Wichita officials likely would need the county's approval for their landfill or transfer station plans. That would be hard to get, given the strong opposition in rural areas to setting up a new landfill anywhere in the county's unincorporated areas.

► LANDFILL TIMETABLE

- Wichita officials expect to conduct a public hearing on the two trash disposal options in September.
- Officials hope to choose one option by October.

Rep. Susan Wagle distributed

*Energy + Nat Res
3-18-97
Attachment 1
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- [] Topeka Capital Journal
- [] Wichita Eagle
- [] Kansas City Star
- [] Emporia Gazette
- [] Garden City Telegram
- [] Hays Daily News

- [] Hutchinson News
- [] Iola Register
- [] Johnson County Sun

- [] Olathe Daily News
- [] Parsons Sun
- [] Pittsburg Morning Sun

Continued

posed landfill site, said she feels deceived.

"This is unacceptable to me. There has to be a better answer than a local landfill," Gwin said.

Commissioners were told of the city's purchase of options, on the 1,200 acres three miles south of Furley, by City Council members Tuesday afternoon, after the county received complaints from rural residents near the proposed landfill site who had found out about the city's plans.

The optioned property is between Greenwich Road and 127th Street, north of 77th North and south of 85th North.

Mike Taylor, the city's environmental education director, said the city has spent \$40,000 for purchase options so far and may spend up to \$50,000.

"The point is the purchase of the land option doesn't mean that a decision about trash disposal has been made," Taylor said. "But by owning the options, that gives the council members and the staff a good way to accurately evaluate the costs between transfer station and a new landfill."

Taylor pointed out that the city is also seeking proposals for establishment of a trash transfer station. The city plans to compare the cost of a landfill and a transfer station in September in order to decide which is the best method for handling trash in the future, Taylor said.

But for some county commissioners, it doesn't matter that the city is only considering buying land. The

fact that the city didn't tell them about the landfill site has so angered them that they will consider today taking back control of solid waste planning.

If the commissioners take back that control, it's likely that the city would need county approval to proceed with a landfill or transfer station.

However, it is unclear how the city will respond if the county does take back the planning function, and whether the city would go ahead with plans for a new landfill.

Commission Chairman Tom Winters, who has been assuring rural residents that he is working closely with Knight and is being kept informed of any developments, said he was "surprised" by the city's news.

Knight could not be reached for comment Tuesday.

Winters said he won't speak about the city's action until today's commission meeting.

"I clearly haven't thought this out to make sure I know what is best," Winters said. "I've got to get all my thoughts together before I really talk about it."

But Gwin said she's ready to fight. "I am somewhat nauseated," she said. "I am obviously not very happy. Maybe we can grab the plan and stop it and modify it or something to keep a landfill out of this county."

Gwin said she will ask her fellow commissioners to support the repeal of the county's 1993 agreement with the city that gives Wichita control of solid waste planning. If a majority of the commission sides with her, the county would assume the planning function in 30 days.

A state law required that counties

— or cities they designate — draw up a plan for disposal of solid waste. Whoever writes the plan can dictate where the landfills will go — or even if there will be one in that area. Counties may also ship their trash to distant landfills, using transfer stations as collection points.

The Kansas Department of Health and Environment has said that it will not issue a permit to build a landfill unless the solid waste plan calls for the landfill.

If the county takes control of planning for trash disposal and writes the plan, it may be able to legally block any effort the city might make to open a new landfill.

Wichita City Council members made no mention of the purchase options earlier Tuesday during their weekly meeting, when they were going over what the city is going to do to write a long-range trash plan for Wichita and the county that will satisfy the state Department of Health and Environment.

Last month, KDHE notified the city that a first draft the city had submitted was unacceptable. The letter said the plan had "significant" problems and needed "considerable work."

But that, said Steve Lackey, city public works director, is only a temporary setback.

"I feel like we've got the project under control," he said. "I wanted to reassure you this morning."

Cherches said he expects no problems revising the city's plan to meet state standards.

"The fact there was a rejection letter is common and routine," Cherches said, adding that the state

had done the same thing to other cities.

"Top level people" from KDHE will be in Wichita next week, Cherches said, "to resolve those issues over a conference table."

The county would be making a mistake, said City Council member Bill Cather, if it were to use KDHE's rejection of the first version of the plan as a reason to pull out of the agreement that put the city in charge of planning trash disposal for the entire county.

"The biggest problem we can generate now, it seems to me, would be if we stopped this process and started all over with the county taking charge of this matter," he said.

Bill Bartel writes about Sedgwick County government; Jean Hays writes about environmental issues. They can be reached at 268-6351. Contributing: Jim Cross of The Eagle

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Date: Fri. 9-20-96

[] Topeka Capital Journal
[x] Wichita Eagle

[] Hutchinson News
[] Iola Register

[] Olathe Daily News
[] Parsons Sun

Ferris: City still has some

say about landfill

■ Council member wants land bought just in case landfill near Furley is needed — no matter what the county says.

By Bill Roy

The Wichita Eagle

crease to pay for the solid-waste solution.

Sedgwick County Commissioner Betsy Gwin agreed that the city still has the authority to build a landfill.

But there's a catch: If a landfill doesn't conform to the plan the county eventually comes up with, the city's landfill plan won't go very far.

The state, which ultimately must approve of any new landfill, wouldn't let the city build a landfill if it conflicted with the county's solid-waste disposal plan, Gwin said.

The City Council spent about \$75,000 to purchase options on land near the northeast Sedgwick County community of Furley. Those options expire Oct. 17. On Tuesday, the City Council is expected to decide whether to buy the land.

Buy it, Ferris says.

"The county has already said they don't want to build a landfill," Ferris said. "Over my dead body, I believe it was in one case, and in another case it was, 'There are too many other issues.'"

County Commissioner Bill Hancock said Gwin is right; the city's effort to build a landfill would go nowhere if it didn't fit into the community's waste management plan written by the county.

But having the city buy those options might not be a bad idea, Hancock said, just in case the county ends up deciding that a landfill is the best way to get rid of the community's trash.

"I'm not going to automatically dismiss any options," Hancock said. "In that regard, if we had it around and available to us, it would be very good, especially if it's geologically sound for a landfill."

City Council member Bill Gale said he agrees that the city should prob-

"It's hard for anybody to make heads or tails at this point, as far as the direction solid waste is going to take."

*Jim Spencer,
district manager*

ably buy the land. The city may not have another chance to buy enough suitable land for a landfill if it gives up the Furley tract, Gale said.

Wichita Mayor Bob Knight said Tuesday that the city should offer the options to the county and that the city should respect the county's wish to make solid-waste management decisions for the community.

Council member George Rogers said that since the county has taken over, the city should offer it those land options.

Meanwhile, waste haulers BFI and Waste Management Inc. are watching to see what local officials come up with. Those two companies haul more than half of the trash that enters the

Brooks Landfill

The companies' reaction is of special interest to local officials. No matter what local government decides to do — build a new landfill or build a transfer station for storing trash before hauling it to distant landfills — it will be financially feasible only if the major haulers decide to cooperate.

