

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 12, 2002 in Room 231-N of the Capitol.

All members were present except: Representative Jeff Peterson - excused

Committee staff present: Emalene Correll, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Bill Bider, Director, Bureau of Waste Management, KS Department of Health and Environment, 1000 SW Jackson, Ste. 320, Topeka, KS 66612-1366
Dan Harden, Public Works Director, KS Association of Counties, 110 Courthouse Plaza, Manhattan, KS 66502
Steve Kearney, Waste Management of Kansas, 1200 SW 10th, Topeka, KS 66601
William W. Sneed, Legislative Counsel, KS Construction and Demolition Landfill Association, 555 Kansas Ave. Ste. 301, Topeka, KS 66603-1446
Scott Young, Attorney, KS Construction and Demolition Landfill Association, 555 Kansas Ave. Ste. 301, Topeka, KS 66603

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She announced that on January 30, 2002, the U.S. Senate confirmed Steve Williams, former secretary of the Kansas Department of Wildlife and Parks, as director of the U.S. Fish and Wildlife Service. He will lead the nation's primary wildlife conservation agency.

The Chairperson also announced that **HB2607**, which was passed out of this committee on February 5, 2002 and placed on the Consent Calendar, has been removed from the Consent Calendar.

The Chairperson opened public hearing on **HB2704**.

HB2704: Solid waste management planning process.

Bill Bider, Director, Bureau of Waste Management, KS Department of Health and Environment, was welcomed. He testified in support of the bill, which was introduced by the Department to clarify county and regional solid waste planning requirements. These revisions to the planning statutes, are needed because the existing law was developed in 1992 primarily to direct and guide counties to prepare initial plans. The provisions do not adequately address procedures to update or revise plans, nor do they clearly define the roles of county commissioners compared to county or regional solid waste planning committees. Another area of current law which requires clarification are those provisions which relate to the process by which a regional plan is revised. He reviewed some major areas of change to the bill. Counties and solid waste planning committees should find these amendments to be helpful as they carry out plan reviews and updates. (See attachment 1)

Dan Harden, Kansas Association of Counties, was welcomed to the committee. He testified in support of the bill and believes this legislation will create a county wide solid waste management committee that is broad based, and interested in its work. It leaves the Board of County Commissioners with sufficient flexibility to craft a county wide solid waste management committee that will meet the particular needs of a particular county while meeting the state wide need to properly manage the state's solid waste stream to adequately protect the Kansas environment. (See attachment 2)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on February 12, 2002.

Steve Kearney, Waste Management of Kansas, was welcomed. He testified in opposition to the bill. His concern regarding the changes proposed by this measure revolve primarily around changes to the current system and insuring that the process in use today for planning does not have further roadblocks to siting disposal facilities implemented. At the point when Kansas finds itself reaching capacity in it's current Subtitle D landfills, much like the problems Sedgwick County has and is still facing with the closing of the Brooks Landfill, any enhanced impediments to siting facilities could be detrimental to Kansas. (See attachment 3) Discussion followed.

The Chairperson closed the hearing on HB2704 and opened the hearing on HB2705.

HB2705: Reports required regarding recycling, reuse and composting of materials.

Bill Bider, Director, Bureau of Waste Management, KDHE, was welcomed back to the committee. He testified in support of the bill. This bill was introduced by the Department to establish a new reporting requirement for public and private entities involved in recycling and composting. This bill directs KDHE to develop and distribute an annual report form to businesses, cities, counties, non-profit organizations, or other facilities which collect, store, process, or broker materials for recycling, composting, or reuse. Entities receiving the forms must complete them and return them to KDHE for review and processing. All submitted information would be confidential and not subject to disclosure under the Kansas Open Records Act unless incorporated into statewide summaries by KDHE. A minor bill revision was requested which would limit reporting by large generators of recyclables to only those generators which directly market or transfer their material to an end-user of the material. (See attachment 4)

Dan Harden, Kansas Association of Counties, was welcomed back to the committee. He testified in opposition to the bill and is of the opinion this legislation will cause an effort funded by the public treasury on the county level that may produce a more accurate statement of the statewide solid waste recycling, reuse, and composting effort. The Kansas Association of Counties does not see the value of the end product, a more accurate statement of the statewide solid waste recycling, reuse, and composting effort, is justified by the cost of the effort. It is for this reason the Association urges the committee not to pass this bill out of committee. (See attachment 5) Discussion followed.

Written only testimony was submitted by Department of Defense, which neither supports nor opposes the bill. (See attachment 6)

The Chairperson closed the hearing on HB2705 and opened the hearing on HB2703.

HB2703: Classes of construction and demolition landfills.

