

Approved: 2-18-99
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Senator David Corbin at 8:00 a.m. on February 17, 1999 in Room 254-E of the Capitol.

All members were present except: Senator Pugh who was excused.

Committee staff present:

Raney Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:

Bill Bider, Director, Bureau of Waste Management, Kansas Department of Health & Environment (KDHE)
Edward R. (Woody) Moses, Kansas Cement Council
Ron Hein, Safety Kleen

Others attending:

See attached list.

The minutes of February 16 were presented for approval. With a motion from Senator Vratil and a second from Senator Morris they were approved as written.

Chairperson Corbin opened the hearing on **SB 246 – adoption of federal regulations concerning solid waste.** Senator Corbin said a fiscal note had been distributed.

Bill Bider, Director, Bureau of Waste Management, KDHE, testified in support of the bill. He said this bill adds a provision to the hazardous waste statutes to provide a mechanism to update the definitions of two terms in Kansas law whenever the U. S. Environmental Protection Agency updates the definitions in the federal regulations. The two terms are "Hazardous waste" and "Acutely hazardous waste". Mr. Bider testimony states that these proposed changes to the hazardous waste statutes are also included as part of HB 2264. That bill also establishes new provisions for hazardous waste transfers from one container to another or from one vehicle to another (Attachment 1).

The hearing on **SB 246** was closed.

The Chairperson opened the hearing on **SB 296 –Creating the hazardous waste management fund.** A fiscal note on this bill was distributed.

Edward R. (Woody) Moses said they asked to have the bill introduced to earmark the fees currently paid by their industry, to the state for the operation of the hazardous waste management program. SB 296 would allow all fees collected for the hazardous waste management program to be spent on the program (Attachment 2). Responding to a question Mr. Moses said it would reduce the possibility of a need to increase the fees assessed to their clients to operate the fund.

Ron Hein, Legislative counsel for Safety-Kleen, said they supported the bill, as it would allow the KDHE to utilize all of the monies which are paid into the department for fees under the various statutes indicated (Attachment 3). Mr. Hein responded to questions.

Bill Bider, Director, Bureau of Waste Management, KDHE said they supported the bill. The key changes to the law recommended by this bill to establish this new funding mechanism are:

1. Establish the new dedicated fee fund to receive all monitoring fees, treatment fees (except the 25 percent supporting HHW), permit fees, and the current balance in the Perpetual Care Trust Fund.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 254-E Statehouse, at 8:00 a.m. on February 17, 1999.

2. Eliminate the Perpetual Care Trust Fund because it has become obsolete with the development of the federal Superfund program.
3. Eliminate the Environmental Permit Fund which currently receives 75 percent of treatment fees. KDHE also identified the need for a minor wording change related to the elimination of the perpetual care trust fund and the establishment of the Hazardous Waste Management Fund to receive all funds recovered under agency enforcement actions. He distributed a balloon showing the recommended amendments (Attachment 4). Mr Bider responded to questions. Several questions were asked concerning the fiscal note.

The hearing on SB 296 was closed.

The meeting adjourned at 9:00 a.m.

The next meeting will be on February 18, 1999.



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Acting Secretary

Testimony presented to

Senate Energy and Natural Resources Committee

February 17, 1999

by

William L. Bider, Director, Bureau of Waste Management
Kansas Department of Health and Environment

Senate Bill 246

The Department of Health and Environment appreciates this opportunity to provide testimony in support of Senate Bill 246. This bill adds a provision to the hazardous waste statutes to provide a mechanism to update the definitions of two terms in Kansas law whenever the U.S. Environmental Protection Agency updates the definitions in the federal regulations. The update does not become effective until the secretary adopts the revised federal regulations. The two terms are "Hazardous waste" and "Acutely hazardous waste."

The current Kansas definition for "Hazardous waste" references a list of federally excluded waste materials as published in July 1, 1983. With the proposed change to the definition, any federal additions to, or subtractions from, the excluded materials list will become effective in Kansas as soon as the secretary adopts the revised federal regulations. Typically, KDHE adopts updates to the federal regulations every two years.

Similarly, the current definition of "Acutely hazardous waste" references an old federal regulation dated July 1, 1984. The referenced regulation lists commercial chemical products or manufacturing chemical intermediates which are hazardous wastes when disposed of by the generator. EPA has routinely updated this list over the years, but our statutory definition remains tied to the 1984 federal lists. The proposed change would automatically update our statutory definition whenever the secretary adopted new versions of the federal regulations.

These proposed changes to the hazardous waste statutes are included as part of House Bill 2264. That bill also establishes new provisions for hazardous waste transfers from one container to another or from one vehicle to another.

Thank you for this opportunity to provide testimony on SB 246.