If BFI and Waste Management decide the new landfill or transfer station is too expensive and opt to take Sedgwick County trash elsewhere, the local landfill or transfer station would likely fail financially.

Tim Lower, district manager for Waste Management, said his company is not exploring options that are different from what the city and county are considering.

BFI is still trying to get a regional

landfill built in Marton County, said District Manager Jim Spencer, and the company is looking at other, unspecified options. Spencer said he's not sure what the community will end up with. Bill Roy writes about government. He can be reached at 268-6233.

"It's hard for anybody to make heads or tails at this point, as far as the direction solid waste is going to take," Spencer said.

Wichita's City Council should buy the northeast Sedgwick County land it targeted for a possible landfill, council member Greg Ferris said Thursday.

City Council members might decide to build a landfill there if they don't think Sedgwick County comes up with the right solid-waste disposal plan, Ferris said.

"This idea that the city has no more authority in this is wrong," Ferris said. "The city still has statutory authority to build a landfill if they want to."

Ferris' proposal is likely to be considered by council members Tuesday, when they are set to decide whether to buy the land in question or give up their chance to purchase it.

Ferris' comments are the latest development in an ongoing dispute between the city and county over how to dispose of the community's solid waste after Brooks Landfill is full. The state has given the city five more years to use the landfill.

Sedgwick County commissioners voted Aug. 28 to take control of the community's solid-waste planning decisions. The county had ceded that authority, given to counties under state law, to the city of Wichita several years ago.

Now it's the county's responsibility to write a long-range solid-waste plan and submit it to the state for approval.

But even though the county has decided to take back its role, Ferris said, City Council members are not giving up their responsibility to represent the people of Wichita.

"If we saw the county going down a direction that, frankly, we thought could result in some kind of disaster, the city has some recourse," Ferris said.

What would be considered a disaster?

It could be disastrous if, for example, the county were unable to come up with a solution and turned over solid-waste control to the private sector, Ferris said. Or if the county planned to use tax money to subsidize a transfer station, as some governments do. Or if the county imposed an unbearable tax in-

Date: Wed. 9-25-96

[] Topeka Capital Journal
■ Wichita Eagle

Wichita hedges bet on landfill

■ City Council decides to spend \$4.2 million on land near Furley — just in case.

By Bill Roy
The Wichita Eagle

The Wichita City Council, in a 4-3 vote, decided Tuesday to buy 1,440 acres in north-east Sedgwick County just in case it needs to build a landfill.

The vote came in spite of Sedgwick County's decision last month to take control of solid-waste planning, therefore relieving the city of the obligation to find a way to dispose of the community's trash. And it came as a direct response to the county's apparent unwillingness to pursue a new landfill — an option the city tends to support.

The council split between two choices. The three-member minority wanted to offer the land-purchase options to county commissioners on the chance that they might decide in favor of building a new landfill. The four-member majority wanted to buy the land to make sure a landfill could be built if necessary.

Council member Joan Cole cast the deciding vote. Cole said she wants to make sure the city can, if necessary, head off the huge tax increase city officials fear would be required if county commissioners decide to build an expensive transfer station — a building for storing solid waste before hauling it to a distant landfill.

Cole said she had no reason to think that the county commissioners would have exercised the land options.

"We would never again find land at this price in a spot so environmentally appropriate," she said.

The city's decision outraged people who live near the land, near Furley.

It was also the latest hit in a game of tag the City Council and County Commission have been playing over solid-waste management. At issue, fundamentally, is the city's desire to build a new landfill and the county's desire not to build one. The issue is pressing because Brooks Landfill will close in October 2001.

It's complicated:

Several years ago the county gave the city the authority for solid-waste disposal planning — authority that counties have under state law. But the county commissioners, angered that the city had bought options on the Furley land, took back that authority in August.

The city's move Tuesday means the council will remain a key player in the solid-waste management debate.

Council members Greg Ferris, Bill Gale and Sheldon Kamen joined Cole in voting to buy the land; Mayor Bob Knight, Vice Mayor Bill Cather and council member George Rogers voted to offer the land to the county.

Most of the land — more than \$3.6 million worth — will be bought from a company known as Venture Land & Trust Co. LLC.

No one on the city's staff could identify the people who make up the land trust company. An Oklahoma City attorney signed the land option contracts with the city, but no one — including City Manager Chris Cherches and City Attorney Gary Rebenstorf — could remember his name or find it in the files.

The city will pay about \$520,000 for the rest of the land, which will be purchased from two trust funds — those of Everett and Wilma Freidline and Kathrine Sevall.

The average price per acre is \$2,942.

That might seem high, said Ferris, but a landfill is much less expensive than a transfer station. A report the council received last week indicated that establishing and operating a new landfill would cost \$9 million to \$10 million a year less than building and operating a transfer station.

The money the city spends on the land near Furley can be recovered by increasing the tipping fee at Brooks by \$1.70 to \$1.80 a ton, Ferris said.

"That will be well within the realm that will not cause any type of rate shock and type of distress," Ferris said.

It might not be rate shock but just plain shock that state Rep. Susan Wagle, R-Wichita, and her constituents are feeling. Wagle said she considers the \$4.2 million the city is paying for about 1,400 acres of rural land an "outrageous" expense.

Wagle, whose legislative district includes the proposed landfill site, said she is also upset about the lack of in-

"Our hopes, our dreams are gone."

Glenda Lott,
who lives near the land
the city will buy

formation about Venture. Many residents near the site have been calling her, seeking more information, but she is unable to find it for them.

Tom Winters, County Commission chairman, said he's not concerned that the city is trying to hold anything over county commissioners' heads to persuade them to build a landfill.

"We're going to make a good decision based on what we find and what we believe is right for the community and which, hopefully, has community-wide support," Winters said. "And if they want to hold that land in reserve, they can explain to their citizens and their taxpayers why they made that dollar investment in that property."

Bryan Jaax, a Furley resident who has led the anti-landfill fight, said his group might ask the courts for protection.

"We'll probably at this point look toward legal action," he said shortly after the City Council voted to buy the land.

Glenda Lott, who lives near the land the city will buy, said the council's vote has changed her life and those of her neighbors forever.

"Our hopes, our dreams are gone," she said.

Bill Roy writes about government and public safety. He can be reached at 268-6233.

Study reveals water flow five feet below waste site

By MARTIN HAWVER
Capital Journal legislative writer

At least three studies of the state's only hazardous waste landfill failed to find or report a water table only five feet below the bottom of trenches in which dangerous chemicals and organic wastes are stored, the Kansas Geological Survey reported Monday.

RGS senior geologist Frank Wilson told the Senate Energy and Natural Resources Committee his was the first study that indicated significant amounts of water underneath the Sedgwick County site of the state's hazardous waste dump.

The RGS survey, completed after at least three other surveys of geological formations underneath Furley, Kan., where the dump is located, indicated significant water flow in an area adjacent to the dump, the area where National Industrial Environmental Services has applied for an 80-acre expansion of its waste dump.

Wilson also testified to the committee that the Kansas Department of Health and Environment squelched the

RGS study until it could confirm it through another study of the site, which was closed in mid-January after poisonous chemicals were detected leaking from a clay-lined sludge storage pit.