The Chairperson welcomed Bill Bider, Director, Bureau of Waste Management, KDHE, back to the committee. He testified in support of the bill which KDHE introduced to address a problem which has been observed at existing construction and demolition (C&D) landfills. Many permitted C&D landfills are finding it difficult to comply with statutory restrictions on the types of waste which they can legally dispose of in their landfills. Current law defines C&D waste in a manner which excludes some materials which are commonly generated at construction or demolition sites in order to avoid federal landfill standards which would apply if the definition is expanded. Because of this problem, some states like our neighbor, Missouri, have effectively eliminated C&D landfills, unless they are designed to the same standard as municipal solid waste landfills. (Several pictures are attached to illustrate the problem of restricted waste disposal). (See attachment 7) Mr. Bider distributed a Kansas map showing the Location of C&D Landfills both publicly and privately owned. (See attachment 8)

Dan Harden, Kansas Association of Counties, was welcomed back to the committee. He testified in support of the bill and believes this legislation is permissive rather than mandatory. It will give the Kansas Department of Health and Environment and counties a degree of flexibility in managing construction and demolition debris, while preserving the quality of the Kansas environment. (See attachment 9)

Written only in support of the bill was submitted by Phillip E. Brothers, Manager, C&D Recyclers of Kansas, Inc. (See attachment 10)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on February 12, 2002.

William Sneed, Legislative Counsel for the Kansas Construction and Demolition Landfill Association, was welcomed back to the committee. He testified in opposition to the bill and believes **HB2738** to be a better resolution to this issue. (See attachment 11)

Steve Kearney, Waste Management of Kansas, was welcomed back to the committee. He testified in opposition to the bill. Waste Management is concerned that the development of two separate classes of Construction and Demolition landfills creates an additional unnecessary layer of environmental regulation for C&D waste. This bill does not appear to address any specifics regarding how Class I vs. Class II will be regulated. There is also no specific mechanism regarding any assurance that banned materials do not go into Class II facilities. The potential environmental impact of C&D landfills has always been a concern of Waste Management and the creation of yet another sub-class for this waste stream that can contain materials damaging to ground water is unnecessary. (See attachment 3) Discussion followed.

The Chairperson closed the hearing on **HB2703** and opened the hearing on **HB2738**.

HB2738: Regulation of construction and demolition landfill; requirements.

William Sneed, Kansas Construction and Demolition Landfill Association, introduced Scott Young, representing the Association, in support of the bill. They believe this proposal provides a balanced approach at addressing the concerns of the Kansas Department of Health and Environment, as well as improving the siting of C&D landfills in Kansas, and at the same time allowing Kansas businesses to continue to operating without imposing unnecessary or unsupported requirements and constraints. (See attachment 12)

Bill Bider, Director, Bureau of Waste Management, KDHE, was welcomed. He testified in opposition to the bill and believes this proposal is unacceptable because it conflicts with federal regulations and it ignores environmental risks. The expansion of the definition of C&D waste without the preventative standards KDHE intends to add in new rules and regulations for Class I C&D landfills, would increase public opposition to siting new landfills. Opposition is already significant whenever a new landfill is proposed, but it could be much worse if these wastes are allowed without providing the public with assurances that the landfills will be properly designed, operated, and monitored. (See attachment 13) Major Solid Waste Packages Task Force/Advisory Group Information 1993-2001, was distributed for review. (See attachment 14)

Steve Kearney, Waste Management of Kansas, was welcomed back to the committee. He testified in opposition to the bill and believes this measure has many of the same overarching concerns regarding the proliferation of construction and demolition landfills with no meaningful ground water monitoring if any, not leachate collection or liners. This policy the committee is being asked to consider needs to be examined closely for it's environmental integrity. This measure expands the types of materials allowed in C&D landfills and he questions the wisdom of such an action. (See attachment 3) Discussion followed.

Written only in opposition to the bill was submitted by Dan Harden, Public Works Director, Association of Counties. (See attachment 15)

Chairperson Freeborn closed the hearing on **HB2738**. She thanked the guests for their participation and the committee for their attention.

The meeting adjourned at 5:25 p.m. The next meeting is scheduled for Thursday, February 14, 2002.



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

Testimony on House Bill 2704

to

House Environment Committee

presented by

Bill Bider, Director, Bureau of Waste Management
Kansas Department of Health and Environment

February 12, 2002

The Department of Health and Environment appreciates this opportunity to present testimony in support of House Bill 2704. This bill was introduced by the department to clarify county and regional solid waste planning requirements. These revisions to the planning statutes, found in K.S.A. 65-3405, are needed because the existing law was developed in 1992 primarily to direct and guide counties to prepare initial plans. The provisions do not adequately address procedures to update or revise plans, nor do they clearly define the roles of county commissioners compared to county or regional solid waste planning committees. Another area of current law which requires clarification are those provisions which relate to the process by which a regional plan is revised.

The lack in clarity of relevant planning statutes is resulting in numerous questions from county governments, regional authorities, planning committee members, and solid waste permit applicants. The recommended amendments should lessen confusion and result in saved time and money by local or regional planners and local governments involved in the planning process..