Senate Energy & Natural Resources

Attachment: /

Date: 2-17-99

DIVISION OF ENVIRONMENT
Bureau of Waste Management

Forbes Field, Building 740
(785) 296-1600

Printed on Recycled paper

Topeka, KS 66620-0001
FAX (785) 296-1592

A-1-1

Testimony

**By The
Kansas Cement Council**

**Before the
Senate Energy & Natural Resources Committee**

Regarding SB 296

February 17, 1999

Good morning, Mr. Chairman and members of the committee, my name is Edward R. Moses, representing the Kansas Cement Council. We thank you for the opportunity to provide our comments in support of SB 296.

The Kansas Cement Council is a coalition comprised of the Ash Grove Cement Co., Heartland Cement Co. and Lafarge Corporation all of whom operate cement manufacturing plants located in Southeast Kansas. At the beginning of this century, Kansas, blessed with good limestone and abundant natural gas, was a national leader in the production of cement; the basic ingredient used in the manufacture of concrete. At its peak the Kansas cement industry operated seventeen cement mills and kilns. Since that time market forces, more efficient production and environmental regulation have conspired to reduce that number to the four active plants operating today.

In order to remain competitive all of these facilities currently treat hazardous waste or recycle tires to recover energy for use in the operation of their kilns. Our environment

Senate Energy & Natural Resources

Attachment: 2

Date: 2-17-99

also receives benefit as cement kilns, operating at a temperatures of 2800-3200°F, assures virtually complete destruction of unwanted hazardous waste while providing an environmentally friendly product. The genesis of this bill is an effort to assure that this mutually beneficial process is maintained in the future. SB 296 would do this by earmarking the fees currently paid by our industry, to the state for the operation of the hazardous waste management program through the establishment of a dedicated fee fund. Our industry currently pays approximately 70-75% of the fees currently collected for hazardous waste management. 80% of these fees actually flow into the program while 20% are directed to the state general fund. SB296 would allow all fees collected for the hazardous waste management program to be spent on the program. Approval of SB296 would allow the current fees assessed to remain stable over a longer period of time and tend to reduce any future increases if needed. Additionally, the establishment of a dedicated fee fund would allow the Kansas Department of Health & Environment greater flexibility in the management of our regulatory program. Both of these outcomes will assist our industry in maintaining its competitive edge in the market place, while providing an important environmental service to all Kansans. We urge your positive recommendation of SB 296 for passage.

Once again, thank you for the opportunity to come before you today. I would be happy to respond to any questions you may have at this time.

HEIN AND WEIR, CHARTERED

ATTORNEYS AT LAW

5845 S.W. 29th Street, Topeka, KS 66614-2462

Telephone: (785) 273-1441

Telefax: (785) 273-9243

*Ronald R. Hein
Stephen P. Weir*

SENATE ENERGY & NATURAL RESOURCES COMMITTEE

TESTIMONY RE: SB296

Presented by Ronald R. Hein

on behalf of

Safety-Kleen

February 17, 1999

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Safety-Kleen, which was formerly Aptus. Safety-Kleen owns and operates a hazardous waste treatment facility in Coffeyville.

Safety-Kleen supports passage of SB296. This bill would allow the Kansas Department of Health and Environment to utilize all of the monies which are paid into the Department for fees under the various statutes indicated. These fees are assessed pursuant to statutes regulating our business, and other businesses as well. We believe that the fees we pay, as opposed to taxes, should be used to support the programs contemplated by the statutory fees.

Not only do we believe that these fees should be utilized by KDHE for the purposes enumerated, we also believe, philosophically, that fees imposed by state government should not be just another general tax. Our company also pays general taxes which are used to support the state general fund.

For these reasons, we would urge the Committee to support SB296.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Senate Energy & Natural Resources

Attachment: 3

Date: 2-17-99



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Acting Secretary

Testimony presented to

Senate Energy and Natural Resources Committee

February 17, 1999

by

William L. Bider, Director, Bureau of Waste Management
Kansas Department of Health and Environment

Senate Bill 296

KDHE appreciates this opportunity to provide testimony in support of Senate Bill 296 which proposes to establish a dedicated fee fund for all hazardous waste fees paid by generators, transporters, and processors of hazardous waste. The purpose of this bill, which was introduced by private companies in Kansas, is to ensure that the fees paid by businesses, local governments, or other handlers of hazardous waste are used to support the state hazardous waste regulatory program rather than other unrelated state programs.

This bill would modify the way that the hazardous waste regulatory program is currently funded. In fiscal year (FY) 1999, the program will be funded from two primary sources and one secondary source. The primary sources are an annual federal grant from the U.S. Environmental Protection Agency (EPA) which provides about 71 percent of all program funds and state general funds which support about 24 percent of the program budget. The remainder comes from hazardous waste treatment fees which are paid by the four Kansas facilities which are involved in the combustion of hazardous waste received from off-site sources. Table 1 in the attached hazardous waste program background document shows how the program will be funded in FY 99.