Wilson said, "It was apparent from the start that they did not like our findings and (Mel) Gray (director of the

"It was apparent from the start that they did not like our findings."

— Geologist Frank Wilson

division of environment of KDHE) attempted to discredit our permeameter analysis."

It was that permeability report that showed the soils in the area of the hazardous waste sludge pit were not uniformly "tight" or able to prevent chemicals from oozing from the pit into at least two water-bearing formations.

Wilson's testimony on the bill, which would prevent KDHE from issuing a permit to allow expansion of the hazardous waste dump, was called "a bombshell" by committee member

Sen. Paul Felecano, D-Vichita.

Joe Harkins, secretary of the State Department of Health and Environment, which is the licensing agency for the dump, said after Wilson's report that he did what he believed was the responsible thing, order a second study to confirm the accuracy of the RGS findings.

The RGS report upended findings of T. Alan Haliburton, a professor of soils mechanics at Oklahoma State University, who in a study of the waste dump site found no significant water tables in the area that would be polluted by the waste dump.

In at least one case, the RGS study indicated water tables within five feet of the Haliburton test wells, which were reported as dry holes.

Committee Chairman Sen. Charlie Angel, R-Palms, said he couldn't speculate on the fate of the dump expansion bill in the face of Wilson's testimony, though other committee members indicated that the permeability of soils under the proposed expansion area sounds bad to them.

Hearings on the bill will continue Tuesday.

Hazardous waste disposal site closed

1-19-82
WICHITA (AP) — State officials Monday closed a hazardous waste disposal site near Furley, until seepage of possible cancer-causing chemicals there can be halted.

Gov. John Carlin and Kansas Health and Environment Secretary Joseph Harkins came to Wichita to announce the closing at a news conference after summoning to Topeka officials of Kansas Industrial Environmental Services Inc., which owns the site.

The governor and health secretary said toxic chemicals had been discovered in a pocket of ground water at the

north edge of the 80-acre dump in northeast Sedgwick County, the only hazardous waste disposal site in the state. The site is about 10 miles northeast of Wichita.

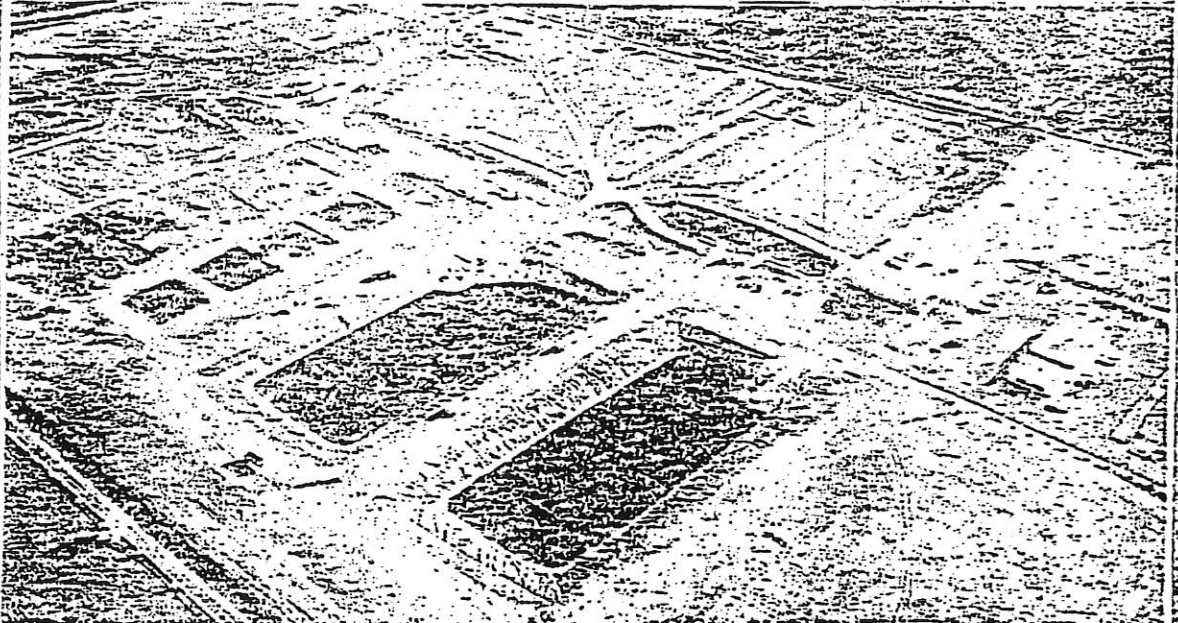
Harkins said no public or private drinking water supplies had been contaminated, and the leak posed no immediate health threat to the public.

"Research completed by the Department of Health and Environment demonstrates that the site at Furley is not properly retaining hazardous wastes which are currently being stored there," Carlin said. "Until, and unless,

problems which we have identified are corrected, the facility will remain closed."

Mel Wiltrogen, KIES public relations spokesman, said site manager Cliff McDaniel was confident the seepage could be stopped and cleaned up.

Recent tests showed the presence in a spring near the site of traces of chemicals listed as possible carcinogens. When retests found more of the vinyl chlorides, which are used as solvents, in a test well at the edge of the site



—Staff

Two large lagoons at the Furley hazardous waste disposal site contain chemicals until water evaporates. The left over sludge is deposited in a landfill. Some seepage of toxic chemicals has been discovered at the site.

Friday, state officials began "a vigorous effort to find the source," Harkins said.

"It is a serious problem," he said, adding that sites such as the one near Wichita are supposed to be leak-proof.

Harkins estimated it will take three to six months to stop the seepage.

One way the company might correct the problem would be to dig a trench to intercept the contaminated ground water, Harkins said.

KIES has applied for a permit to double the size of the site. Harkins said KDE action on that proposal had been slated for mid-February but probably will be delayed because of the seepage problem.

Carlin and Harkins said they believe KIES will be able to handle waste it would normally take in by having it shipped to its parent company's other sites.

SENATE ENERGY & NATIONAL RESOURCES COMMITTEE

March 18, 1997
Topeka, Kansas

Presented by Duane Sanders

Mr. Chairman and Members of the Committee:

In August 1996, a real estate agent came into our community claiming to represent a group of investors who were interested in putting together a large tract of land for a development project. The agent was employed by a prominent real estate agency and was buying options on behalf of Venture Land Company. We could locate no one who knew the identity of Venture Land or had even heard of it. A check with the Secretary of State revealed the corporate application papers were filed in May, 1996, by a law firm in Wichita, but the corporation officers would remain secret for one year.

The options, purchased for \$3,000 per acre for land that would hardly be worth \$1,000 per acre, were bought mostly from absentee landowners. The options, we were told, were then offered to the Wichita City Council who wanted more land for a landfill. Although the County Commission was in control of the solid waste planning, the City Council bought the options, purchased the land and annexed it, all the while pretending they had no idea who they were buying the options from.

After the dust, settled, we learned who was involved. I'm sure you have heard the statement "Birds of a feather flock together". As it turned out, a member of the City Council, a member of the law firm and the man who supposedly owned Venture Land Company, were all from the same flock of birds. (They are close friends and socialize together.)