The changes proposed by KDHE are designed to clarify requirements and procedures without making any substantive changes in roles and responsibilities. The bill maintains and even strengthens the role of county commissioners to make final decisions regarding plans using an official county process to adopt plans or recommendations prepared and submitted to them by a county or regional solid waste planning committee. The bill also maintains and clarifies the role of the county or regional planning committee to develop plans, review plans as necessary, revise plans to address changing conditions, and to make recommendations to county commissioners to adopt such changes.

Some major areas of change include:

- (1) A counties participating in a regional planning group may establish its own county planning committee with special duties to be determined by the county (page 1, lines29-31).

- (2) County or regional planning committees must include at least 5 members and no more than 30 page 1, lines 38-42).
- (3) A county commissioner can only be appointed to a regional committee if one or more non-commissioners also represent the county. Every county in a region must have at least one representative on the regional planning committee (page 2, lines 16-22).
- (4) County and regional planning committees shall prepare plans, review plans annually, and report to the county commission with recommendations for plan revisions (page 2, lines 35-43 and page 3, line 1).
- (5) County commissioners shall review plans and planning committee recommendations, adopt plans or plan amendments, hold five-year public hearings, make reports to KDHE regarding planning efforts, and review solid waste permit applications for consistency with the county or regional solid waste plan (page 3, lines 2-24).
- (6) County commissioners may perform annual plan reviews in lieu of the planning committee if a quorum of the planning committee is not present at a properly scheduled meeting (page 3, lines 25-30).
- (7) A county commission may revise its solid waste plan at any time by convening a meeting of the planning committee to review the need for changes to the plan (page 3, lines 31-40).
- (8) Regional solid waste planning committees shall meet annually to review the regional plan and make recommendations to each county commission which must adopt the committee recommendations or submit comments to the committee. The committee must report the actions of the region to KDHE (page 3, lines 41-43 and page 4, lines 1-7) .
- (9) Plan revisions for regions or individual counties within regions shall be carried out in accordance with provisions set forth in interlocal agreements (page 4, lines 8-13).

KDHE has attached a minor change to this bill due to an omission made when the revisor's office developed the bill. The added wording found on page 3 confirms that county commissioners may revise a solid waste plan or update before adoption.

In summary, counties and solid waste planning committees should find these amendments to be helpful as they carry out plan reviews and updates. No state or local fiscal impacts will result. And permit applicants should more thoroughly understand the procedures which must be followed if a plan requires amendment before a new facility can be permitted.

I would be happy to answer any questions.

HOUSE BILL No. 2704

By Committee on Environment

1-25

AN ACT concerning solid waste management planning; amending K.S.A. 2001 Supp. 65-3405 and repealing the existing section.

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

Section 1. K.S.A. 2001 Supp. 65-3405 is hereby amended to read as follows: 65-3405. (a) Each county of this state, or a designated city, shall submit to the secretary a workable plan for the management of solid waste in such county. The plan developed by each county or designated city shall be adopted by the governing body of such county or designated city if so authorized. Two or more counties, by interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq., and amendments thereto, may develop and adopt a regional plan in lieu of separate county plans. ~~The secretary shall not require the submission of county or regional plans earlier than one year following completion and distribution of the state-wide solid waste management plan provided for in subsection (a)(5) of K.S.A. 65-3406, and amendments thereto. County and regional plans shall be amended from time to time as changing conditions occur by filing revisions with the secretary.~~

(b) There shall be established in each county or group of counties cooperating in a regional plan a solid waste management committee. A county ~~by interlocal agreement may designate which cooperates in a regional plan may establish its own county committee in addition to cooperating in the required regional committee. A county which does not cooperate in a regional plan may designate, by interlocal agreement,~~ a city as the solid waste management planning authority for the county. Subject to the requirements of this section, the membership of the committee, the terms of committee members, the organization of the committee and selection of its officers shall be determined by the county or counties by interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq., and amendments thereto. ~~The membership of the committee number of members on the committee, whether an individual county committee or a regional committee, shall be not fewer than five or a number equal to the total number of counties cooperating in the regional plan, whichever is more, and shall not exceed 30 members and.~~ The membership shall include: (1) Representatives of incorporated cities located in the county