Under the proposed scenario, the state general fund allocation would be eliminated because facility monitoring fees which currently are deposited into the state general fund would now be deposited to the new *Hazardous Waste Management Fund*. This fund would provide the required 25 percent match for the federal grant and it would be used to support the hazardous waste program and related administrative overhead costs.

Each year about \$420,000 in monitoring fees is deposited in the state general fund, but only about \$330,000 is allocated from the fund to support the hazardous waste program. At this

time, there is a great need to have to have access to these extra funds because the EPA grant has remained stagnant for several years and the state general fund allocation has been steadily reduced. Several years of inflation has resulted in a situation where nearly all of the existing funds are needed for staff salaries and only a limited amount of money is available for operating expenses. Also, there is very little money to support much needed travel to facilities, staff training, and technical training and education for the regulated community. Virtually no funds are available to support contractual services to assist in highly technical work such as trial burns or risk assessments at combustion facilities.

Although the department currently has access to the treatment fees which are paid by the four combustion facilities, maximum payments are capped at \$60,000 annually for each cement kiln and \$200,000 annually for the Safety-Kleen incinerator in Coffeyville. Total collected revenue is expected to be about \$250,000 in FY 99 which is substantially higher than historical averages which have been about half of that amount. The large increase in FY 99 (and in FY 98 as well) is due to a special dioxin combustion project which is occurring at Safety-Kleen. There is a great deal of uncertainty whether this facility will continue to operate after this project is completed near the end of 1999. Thus, treatment fee revenues could drop substantially.

It is also noteworthy that state law specifies that 25 percent of all treatment fee revenues are used to support the household hazardous waste collection grant program. Most of the remainder of collected fees have been historically used to fund the pollution prevention program in KDHE and Kansas State University. The department can provide information about this important service program for business, in particular small business, at a later date if the committee wishes. Table 2 in the attachment shows all estimated revenue and expenditures in FY 2000.

KDHE operates the state hazardous waste program in lieu of EPA running the program. Kansas businesses frequently comment that they would much rather have KDHE administer this program than EPA, which is usually perceived as more rigid and less responsive to company needs than a state agency. To maintain state authority for the program and continuously assume responsibilities for new federal regulations, KDHE must maintain a staff which is sufficient in numbers and capabilities. Funding must grow modestly to simply maintain current services and capabilities. This proposal to utilize the hazardous waste fees already paid specifically for this purpose could meet current and short-term funding needs without revising regulations to increase fees. Kansas businesses would like their current fees to be fully utilized to support the program to avoid having to increase treatment fees or establish new permit fees which are authorized in current law but have not been needed to support the state program.

Finally, this proposal is consistent with a House Appropriations Subcommittee report in 1995 which recommended a shift away from state general fund support for KDHE's environmental regulatory programs. The report stated it was preferable to fund these programs with user fees rather than state general funds. This funding approach places the financial burden

of maintaining regulatory programs on the businesses and other organizations which create the need for the program rather than on the public as a whole. In this case, it also creates an incentive for businesses to minimize waste or eliminate it's generation all together.

The key changes to the law recommended by this bill to establish this new funding mechanism are:

1. Establish the new dedicated fee fund to receive all monitoring fees, treatment fees (except the 25 percent supporting HHW), permit fees, and the current balance in the Perpetual Care Trust Fund (expected to be about \$300,000 on July 1, 1999).
2. Eliminate the Perpetual Care Trust Fund because it has become obsolete with the development of the federal Superfund program.
3. Eliminate the Environmental Permit Fund which currently receives 75 percent of treatment fees.

KDHE has also identified the need for a minor wording change related to the elimination of the perpetual care trust fund and the establishment of the Hazardous Waste Management Fund to receive all funds recovered under agency enforcement actions. This change is shown in our attached balloon on the final page of the bill.

We appreciate this opportunity to present testimony on Senate Bill 296.

**Kansas
Department of
Health & Environment**



**Hazardous Waste
Program Funding**

*Time to Establish a
Dedicated Fee Fund?*

Background Information
November 1998

Kansas businesses pay the state over \$420,000 per year in facility monitoring fees to help cover the state's costs of ensuring that hazardous wastes are properly handled, stored, and treated. However, KDHE receives less than \$300,000 back from the state general fund to perform this very important and vital environmental function. Isn't it time all collected fees are used for their intended purpose; that is, to more fully monitor the thousands of facilities which generate and manage hazardous wastes.