As a community of home and land owners, we were able to do nothing but watch and worry that this land too, would be polluted as are the other landfill sites used and abandoned in Wichita. We're concerned about the blowing plastic bags and paper, the infestation of birds in our milo fields and the influx of 500 trash trucks per day on our quiet rural roads. In addition, because the Council purchased such a large track of land, 1200 acres, we are concerned that their intent is to have a mega landfill to be used by surrounding counties and states. The Council has stated their need to have a new landfill to pay for the closure of the present one. We were told the City of Wichita has been receiving four million dollars per year from the present landfill.

People in the Furley area cannot vote for members of the Wichita City Council who are promoting this travesty. They are beyond our influence. Perhaps we should hold a tea party like the people of Boston many years ago. We're in a similar situation. We must rely on you for help as present statutes contain a variance clause that would allow the City Council to overturn the final decision on a solid waste plan. According to Councilman Greg Ferris, per the Wichita Eagle, March 10, 1997, the City Council could get the Counties decision overturned through K.D.H.E. or the courts.

Sen Energy & Nat Res
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In 1986, the City Council purchased another track of land to be used as a landfill. The Kingsbury Cite lies adjacent to the present landfill and has a four lane highway network. The barrier fence and trees are already in place. The engineering study on that cite indicates it meets and exceeds the standards established by K.D.H.E. With the Kingsbury Cite ready at the north edge of Wichita, why does the City Council want to bring trash all the way out to our quiet rural community and contaminate prime farm land? A rumor is circulating in Wichita that the engineering report on the Kingsbury Cite is not reliable. I'm certain a report of that magnitude done by an environmental engineering firm and recognized nationally, as is SCS, must surely be credible.

The Sedgwick County Appraiser was interviewed on T.V. recently and stated appraisal values of land in our area were already down because of the possibility of a landfill being developed. We wonder what will happen to our life savings invested in the land if it becomes reality.

Favorable passage of Substitute House Bill 2331 will give us an opportunity to counteract the underhanded and deceptive measures used by the City Council.

The Kansas Legislature is our only hope. We plead for your help and support of Substitute house Bill 2331.

MARCH 12, 1997

TO: KANSAS STATE SENATE ENERGY AND NATUTAL
RESOURCE COMMITTEE

FROM DAN WENDELL
11601 E. 77th ST. NORTH
WICHITA, KANSAS 67226

RE: SUBSTITUTE HOUSE BILL 2331

Thirty-two years ago I left the family farm to seek employment in the city. For thirty-two years my dream has been to move back to the country. Last year I was able to purchase a small acreage in the county and build a new home on it. Within a few months the city of Wichita, purchased 1400 acres of land across the road in front of our new home for a landfill.

Immediately our neighborhood was worried about ground water contamination, contamination running into our ponds, air quality, excessive noise, huge trash trucks on our roads, the possibility of trash trains coming from out of state, blowing trash, excessive birds painting our buildings, excessive dust in the air and the loss of wildlife in the area. Because of the environmental impact this would have on the area we began to fight.

Upon checking with several attorneys we found that due to the laws in Kansas there was nothing that we could do legally. We then tried to fight it politically but since we are unable to vote for Wichita's city commission who had bought this land we soon found we have no voice in what happens in our neighborhood.

We ask that you the legislators of Kansas pass this substitute house bill 2331 and give us a voice in what happens in the rural areas of Kansas.

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To: Kansas State Energy and Natural Resource
Committee

Re: Substitute House Bill 2331

I built my dream home close to thirty years ago, and on a small farm my wife and I always wanted, we raised our family of three children and became active in community affairs.

Forty-six years ago I was drafted into the army by President Truman, through public law 550. All during my basic training I was lectured about Communism, and that Communism had to be stopped in Korea. If not it would spread to this country, and we would lose our freedom, our rights to jury trials and our rights to vote. When the city of Wichita bought land adjacent to my farm, and annexed this land, and finally announced it was to be used as a landfill, I felt my land was being invaded, for my farm became worthless overnight.

I can not vote for or against members of the City Council that decided to purchase this land, instead, I can only vote for my County Commissioners, in whom I put my trust that they will care for the land around me, and the environment. However, by requesting a Variance, the City Council can override the County Commissioners, and put a landfill next to my farm.

I have no vote in this decision in any way. I feel that my rights, that I have fought for in Korea, has now been taken away. I still have some fight left in me, but I'm not sure who is the enemy. It would easy to say it is the city of Wichita, however, I know what they are doing is within the law. Therefore I can only blame the Variance ^{Clause} ~~Law~~ that is now in force.

I can fight this enemy only with words, so I beg of you Councilmen to pass this law, 2331, to give me and my community back the right to vote, and to help us keep our democracy.

From:

Virgil L. Uhlman
6721 N. 127th E.
Wichita, KS 67226

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March 12, 1997

Mr. Chairman, Members of the Committee:

My name is Betty Ziegler. I live northeast of Wichita at 77th North and Greenwich Road. The city of Wichita has purchased all the land in my section for a landfill except my 80 acres. I was given a brief opportunity to sell my property which has been my home for 41 years . The farm has been in my family over 100 years.

Today I would like to share with you the rather unusual way that land was obtained by Venture Land Co. for the city of Wichita.

Last May , my sister, who lives in New Mexico, called me saying that she had a call from Venture Land Co. wanting to buy her 80 acres, which adjoins mine. They were wanting a large parcel for development and willing to pay more than the 'going' price. Since the quarter section across the road had been sold for a housing development she thought it was for housing. They were contacted numerous times. I didn't know until August that some of my neighbors had also been contacted and they , too, had been told it was to be used for development. Nothing more.

It wasn't until Sunday, August 11, that the folks that own a farm in my section told me that they, too, had been contacted by Venture Land, but they had no intention of selling. Then, on Tuesday morning she called to say that they had sold their farms. That same day Venture Land's salesman, Joe McFall, called and wanted to visit with me.

When he came out, he told me that Venture Land was buying land in the area for development. When I asked him what the development would be, he said, "hold on to your hat" and hesitated. Then he said "**it's out now** so I can tell you --**it's for a landfill.**" Then, he produced a map showing the land fill boundaries and who had already sold options and those pending. I was the last one inside the loop to be contacted. Acting like he was doing me a favor, he offered to buy my farm--giving me a life estate on the house. He said , "You can live here the rest of your life, next to the landfill, whether you own it or they own it, because this place is in the perimeter and would never be dumped on".

I was in shock--all these people had sold and had kept very quiet about it. I asked him if I were to sell to them, what would happen to my new neighbors across the road who had just built nice, new houses. He sat there and then silently shrugged his shoulders.

I told Joe I would have to talk to my attorney. I knew that I didn't want to sell, but neither did I want to live next to a dump. Joe left along with his offer to buy.

I could have taken their money that day and kept quiet . Or I could have told my new neighbors, like one of those who sold told me, "The good Lord told me that if the government wanted my land that I should let them have it", but I didn't. That evening on the 6:00 o'clock news was a picture of my house and the newsman said , "the site of the future landfill".