1 or counties, ~~equal in number to not to exceed~~ five members representing
2 any cities of the first class, three members representing any cities of the
3 second class and one member representing any cities of the third class;
4 (2) one representative of unincorporated areas of the county or counties;
5 (3) representatives of the general public, citizen organizations, private
6 industry, any private solid waste management industry operating in the
7 county or counties and any private recycling or scrap material processing
8 industry operating in the county or counties; (4) the recycling coordinator,
9 if any, of the county or counties; and (5) any other persons deemed ap-
10 propriate by the county ~~or counties or~~, designated city or ~~cities~~ *groups of*
11 *counties*, including, but not limited to, county commissioners, county en-
12 *gineers*, county health officers and county planners. Members of the com-
13 *mittee* shall be appointed by the board of county commissioners or gov-
14 *erning* body of the designated city; or by agreement of the boards of
15 *county* commissioners ~~or governing bodies of the designated cities~~ co-
16 *operating* in the plan. *A county commissioner shall not be appointed to a*
17 *regional planning committee unless one or more other non-commissioners*
18 *also represent the commissioner's county on the committee. A regional*
19 *planning committee shall include at least one representative of each*
20 *county in the region. Persons appointed to an individual county planning*
21 *committee in a county covered by a regional plan may also serve on a*
22 *regional planning committee.* Members appointed to represent cities shall
23 be nominated by the mayor of the city represented, or by agreement of
24 all mayors of the cities represented if more than one city of the class is
25 located in the county or counties. If the nominee is not appointed or
26 rejected within 30 days after nomination, the nominee shall be deemed
27 appointed.

28 (c) The solid waste management committee, *whether an individual*
29 *county committee or a regional committee*, shall: (1) Be responsible for
30 the preparation of the solid waste management plan of the *individual*
31 *county or group of counties participating in the committee*; (2) review
32 the plan at least annually; ~~(3) at least every five years hold a public hearing~~
33 ~~on the plan and future goals of solid waste management in the county or~~
34 ~~group of counties; and (4) notify the secretary that the committee has~~
35 ~~completed the review or public hearing; and (3) provide to the county~~
36 *commissioners of the individual county or group of counties served by the*
37 *plan a report containing the results of the annual plan reviews, including*
38 *recommendations for revisions to the plan. Annual plan reviews which*
39 *take place in years when county commissions are scheduled to carry out*
40 *five-year public hearings in accordance with subsection (d) shall compre-*
41 *hensively evaluate the adequacy of the plan with respect to all criteria*
42 *established by subsection (j). The responsibilities of a solid waste man-*
43 *agement committee established in a county which cooperates in a regional*

1 plan are to be determined by the county commission of such county.

2 (d) Each county commission shall: (1) Review the county or regional
3 solid waste management plan, the annual review report and any proposed
4 revisions of the plan prepared by the solid waste management committee;
5 (2) adopt the solid waste management plan or proposed revisions to the
6 plan prepared by the solid waste management committee as submitted, ————— or as revised by the county commission,
7 except as provided by subsection (g) for regional plans; (3) at least every
8 five years hold a public hearing on the county or regional solid waste
9 management plan, including a review of projected solid waste manage-
10 ment practices and needs for a 10-year planning period; (4) notify the
11 department that the solid waste management committee has completed
12 each annual review and each five-year public hearing and that the com-
13 mission has adopted the plan or review, except as provided in subsection
14 (g) for regional plans; (5) submit with the annual notification a list of solid
15 waste management committee members representing the county on an
16 individual county committee or a regional committee; and (6) review per-
17 mit applications for solid waste processing facilities and solid waste dis-
18 posal areas submitted to the department pursuant to K.S.A. 65-3407, and
19 amendments thereto, to determine consistency of the proposed facility
20 with the county or regional plan and to certify that the area is properly
21 zoned or compatible with surrounding land uses. County commissions
22 may utilize the annual plan review reports prepared by solid waste man-
23 agement committees as the basis for the required five-year public
24 hearings.

25 (e) The county commission of each county which has completed an
26 individual county solid waste plan shall convene an annual meeting of the
27 county solid waste management committee to review the plan. If a quorum
28 of the solid waste management committee is not present, the county com-
29 mission may independently complete the annual review required in sub-
30 section (c).

31 (f) The county commission of a county which has completed an in-
32 dividual county solid waste management plan may choose to revise its
33 plan at a time which does not coincide with a scheduled annual review
34 by the county solid waste management committee. In such a case, the
35 county commission shall convene a meeting of the solid waste management
36 committee to review the commission's proposed changes and obtain com-
37 mittee comments and recommendations for plan revision. If a quorum of
38 the solid waste management committee is not present, the county com-
39 mission may independently revise and adopt the county solid waste man-
40 agement plan.

41 (g) A regional solid waste management committee shall meet annually
42 to review the regional solid waste management plan. The recommenda-
43 tions of the regional committee shall be distributed to the county com-

1 missioners of each county cooperating in the regional plan. Each county
2 commission shall either: (1) Adopt the regional committee report, includ-
3 ing any proposed plan revisions, and submit the record of adoption back
4 to the regional committee; or (2) submit comments back to the regional
5 committee. Following the adoption of the annual review report by every
6 county in the region, the regional committee shall notify the department
7 that the annual review or five-year update has been completed.

8 (h) The county commission of a county which cooperates in a regional
9 solid waste management plan may choose to revise its plan at a time which
10 does not coincide with a scheduled annual review by the regional solid
11 waste management committee. At such time, the provisions of the inter-
12 local agreement shall establish protocols for addressing the needs of the
13 county seeking the change in the regional plan.