State Hazardous Waste Program

The Kansas Department of Health and Environment administers a regulatory program designed to ensure that hazardous wastes are properly managed in Kansas including handling by generators, transporters, and treatment, storage, or disposal (TSD) facilities. A total of 27 full-time equivalent (FTE) positions are assigned to the Bureaus of Waste Management and Environmental Field Services to implement this program. Duties include inspections, permitting, enforcement, data management, regulation development, and technical assistance.

Kansas has received authorization from the U.S. EPA to administer most aspects of the federal program. However, it is an ongoing process to modify state regulations to incorporate federal changes and subsequently amend the authorized state program to more completely administer federal requirements. Kansas state law does establish some regulatory controls which differ from the federal requirements. For example, Kansas regulates businesses which generate only 55 pounds per month compared to 220 pounds in the federal regulations.

Current Hazardous Waste Program Funding

The state hazardous waste program is funded primarily by two sources: a federal grant and state general funds which match the grant, one state

dollar for every three federal dollars. A small amount of hazardous waste treatment fees paid by the four hazardous waste combustion facilities in Kansas is also used to support program activities. Table 1 shows the funding sources and base program budget for FY 99. Most collected treatment fees are used to support programs other than the base hazardous waste regulatory program. Kansas law specifies that 25 % of treatment fees shall be used to support the household hazardous waste grant program. An additional portion of these fees are designated for waste minimization and pollution prevention activities. In FY 99, over \$150,000 in treatment fees may be used for these two purposes.

Table 1

HAZARDOUS WASTE BASE PROGRAM FUNDING SOURCES - FY99	
Federal Grant	\$ 894,000*
State General Funds	298,000
Treatment Fees	<u>66,000</u>
Total Budget	\$1,258,000

*Does not include \$161,000 used for administrative overhead.

Other hazardous waste fees are paid by generators, transporters, and TSD facilities called monitoring fees. These fees which totaled about \$421,000 in FY 98, are deposited into the state general fund. Less than \$300,000 was returned to KDHE to administer the hazardous waste program.

An Alternative Funding Method

Businesses which pay hazardous waste fees have expressed their opinion that all fees should be used to support the hazardous waste program so that service can be maintained at the highest level possible. Diversion of fees to other state programs, whether pollution prevention or other non-environmental areas, results in decreased service, especially as related to processing applications and responding to technical inquiries. At the present time, the state hazardous waste program is staffed at a minimum level. Any reductions caused by shrinking resources would severely impact the ability to provide adequate service and accomplish federal mandates. Also, no additional responsibilities can be absorbed unless resources are increased.

The state Legislature also expressed its preference to shift away from state general fund support to fee-based funding for environmental regulatory programs in a 1995 report prepared by the House Appropriations Committee. This report recommended the establishment of dedicated fee funds for KDHE's regulatory programs. This funding method places the financial burden of maintaining regulatory programs on the businesses which create the need for the programs rather than on the public as a whole. In this case, the businesses which generate, transport, treat, or store hazardous waste in Kansas would pay fees to support the state's program costs.

Table 2 shows how a new *dedicated fee fund* receiving all hazardous waste fees can supplement the federal grant to fully support the base hazardous waste program and the following:

- Program enhancements to take on more responsibility related to the federal RCRA Corrective Action Program for

permitted hazardous waste facilities (3 FTEs);

- Continued funding of household hazardous waste grants; and
- Support for the department's pollution prevention program

No state general funds will be needed to maintain the hazardous waste program if this dedicated fee fund is established.

It will be necessary to develop and implement a permit application fee schedule for hazardous waste activities. These statutorily authorized fees have never been collected by KDHE because federal and state funds have previously satisfied all resource needs. Those funds are no longer adequate to meet base program expenses.

More Information

For more information about the hazardous waste program, the RCRA Correction Program, or this funding analysis, please contact the Office of Public Information at (785) 296-1529 or the Bureau of Waste Management at (785) 296-1600.

Table 2

PROPOSED FUNDING SOURCES FOR HAZARDOUS WASTE PROGRAM AND OTHER RELATED ACTIVITIES (Estimated for FY 2000)		
Revenue		
Federal Hazardous Waste Grant		\$1,055,000
State Fees (Dedicated Fund)		
Treatment Fees	200,000	
Monitoring Fees	420,000	
Permit Fees	<u>35,000</u>	
Subtotal		<u>655,000</u>
Total Revenue		\$1,710,000
Expenditures		
Base Hazardous Waste Program		\$1,267,000
Household HW Grants (25% of Treatment Fees)		50,000
Pollution Prevention Program		75,000
Corrective Action Enhancement		150,000
Overhead (18% of Federal Grant)		<u>161,000</u>
Total Expenditures		\$1,703,000