Folks, please, don't let it happen!!

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TO: Senate Committee on Energy and Natural Resources

FROM: Bruce Bodecker
1945 N.W. Butler Rd.
Benton, Kansas 67017 (316)778-1847

TOPIC: Substitute House Bill No. 2331

Good morning Senators. I own and operate a family farm in western Butler and eastern Sedgwick County. I live two miles East of ground purchased by the City of Wichita for a proposed solid waste landfill. I have spent the last seventeen years as a supervisor, and am currently president of the Butler County Conservation District. I was elected to nine years of duty on the Butler County Committee, which administers federal farm policy at the county level for the United States Department of Agriculture. I also have spent about four years on the Butler County Zoning Board, which is involved with land use in the county. Today I represent none of these organizations. I only represent myself.

In 1977, the Kansas Department of Health and Environment issued a permit for a hazardous waste landfill formally known as the Furley Dump. By 1982 a severe leak was discovered and this facility was closed. Cleanup procedures have continued from closer until the present under the guidance of USEPA. This Furley Dump is located one fourth mile north of Wichita's purchased land.

When the existing Furley Dump was permitted, Sedgwick County was not zoned. After my experiences on the Butler County Zoning Board, we made sure that proper zoning was in effect around the Furley Dump, when zoning was enacted in Sedgwick County. We were very hopeful that proper zoning would protect us if the landfill ever raised its ugly head again.

Because of decisions by the courts, a concept of island annexation has been developed. Wherein a city can purchase, annex, and zone without any input from the county. Which leaves rural residents without political representation in these very important land use issues. Once again in a long list of events that have been devastating to our community, we the people were left unrepresented, while Wichita exercised its special rights.

Today the county commissioners have responsibility to plan for solid waste management. Rural residences are politically represented by those commissioners. Today the City of Wichita has the right to ask and receive a variance from the secretary of KDHE for a landfill. If that variance is available, we the rural residence are once again not represented. Substitute House Bill 2331 stops the variance and terminates this political shell game.

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This is not a democrat nor a republican issue. This is not a rural or urban issue. This is an issue about how Kansans will govern themselves. I am in favor of self governance by democratic processes, and to that end I am in favor of H.B. 2331. The load is heavy. We need your help.

Senate Energy & Natural Resources Committee
Statement By Wilmer Freund, Chairman
Sedgwick County Conservation District
9505 West Central, Suite 103, Wichita, KS 67212
316-729-0331, March 18, 1997

My name is Wilmer Freund, retired Consulting Engineer and Chairman of the Sedgwick County Conservation District. I have been a member of the District Board since 1969, serving as Chairman since 1992. Through the Conservation District, almost \$800,000 is spent annually in Sedgwick County for the wise management of our natural resources, e.g. soil, water, clean air to name a few. Kansas spends \$8 million annually statewide to control pollution and clean up what already has been polluted.

Today I speak to you on behalf of the District regarding Substitute for HB 2331 (as amended by the House Committee of the Whole). The District wholeheartedly supports this bill for the following reasons:

- 1) It eliminates the possibility of "end-running" a bona-fide Solid Waste Management Plan;
- 2) It encourages governmental entities and/or private operators to evaluate and use the best locations for solid waste management to their maximum potential;
- 3) It would offer some degree of protection for land development against the threat of devaluation due to undesirable location of landfill operations in the future; and finally,
- 4) It puts "teeth" in a good Solid Waste Management Plan.

Overall, the bill as amended would prevent reckless ravaging of valuable land simply to satisfy the needs of society.

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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 2331

The Department of Health and Environment appreciates this opportunity to provide testimony in support of substitute House Bill 2331. While supporting the concept established in this substitute bill, we would like to suggest certain amendments which will strengthen the legislative intent which is to provide assurances that solid waste permit applicants should not be able to circumvent the local planning process. To accomplish this goal, we have attached a balloon which presents a new paragraph (l) which begins on page 4.

As the bill currently proposes, KDHE could not issue a solid waste permit unless the party responsible for preparing the solid waste plan for the location certified that the proposed facility is consistent with the local plan. This certification could come from the county, designated city, or regional authority which prepared the subject plan. The one exception to that requirement would be for landfills located at industrial facilities receiving only manufacturing or process waste generated on-site. With some minor differences, this requirement is currently in solid waste regulations.

Although the department supported the substitute bill as developed by the House Environment Committee, further study led us to believe that some improvements could be made. Our suggested changes are listed and explained below:

1. Eliminate regional authorities from the list of entities that can certify facility consistency with the county solid waste plan, even if the county has adopted a region plan. Although regional planning is desirable for a variety of reasons, implementation as related to the siting of new facilities should be addressed at the county level. Even though many counties chose to plan together, few are implementing comprehensive solid waste management programs as regions. Most approved regional plans conclude that counties will KDHE

Substitute for HOUSE BILL No. 2331

By Committee on Environment

2-25

0 AN ACT concerning solid waste; relating to issuance of certain permits;
1 **[concerning application of certain requirements;]** amending
2 **[K.S.A. 12-2123 and 19-2658 and]** K.S.A. 1996 Supp. 65-3407 and
3 repealing the existing ~~section~~ **[sections]**.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 1996 Supp. 65-3407 is hereby amended to read as
7 follows: 65-3407. (a) It shall be unlawful for any person to construct, alter
8 or operate a solid waste processing facility or a solid waste disposal area
9 of a solid waste management system, except for clean rubble disposal
0 sites, without first obtaining a permit from the secretary.

1 (b) Every person desiring to obtain a permit to construct, alter or
2 operate a solid waste ~~storage, treatment or~~ processing facility or disposal
3 area shall make application for such a permit on forms provided for such
4 purpose by the rules and regulations of the secretary and shall provide
5 the secretary with such information as necessary to show that the facility
6 or area will comply with the purpose of this act. Upon receipt of any
7 application and payment of the application fee, the secretary, with advice
8 and counsel from the local health authorities and the county commission,

9 ll make an investigation of the proposed solid waste processing facility
0 or disposal area and determine whether it complies with the provisions
1 of this act and any rules and regulations and standards adopted there-
2 under. The secretary also may consider the need for the facility or area
3 in conjunction with the county or regional solid waste management plan.
4 When the investigation reveals that the facility or area does conform with
5 the provisions of the act and the rules and regulations and standards
6 adopted thereunder the secretary shall approve the application and shall
7 issue a permit for the operation of each solid waste processing or disposal
8 facility or area set forth in the application. In the event that the facility
9 or area fails to meet the rules and regulations and standards required by
0 this act the secretary shall issue a report to the applicant stating the de-
1 ficiencies in the application. The secretary may issue temporary permits
2 tioned upon corrections of construction methods being completed
3 and implemented.