14 (d) (i) Each county or group of counties is required to adopt and
15 implement a solid waste management plan pursuant to this section and
16 is responsible for continued and ongoing planning for systematic solid
17 waste management within the boundaries of such county or group of
18 counties. The solid waste management plan of each county, *designated*
19 *city* or group of counties ~~or designated city or cities~~ shall provide for a
20 solid waste management system plan to serve all generators of solid waste
21 within the county or group of counties.

22 (e) (j) Every plan shall:

23 (1) Delineate areas within the jurisdiction of the political subdivision
24 or subdivisions where waste management systems are in existence and
25 areas where the solid waste management systems are planned to be avail-
26 able within a 10-year period.

27 (2) Conform to the rules and regulations, standards and procedures
28 adopted by the secretary for implementation of this act.

29 (3) Provide for solid waste management systems in a manner consis-
30 tent with the needs and plans of the whole area, and in a manner which
31 will not contribute to pollution of the waters or air of the state, nor con-
32 stitute a public nuisance and shall otherwise provide for the safe and
33 sanitary disposal of solid waste.

34 (4) Conform with existing comprehensive plans, population trend
35 projections, engineering and economics so as to delineate with practicable
36 precision those portions of the area which may reasonably be expected
37 to be served by a solid waste management system within the next 10 years.

38 (5) Take into consideration existing acts and regulations affecting the
39 development, use and protection of air, water or land resources.

40 (6) Establish a time schedule and revenue schedule for the devel-
41 opment, construction and operation of the planned solid waste manage-
42 ment systems, together with the estimated cost thereof.

43 (7) Describe the elements of the plan which will require public ed-

1 ucation and include a plan for delivering such education.

2 (8) Include such other reasonable information as the secretary
3 requires.

4 (9) Establish a schedule for the reduction of waste volumes taking in
5 consideration the following: (A) Source reduction; (B) reuse, recycling,
6 composting; and (C) land disposal.

7 (10) Take into consideration the development of specific manage-
8 ment programs for certain wastes, including but not limited to lead acid
9 batteries, household hazardous wastes, small quantities of hazardous
10 waste, white goods containing chlorofluorocarbons, pesticides and pesti-
11 cide containers, motor oil, *consumer electronics, medical wastes, con-
12 struction and demolition waste, seasonal clean-up wastes, wastes gener-
13 ated by natural disasters* and yard waste.

14 ~~(k)~~ (k) The plan and any revision of the plan shall be reviewed by
15 appropriate official planning agencies within the area covered by the plan
16 for consistency with programs of comprehensive planning for the area.
17 All such reviews shall be transmitted to the secretary with the proposed
18 plan or revision.

19 ~~(l)~~ (l) The secretary is hereby authorized to approve or disapprove
20 plans for solid waste management systems, or revisions of such plans,
21 submitted in accordance with this act. If a plan or revision is disapproved,
22 the secretary shall furnish any and all reasons for such disapproval, and
23 the county or group of counties whose plan or revision is disapproved
24 may request a hearing before the secretary in accordance with K.S.A. 65-
25 3412, and amendments thereto.

26 ~~(m)~~ (m) The secretary is authorized to provide technical assistance to
27 counties or designated cities in coordinating plans for solid waste man-
28 agement systems required by this act, including revisions of such plans.

29 ~~(n)~~ (n) The secretary may recommend that two or more counties
30 adopt, submit and implement a regional plan rather than separate county
31 plans.

32 ~~(o)~~ (o) The secretary may institute appropriate action to compel sub-
33 mission of plans or plan revisions in accordance with this act and the rules
34 and regulations, standards and procedures of the secretary.

35 ~~(p)~~ (p) Upon approval of the secretary of a solid waste management
36 plan, the county or designated city is authorized and directed to imple-
37 ment the provisions contained in the plan.

38 ~~(q)~~ (q) A county cooperating in a regional solid waste management
39 plan may withdraw from such plan only:

40 (1) In accordance with the terms of the interlocal agreement
41 adopting the old plan or upon revision or termination of such agreement
42 to permit withdrawal; and ~~(2)~~ upon a determination by the secretary that
43 the existing regional solid waste management plan will not be significantly

1 affected by the withdrawal, or
2 (2) *if two or more revised solid waste management plans are prepared*
3 *and submitted to the department for review and approval addressing solid*
4 *waste management in counties which have decided to plan individually*
5 *or in any newly formed regions.*

6 Sec. 2. K.S.A. 2001 Supp. 65-3405 is hereby repealed.

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

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Testimony of Dan Harden
Before the House Environment Committee
Regarding House Bill 2704
12 February 2002

Representative Joann Freeborn
Chair

Representative Freeborn, and members of the House Environment Committee; my name is Dan Harden. I am a registered professional engineer in Kansas. I have been employed since 1976 as the Riley County engineer and have been involved at the county level with solid waste management continuously during that time.

I am here today representing the Kansas Association of Counties to urge you to support House Bill 2704. The Kansas Association of Counties urges you to support this legislation. This legislation will create a county wide solid waste management committee that is broad based, and interested in its work. It leaves the Board of County Commissioners with sufficient flexibility to craft a county wide solid waste management committee that will meet the particular needs of a particular county while meeting the state wide need to properly manage the state's solid waste stream to adequately protect the Kansas environment.

*House Environment
2-12-02
Attachment 2*

This legislation is consistent with the Kansas Association of Counties' countywide solid waste management committee platform position. The Kansas Association of Counties urges the committee to pass out of committee House Bill 2704.

I stand for questions.

Testimony of Behalf of Waste Management
Prepared for the House Environment Committee
Regarding House Bills 2704, ~~2704~~, ~~2705~~ and 2738
2703

Madam Chair and members of the House Environment Committee:

I am Steve Kearney and am appearing here today on the above referenced bills on behalf of Waste Management of Kansas. With your permission I have consolidated my testimony on these bills.

House bill 2703 pertaining to Construction and Demolition landfills:

Waste Management is concerned that the development of two separate classes of Construction and Demolition landfills creates an additional unnecessary layer of environmental regulation for C&D waste. This bill does not appear to address any specifics regarding how Class I vs. Class II will be regulated. There is also no specific mechanism regarding any assurance that banned materials do not go into Class II facilities. The potential environmental impact of C&D landfills has always been a concern of Waste Management and the creation of yet another sub-class for this waste stream that can contain materials damaging to ground water is unnecessary.

House bill 2704 pertaining to solid waste management planning:

Our concern regarding the changes proposed by this measure revolve primarily around changes to the current system and insuring that the process in use today for planning does not have further roadblocks to siting disposal facilities implemented. At the point when Kansas finds itself reaching capacity in its current Subtitle D landfills, much like the problems Sedgwick County has and is still facing with the closing of the Brooks Landfill, any enhanced impediments to siting facilities could be detrimental to Kansas.

On page 3 (d) contains several items we would like to draw to your attention. Requiring a 10 year planning period does not seem consistent with current practices for projection of waste streams due to the length. With the changes in the economy in flux, changes to patterns will occur more frequently and we believe a shorter time frame would make sense. I understand that this would require a change elsewhere in the law where 10 years is referred to as well. We want to be certain that if county commissions are reviewing permits as referred to in (d) (6) that their review is limited to only those matters they are technically qualified to review in the approval or denial of a permit.

House bill 2738 pertaining to Construction and Demolition landfills:

This measure has many of the same overarching concerns regarding the proliferation of construction and demolition landfills with no meaningful ground water monitoring if any, not leachate collection or liners. This policy you are being asked to consider needs to be examined closely for its environmental integrity. This measure expands the types of materials allowed in C&D fills and we question the wisdom of such an action.

*House Environment
2-12-02
Attachment 3*



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

Testimony on House Bill 2705
to
House Environment Committee
presented by Bill Bider, Director Bureau of Waste Management
Kansas Department of Health and Environment

February 12, 2002

Thank you for this opportunity to provide testimony in support of House Bill 2705 on behalf of the Kansas Department of Health and Environment. HB 2705 was introduced by KDHE to establish a new reporting requirement for public and private entities involved in recycling and composting. This bill directs KDHE to develop and distribute an annual report form to businesses, cities, counties, non-profit organizations, or other facilities which collect, store, process, or broker materials for recycling, composting, or reuse. Entities receiving the forms must complete them and return them to KDHE for review and processing. All submitted information is confidential and not subject to disclosure under the Kansas Open Records Act unless incorporated into statewide summaries by KDHE.

Over the past four years, KDHE has carried out a voluntary survey of businesses, local governments, and others involved in recycling and composting to estimate the level of waste reduction activity in Kansas. Participation started quite well with over 600 responses comprising about two-thirds of the universe of material handlers known to the department at the time. Each year since then, participation has decreased. Responses for calendar year 2000 numbered only 252. With this response rate of less than 33%, it is impossible for KDHE to develop an accurate estimate of waste reduction in Kansas.

The lack of recycling and composting data in Kansas causes several problems. First, in national state-by-state comparative summaries, Kansas is never accurately portrayed. Second, and more importantly, it is not possible to estimate the success of the state's major efforts to promote waste reduction through grants, technical training, and public education. The state has spent millions of dollars over the past five years to assist local governments and private companies to implement waste reduction programs, yet we cannot accurately estimate the benefits gained. This bill will provide a way to measure recycling and composting activities and monitor progress in achieving overall waste reduction goals.

KDHE requests that a minor revision be made to HB 2705 to limit reporting by large generators of recyclables to only those generators which directly market or transfer their material to an end-user of the material.

I would be happy to answer any questions.

HOUSE BILL No. 2705

By Committee on Environment

1-25

AN ACT concerning solid waste; requiring certain reports regarding recycling, reuse and composting of materials.