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1 (c) Before reviewing any application for permit, the secretary shall
2 conduct a background investigation of the applicant. The secretary shall
3 consider the financial, technical and management capabilities of the ap-
4 plicant as conditions for issuance of a permit. The secretary may reject
5 the application prior to conducting an investigation into the merits of the
6 application if the secretary finds that:

7 (1) The applicant currently holds, or in the past has held, a permit
8 under this section and while the applicant held a permit under this section
9 the applicant violated a provision of subsection (a) of K.S.A. 65-3409, and
10 amendments thereto; or

11 (2) the applicant previously held a permit under this section and that
12 permit was revoked by the secretary; or

13 (3) the applicant failed or continues to fail to comply with any of the
14 provisions of the air, water or waste statutes, including rules and regula-
15 tions issued thereunder, relating to environmental protection or to the
16 protection of public health in this or any other state or the federal gov-
17 ernment of the United States, or any condition of any permit or license
18 issued by the secretary; or if the secretary finds that the applicant has
19 shown a lack of ability or intention to comply with any provision of any
20 law referred to in this subsection or any rule and regulation or order or
21 permit issued pursuant to any such law as indicated by past or continuing
22 violations; or

23 (4) the applicant is a corporation and any principal, shareholder, or
24 other person capable of exercising total or partial control of such corpo-
25 ration could be determined ineligible to receive a permit pursuant to
26 subsection (c)(1), (2) or (3) above.

27 (d) Before reviewing any application for a permit, the secretary may
28 request that the attorney general perform a comprehensive criminal back-
29 ground investigation of the applicant; or in the case of a corporate appli-
30 cant, any principal, shareholder or other person capable of exercising total
31 or partial control of the corporation. The secretary may reject the appli-
32 cation prior to conducting an investigation into the merits of the appli-
33 cation if the secretary finds that serious criminal violations have been
34 committed by the applicant or a principal of the corporation.

35 (e) The fees for a solid waste processing or disposal permit shall be
36 established by rules and regulations adopted by the secretary. The fee for
37 the application and original permit shall not exceed \$5,000. The annual
38 permit renewal fee shall not exceed \$2,000. No refund shall be made in
39 case of revocation. In establishing fees for a construction and demolition
40 landfill, the secretary shall adopt a differential fee schedule based upon
41 the volume of construction and demolition waste to be disposed of at
42 such landfill. All fees shall be deposited in the state treasury and credited
43 to the solid waste management fund. A city, county, other political sub-

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vision or state agency shall be exempt from payment of the fee but shall meet all other provisions of this act.

(f) Plans, designs and relevant data for the construction of solid waste processing facilities and disposal sites shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, alteration or operation of such facility or area. In adopting rules and regulations, the secretary may specify sites, areas or facilities where the environmental impact is minimal and may waive such preparation requirements provided that a review of such plans is conducted by a professional engineer licensed to practice in Kansas.

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

(h) As a condition of granting a permit to operate any processing facility or disposal area for solid waste, the secretary shall require the permittee to provide a trust fund, surety bond, cash bond, a secured trust fund, irrevocable letter of credit or insurance to pay costs of closure and postclosure cleanup, or shall require the permittee to meet a financial test established by the secretary for closure and postclosure, which test may be met by a permittee's ad valorem taxing power. In addition, the secretary shall require the permittee to provide liability insurance, including coverage against sudden and nonsudden occurrences, or any combination thereof, in such amount as determined necessary by the secretary to insure the financial responsibility of the permittee for any: (1) Operational activities contemplated by the act, rules and regulations adopted pursuant thereto, and the permit; and (2) liability incurred in the operation of the facility or area and to insure that, upon abandonment, cessation or interruption of the operation of the facility or area, all appropriate measures are taken to prevent present or future damage to human health and the environment. Any such liability insurance as may be required pursuant to this subsection or pursuant to the rules and regulations of the secretary shall be issued by an insurance company authorized to do business in Kansas or by a licensed insurance agent operating under authority of K.S.A. 40-246b, and amendments thereto, and shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance pursuant to K.S.A. 40-216, and amendments thereto, except as authorized by K.S.A. 40-246b, and amendments thereto. Nothing contained in this subsection shall be deemed to apply to any state agency or department or agency of the federal government.

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1 (i) Permits granted by the secretary, as provided in this act: (1) Shall
 2 not be transferable; and (2) shall be revocable or subject to suspension
 3 whenever the secretary shall determine that the solid waste processing
 4 or disposal facility or area is, or has been constructed or operated in
 5 violation of this act or the rules and regulations or standards adopted
 6 pursuant to the act, or is creating or threatens to create a hazard to per-
 7 sons or property in the area or to the environment, or is creating or
 8 threatens to create a public nuisance, or upon the failure to make payment
 9 of any fee required under this act. The secretary also may revoke, suspend
 10 or refuse to issue a permit when the secretary determines that past or
 11 continuing violations of the provisions of subsection (c)(3) of K.S.A. 65-
 12 3407, and amendments thereto, have been committed by a permittee, or
 13 any principal, shareholder or other person capable of exercising partial
 14 or total control over a permittee.

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

19 (k) (1) No permit to construct or operate a solid waste disposal area
 20 shall be issued on or after the effective date of this act if such area is
 21 located within ½ mile of a navigable stream used for interstate commerce
 22 or within one mile of an intake point for any public surface water supply
 23 system.

24 (2) Any permit, issued before the effective date of this act, to con-
 25 struct or operate a solid waste disposal area is hereby declared void if
 26 such area is not yet in operation and is located within ½ mile of a navi-
 27 gable stream used for interstate commerce or within one mile of an intake
 28 point for any public surface water supply system.

29 (3) The provisions of this subsection shall not be construed to pro-
 30 hibit: (A) Issuance of a permit for lateral expansion onto land contiguous
 31 to a permitted solid waste disposal area in operation on the effective date
 32 of this act; (B) issuance of a permit for a solid waste disposal area for
 33 disposal of a solid waste by-product produced on-site; (C) renewal of an
 34 existing permit for a solid waste area in operation on the effective date
 35 of this act; or (D) activities which are regulated under K.S.A. 65-163
 36 through 65-165 or 65-171d, and amendments thereto.

37 ~~(l) No permit for a solid waste processing facility or solid waste dis-~~
 38 ~~posal area shall be issued pursuant to this section unless the county, group~~
 39 ~~of counties or designated city responsible for the development and adop-~~
 40 ~~tion of a solid waste management plan for the area where the facility or~~
 41 ~~area is or will be located certifies to the secretary that the facility or area~~
 42 ~~is consistent with the plan. The provisions of this subsection shall not~~
 43 ~~apply to a solid waste disposal area for disposal of only solid waste pro-~~

New Paragraph (1):

(1) Before reviewing any application for a solid waste processing facility or solid waste disposal area, the secretary shall require the following information as part of the application:

(1) Certification by the board of county commissioners or the mayor of a designated city responsible for the development and adoption of the solid waste management plan for the location where the processing facility or disposal area is or will be located that the processing facility or disposal area is consistent with the plan. This certification shall not apply to a solid waste disposal area for disposal of only solid waste produced on site from manufacturing and industrial processes or from on site construction or demolition activities.

(2) If the location is zoned, certification by the local planning and zoning authority that the processing facility or disposal area is consistent with local land use restrictions; or if the location is not zoned, certification from the board of county commissioners that the processing facility or disposal area is compatible with surrounding land use.