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

Section 1. (a) The owner or operator of any of the following types of businesses or facilities shall make recycling, reuse and composting information available to the department of health and environment upon receipt of an annual report form from the department:

- (1) Businesses and facilities that are end-users of recyclables; and
- (2) businesses and facilities that collect, store, process or broker materials for recycling, reuse or composting, including, but not be limited to: (A) Scrap material processors; (B) city, county and regional programs; (C) nonprofit and for-profit collection centers; (D) nonprofit and for-profit buy-back centers; and (E) large generators of recyclable, reusable or compostable material

that directly transfer such material to an end-user of the material.

(b) The annual report shall include information on the types, amounts, sources and destinations of materials recycled, reused or composted.

(c) All recycling, reuse and composting information submitted to the department on the annual report form shall be confidential and disclosure thereof shall not be required pursuant to the open records act. Such information shall be made available to the public only in a summarized form which does not identify any individual or facility.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Testimony of Dan Harden
Before the House Environment Committee
Regarding House Bill 2705
12 February 2002

Representative Joann Freeborn
Chair

Representative Freeborn, and members of the House Environment Committee; my name is Dan Harden. I am a registered professional engineer in Kansas. I have been employed since 1976 as the Riley County engineer and have been involved at the county level with solid waste management continuously during that time.

I am here today representing the Kansas Association of Counties to urge you to oppose House Bill 2705. The Kansas Association of Counties urges you to oppose this legislation. The Kansas Association of Counties is of the opinion this legislation will cause an effort funded by the public treasury on the county level that may produce a more accurate statement of the statewide solid waste recycling, reuse, and composting effort. The Kansas Association of Counties does not see the value of the end product, a more accurate statement of the statewide solid waste recycling, reuse, and composting effort, is justified by the cost of the effort. It is for this reason the Kansas Association of Counties encourages you not pass House Bill 2705 out of committee.

*House Environment
2-12-02
Attachment 5*



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY ENVIRONMENTAL CENTER
CENTRAL REGIONAL ENVIRONMENTAL OFFICE
647 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

February 12, 2002

RE: Kansas House Bill 2705

Honorable Joann Freeborn
Chairperson, House Committee on Environment
Room 231-N, State Capitol Building
300 SW 10th Street
Topeka, Kansas 66612

Dear Ms. Freeborn:

I am writing you regarding House Bill 2705 that would establish a requirement for certain organizations to report quantities of waste diverted from landfills through recycling, reuse and composting efforts. Based on the current language of the bill, the Department of Defense (DoD) neither supports nor opposes this measure.

In our review of the bill language, it is not clear whether the reporting requirements will apply to military installations. As discussed below, we request your consideration of the following issues:

- Will the provision requiring reporting from "large generators of recyclable, reusable or composted material" apply to military installations?
- Is construction and demolition (C&D) waste a material that is covered by the reporting requirements?
- Will this reporting program replace similar state reporting requirements already in place?
- How can "double-counting" or inaccurate counting issues be avoided?

Large Generators. As a general practice, all DoD facilities in Kansas try to implement recycling programs at each installation. This ranges from large installations such as Fort Riley to small National Guard armories. Thus the recycled material can range from several tons of various materials to a few boxes of recycled office paper and recycled cans. Accordingly, it is suggested that the definition of "large generators" be defined as facilities generating at least one (1) ton per day of solid waste. This would prevent small facilities like National Guard armories and Reserve centers, which typically dispose of waste

*House Environment
2-12-02
Attachment 6*

through municipal solid waste systems, from being required to report the quantities of recycled material generated.

Construction and Demolition Waste. How Construction and Demolition (C&D) waste would be treated is not clear from the bill language. Often this material is considered recyclable or reusable, but there is little to no market for it in much of the state. Nationwide, modernization of buildings and facilities on military installations generates substantial C&D waste and comprises a significant portion of the installation solid waste stream. (For example, C&D waste accounts for approximately 33 percent of all solid waste from Army installations.) Including C&D waste in the statistics reported might tend to skew the data by obscuring the progress that is being realized through other waste minimization efforts.

Existing Reports. The DoD currently sets waste reduction goals and collects data to determine whether each installation is meeting the goal. So some recycling information at facilities is already tracked and reported internally. However, we encourage you to consider whether this new reporting requirement might be redundant with information already available through reports currently required by the Kansas Department of Health and Environment (KDHE) through existing permitting processes. For example, a DoD installation in the state is required, under its composting facility permit, to make annual reports to the KDHE of the number of tons collected and distributed, the materials composted, time in the yard, the type of equipment used, the total size of the site, etc. If detailed information such as this is already collected on permitted facilities, why would a new report be necessary? Or would this new reporting requirement replace existing requirements?

Potential Double-Counting or Inaccurate Counting. With respect to the conclusions that can be drawn from the data collected, there is also the potential for "double-counting" some waste and recycled materials. For example, at least one DoD installation in Kansas currently allows a nearby municipality to deposit sorted recyclables at the DoD recycling facility, thereby reducing impacts on the city landfill. How would these materials be accounted for in the proposed report? How would the installation avoid having the city's waste included in the quantities attributable to the installation's waste stream?