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~~Proceed on site from manufacturing and industrial processes.~~

[Sec. 2. K.S.A. 12-2123 is hereby amended to read as follows:

12-2123. (a) Whenever the governing body of any city finds and determines by resolution that it is necessary to acquire a site or sites for the disposal of refuse or solid waste as defined by K.S.A. 65-3402~~(a)~~ and amendments thereto within or without the city, ~~if the city may acquire such site or sites by gift, purchase or condemnation and may construct necessary facilities thereon and purchase necessary equipment for the disposal of such refuse or solid waste.~~ In the event the governing body of such city finds that it is necessary to acquire such site or sites by condemnation, the governing body of the city shall proceed under the provisions of K.S.A. 26-501 to 26-516 inclusive, and amendments thereto. Whenever any such city shall so condemn such a site or sites, said city shall acquire a fee simple title thereto. In order to pay for such site or sites and the construction of all such necessary facilities and equipment to be used in the disposal of refuse or solid waste, the governing body of such city is authorized to issue general bonds of the city in the manner provided by law for the issuance of general improvements bonds of the city.

[(b) Any site or sites acquired pursuant to this section, and any facilities or equipment thereon, shall be subject to all permit and other requirements of the solid waste management laws of this state.]

[Sec. 3. K.S.A. 19-2658 is hereby amended to read as follows:

19-2658. (a) The board of county commissioners of any county is hereby authorized to acquire by lease, condemnation or purchase, lands to be used as a site for the disposal of refuse. "Refuse" for the purposes of this act shall include garbage, trash and solid waste. Upon the acquisition of any such site, the board may build or construct any necessary buildings, incinerators or other structures or improvements thereon and may acquire or make use of any equipment presently owned by the county necessary for the proper, effective and sanitary disposal of refuse. If the board of county commissioners shall deem it to be in the best interests of the county, such board may in lieu of acquiring a site as hereinbefore authorized, contract with any city or cities located within such county and having a refuse disposal site, for the use of such disposal site upon such terms and conditions as may be agreed upon by the board of county commissioners and the governing body of the city and may acquire equipment or make use of any equipment presently owned by the county pursuant thereto.

[(b) Any site acquired pursuant to this section, and any structures, improvements or equipment thereon, shall be subject to all permit and

ther requirements of the solid waste management laws of this state.]

2 Sec. 2 [4]. [K.S.A. 12-2123 and 19-2658 and] K.S.A. 1996 Supp.

3 65-3407 is [are] hereby repealed.

4 Sec. 3 [5]. This act shall take effect and be in force from and after

5 its publication in the statute book.

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Testimony of
Charles M. Benjamin, Ph.D., J.D.
Legislative Coordinator
Kansas Natural Resource Council
Kansas Chapter of Sierra Club
935 S. Kansas Ave., Suite 200
Topeka, KS 66612

Re: Substitute for H.B. 2331 as amended by House Committee of the
Whole

Before the Senate Committee on Energy and Natural Resources
March 18, 1997

Thank you for the opportunity to testify in favor of this bill. I come to you today because of a basic problem that almost all counties face with regard to planning and implementing solid waste facilities, whether they be landfills, transfer stations, composting or recycling facilities. That problem boils down to which local public entity will be in charge of the entire solid waste stream flow. But first a little historical background so that we can all understand how we got to where we are.

When we were a state of small towns and small farms people got rid of what little solid waste they had in one of three ways. They either burned it, they buried it or they dumped it on "waste ground", usually near a stream that they couldn't use for anything else. As we became more urbanized these three methods of disposal were no longer satisfactory. Burning trash resulted in nuisance smoke and debris or worse, it set fire to nearby structures. As we became urbanized, burying or merely dumping solid waste became a public health risk. Cities therefore began collecting trash, either by creating municipally owned systems or contracting with private haulers. The trash that was collected was disposed of on the outskirts of town in the "town dump", typically located near the closest moving body of water so that floods would carry the debris downstream.

Because of the proliferation of town dumps and the generally unsanitary condition of these facilities, there emerged, in the late 1960s and early 1970s, a nationwide movement to develop "sanitary landfills", essentially large pits dug into the ground where trash is buried and then covered with dirt. Counties now got into the solid waste act because there was an effort to limit the number of these landfills to one per county. Cities continued to be responsible for collecting the trash. But the trash ended up in the sanitary landfill run by the county, unless the county delegated that authority to a city. In the case of Sedgwick County the County delegated this authority to the City of Wichita.

After about fifteen years of sanitary landfills, there emerged problems all over the country with pollution of surface and groundwater from these facilities. Beginning in the late 1980s

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and early 1990s we entered in the era of Subtitle D of RECRA. Subtitle D required that plastic liners and leachate collection systems be put into landfills. In order to make such facilities cost-effective they had to be large enough to pay for themselves with sufficient trash volume. For large municipal areas like Wichita, this was not a problem. However, for small counties the only way to make a Subtitle D landfill cost effective was to create a regional facility with other counties. KDHE recognized this fact and gave counties the authority and the funds to plan their Subtitle D solid waste future. Small counties were encouraged to do this planning with other small counties. But there was a small problem.

The problem was that the cities continued to be in charge of collecting the trash. They were under no obligation to bring the trash they collected to either the local county landfill or the regional landfill run by their county in coalition with other counties. Instead cities could contract with private companies who could take their trash to who knows where. In my experience as a Harvey County Commissioner, for example, the cities of Newton, North Newton, Hesston and Walton in Harvey County took their solid waste to the Harvey County landfill. However, the cities of Halstead and Sedgwick contracted with BFI who took their solid waste to the Brooks landfill in Wichita. In the meantime, we were participating with Dickinson, McPherson and Marion counties in a regional solid waste planning process. We knew that no matter how much time or taxpayer money we put into the planning process, there was no guarantee that we could get the cities in Harvey County to comply with the plan.

The nut of the problem is that counties can do all the solid waste planning in the world but they cannot compel the cities in their county to comply with the solid waste plan. The only leverage that counties have now is that they have the power to levy a solid waste fee on all county residents, thereby, in effect blackmailing the cities into taking their trash to the county or regional landfill. Another solution is to create a municipal solid waste utility as McPherson County has done. There the municipal solid waste facility runs the landfill and has bought out all the private haulers in the County. Thus the municipal solid waste utility controls the entire trash flow from the point at which it is placed on the curb to the time it goes into a landfill or is recycled or composted.

I think this bill would go a long way toward breaking the political gridlock over solid waste not only in Wichita and Sedgwick County, but also in other counties across the state. Once one local entity is in charge of the entire solid waste flow, then rational planning can occur. Only then can all the citizens of the county decide whether they want to landfill, or sell their trash to someone else, or compost it, or recycle it or some combination of the above. As the situation stands now, no one is in charge so everyone is in charge and nothing happens. I therefore urge the passage of this bill. Thank you for your time.



City of Wichita Testimony Substitute House Bill 2331

Senate Energy & Natural Resources Committee

Delivered by Mike Taylor, Government Relations Director
March 18, 1997

There is no doubt that the City of Wichita and Sedgwick County are having a difficult, complicated time trying to figure out what to do about solid waste in the coming years. It is a local dilemma which has sparked on going debates and discussions between governing bodies, between urban and rural residents, between next door neighbors and within families. "Talking trash" has become a major and important topic of conversation in all corners of the County.

Whether to build a new landfill, a transfer station, or an incinerator is a complex controversy. But it is a local controversy which is being studied, discussed and debated locally. It is a local problem being solved at the local level. With all due respect, I would argue that allowing local problems to be solved by the people who created them and have to live with them is enough reason for the Legislature to stop this bill.

There are some legal and practical concerns produced by this bill. The amendment overrules an Attorney General Opinion (AGO 90-67) which allows the Secretary of Health and Environment to issue a variance in certain circumstances. Under Substitute House Bill 2331, the Secretary loses that discretion and the ability to act in extraordinary circumstances. What if a County simply fails to certify a permit? Or what if a County drafts a solid waste plan based solely on political considerations and fails to recognize sound scientific, environmental or economic data? Any effort to appeal would be foreclosed and the Secretary would be prohibited from doing anything about it. Whether it is the intent or not, this bill weakens the authority of the KDHE Secretary.

A primary concern is the impact on a City's Constitutional Home Rule powers. While normally Counties may not interfere with City Home Rule, this amendment would appear to allow a County to overrule a City's options with respect to solid waste if the County felt it was inconsistent with the County plan. This runs counter to the philosophy of Home Rule.

This bill was drafted to stop the City of Wichita from doing something the people of Furley don't like. But it goes far beyond that local situation. It affects every City and every County in the State. And it weakens the authority of the Secretary of Health and Environment to deal with unusual or exceptional circumstances. I understand why Representative Wagle would introduce such a bill and why the people of Furley would support it. But I ask each of you to consider this question: Is it sound public policy to pass a law which has statewide impacts, simply because the folks in two neighboring towns disagree on the possible solution to a local problem?

*Sen Energy + Nat Res
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City of Wichita

Information Brief

FACT SHEET ON VENTURE LAND AND TRUST COMPANY

Who is Venture Land and Trust Company?

Venture Land and Trust Company was formed by Wichita developer George Laham and one of his immediate family members for the purpose of assembling land to offer the City of Wichita as a possible site for a landfill.

Laham is the principal owner. Mark Dubberstein is vice president. Dubberstein is an Oklahoma City attorney. Connie Tatum, a Wichita attorney, is the registered agent who handled the filing of the incorporation papers in Kansas.

Why was Venture formed?

It was no secret the City of Wichita was looking for possible landfill sites as part of its effort to research solid waste disposal options. Accurate cost estimates could not be developed until a specific site was located.

Last spring, the City authorized a Wichita realtor to assist in locating suitable tracts of land for a landfill. The realtor quit after the location in southwest Sedgwick County was publicized. A second realtor from a different firm was contacted, but later withdrew because of the controversial nature of siting a landfill.

Historically, the siting of landfills has caused controversy, including threats, intimidation and the damaging of personal and business reputations. Given the emotionally charged nature of the situation and the concern over repercussions, George Laham formed Venture Land and Trust. Oklahoma attorney Mark Dubberstein handled the legal paperwork because the chance of threats against him were diminished by his distance from Wichita. The names of local people connected with Venture were kept confidential to protect them from the threat of repercussions.

Was Venture acting on behalf of the City of Wichita?

No. Venture was formed and negotiated the land deals near Furley without authorization of the Wichita City Council or City Manager. Nor was Venture acting as an agent of for the City of Wichita.

Venture searched for the land, negotiated with property owners and then presented the assembled land package to the City.

How did the City secure the land options?

City staff studied the site offered by Venture and referred it to Burns and MacDonnell, the City's consultant for evaluation. Burns and MacDonnell agreed it was environmentally sound and met all of the criteria for a landfill.

The City then negotiated directly with two other landowners to purchase the rest of the acreage needed. Those landowners, the Everett and Wilma Friedline Trust and the Katherine Sevall Trust, agreed to sell their land to the City.

*Sen Energy & Nat Res
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The Wichita City Council, in a public meeting on August 6, 1996, authorized the City Manager to sign land purchase options.

Was Venture the only company or entity offering land?

No. The City was approached by several landowners or their representatives once it became public knowledge that suitable landfill sites were being searched for. Landowners in southwest Sedgwick County and Butler County, for example, also offered to sell land. Those sites were studied by the City's consultants and were rated only fair to poor and rejected.

Why did Venture look for land in the Furley area?

It has been well known since 1979 that the soil, groundwater and other conditions made land in northeast Sedgwick County environmentally sound for siting of a landfill. A revised map made public in 1995 also showed the northeast part of the county as an acceptable location for a landfill. That map was drawn up based on soil type, groundwater, road system access and proximity to airports. Northeast Sedgwick County was one of the few sites in Sedgwick County which met all of the requirements for a landfill.

How much money did Venture make?

Venture contracted to pay \$3,409,896 to assemble the land. The City will pay \$3,608,347 for those tracts.

Venture made \$198,451 in compensation for the transaction. That represents 5.5% of the contracted price with the City.

What's the connection between Venture, the Elkouri law firm and Greg Ferris?

George Laham formed Venture. He used the Elkouri law firm because that is the firm he regularly uses for his legal work. Connie Tatum, an attorney in the Elkouri firm, handled the project of incorporating Venture. Mark Dubberstein, the Oklahoma attorney, is Tatum's brother. Dubberstein was used in order to protect local people from threats or intimidation.

City Council member Greg Ferris has no monetary, business or official connection to Venture or the Elkouri law firm. While Ferris was aware of Laham's connection with J.P. Weigand Real Estate, he was not aware of the ownership of Venture Land and Trust.

Ferris considers both George Laham and David Elkouri good friends, but Ferris has no monetary interest in Venture, nor was he aware of the principal partners in Venture. Ferris had nothing to do with the selection of the Elkouri law firm.



A Decision Affecting Generations To Come.

It seems simple enough. A local landfill or incinerator, transfer to a regional disposal site or recycling. But the solid waste disposal decision Sedgwick County will make by August 15 is complex. Because for every pro there is a con. For every advantage, a disadvantage.

We've Done The Homework.

For the past six months, thousands of your neighbors have been working with the county, to examine every solid waste disposal option.

Some have studied programs of other cities and consulted with technology experts. Others visited landfills, transfer stations, incinerators and recycling sites. Always considering the impact of every option on the community, the environment and your pocketbook.

The Time Is Now.

As Brooks Landfill prepares to close, a solution becomes vitally important. We must learn from the past, as we study our options for the future. Deciding not just for today, but for generations to come. Because in the end, the solution must be the best for everyone, while impacting each of us the least.

We Want You To Know.

We have choices, but we must choose carefully. In the coming months we'll be outlining the pros and cons of our solid waste options. And, if you would like to read the plan yourself, copies will be available after March 19 at your local library. Or visit our web site at: www.southwind.net/sedgwick under "Solid Waste Update."



**DEVELOPING A SOLID,
SOLID WASTE SOLUTION**

*Sen Energy & Nat Res
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Attachment 12*