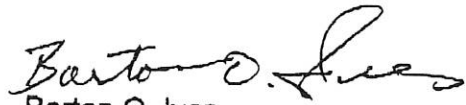
I recognize that many of these details can be worked out in the rule writing process that will follow passage of the statute. However, I wanted you and your committee to consider these issues when determining if another administrative requirement is really necessary.

As the DoD Regional Environmental Coordinator for Region 7 and the State of Kansas, I coordinate environmental legislative and regulatory issues that impact military installations. My office would welcome the opportunity to work

with you and your committee on any environmental matter that may affect DoD installations and agencies in Kansas.

If you have any questions, please feel free to contact me by phone at (816) 983-3548, fax (816) 426-7414, or e-mail: bart.o.ives@usace.army.mil. I thank you for the opportunity to comment on HB 2705 and would appreciate it if you would share this letter with the members of your committee.

Sincerely



Barton O. Ives
DoD Regional Environmental Coordinator
Region 7

Copies Furnished:

- Commander, US Army Combined Arms Center and Fort Leavenworth
- Commander, 24th Infantry Division (Mech) and Fort Riley
- The Adjutant General of Kansas
- Commander's Representative, Kansas Army Ammunition Plant
- Commander's Representative, Sunflower Army Ammunition Plant
- US Army Environmental Center, Office of Counsel
- Air Force Regional Environmental Coordinator
- Air Force Legal Services Agency
- Navy Regional Environmental Coordinator
- Defense Logistics Agency Regional Environmental Coordinator



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

Testimony on House Bill 2703
to
House Environment Committee
prepared by
Bill Bider, Director, Bureau of Waste Management
Kansas Department of Health and Environment

February 12, 2002

The Department of Health and Environment appreciates this opportunity to provide testimony in support of House Bill 2703. KDHE introduced this bill to address a problem which has been observed at existing construction and demolition (C & D) landfills. Many permitted C & D landfills are finding it difficult to comply with statutory restrictions on the types of waste which they can legally dispose of in their landfills. Current law defines C & D waste in a manner which excludes some materials which are commonly generated at construction or demolition sites in order to avoid federal landfill standards which would apply if the definition is expanded. Because of this problem, some states like our neighbor, Missouri, have effectively eliminated C & D landfills, unless they are designed to the same standard as municipal solid waste landfills. (Several pictures are attached to illustrate the problem of restricted waste disposal.)

As a partial solution to this problem, KDHE proposes to establish a new class of C & D landfill which would be permitted to dispose of certain currently restricted materials in addition to all other C & D wastes. The establishment of this new class of landfills, referred to as "Class I C & D landfills", in no way eliminates the existing class, which would be called "Class II C & D landfills". Every landfill owner or applicant would have a choice as to whether to operate a Class I or Class II facility, or both.

The types of waste which would be allowed at Class I facilities, but not Class II facilities include: small amounts of MSW generated at C & D sites such as lunch bags, bottles, cups, newspapers, etc.; chemical containers which have been emptied to the extent practica; friable asbestos which is separated from other waste and carefully handled; and furniture and appliances, as long as CFCs are first removed.

Although not specified in the bill, KDHE would propose to develop and adopt new rules and regulations for Class I landfills. Authority already exists in K.S.A. 65-3406 and 65-3407 to adopt such rules and issue permits for such facilities. At the present time, KDHE believes that the only additional standards necessary at Class I landfills as compared to Class II would be the use of a clay liner with a

leachate collection system, and groundwater monitoring. These standards are believed to be necessary to comply with applicable federal standards for landfills (40 CFR Part 257.3) which dispose of waste which is classified as "conditionally exempt small quantity generator waste (CESQG)." The disposal of caulking tubes and "empty" containers, which are frequently not totally empty, may constitute the disposal of CESQG waste.

KDHE strongly believes that landfills which receive waste with the potential to impact groundwater and surface water, such as chemical containers like caulking tubes or partly empty paint cans, should have preventive features such as a liner and leachate collection system with groundwater monitoring. To require less would conflict with the overall philosophy of the state's solid waste laws and regulations, which is to minimize the potential for releases rather than respond to releases after they have occurred.

In summary, Class I C & D landfills would be a disposal option which makes sense from many points of view. Landfill owners can avoid intense waste screening operations and market their facility as more full service than an existing (Class II) landfill. Waste generators may choose to pay somewhat higher disposal rates to avoid segregating currently prohibited waste at their construction or demolition site. Such higher costs should still be significantly below the disposal costs in MSW landfills, with the exception of disposal in small arid landfills in western Kansas. Disposal in a Class I landfill has the added benefit of saving valuable space in a Subtitle D municipal solid waste landfill.

Even with the option to apply for a permit for a Class I facility, some owners or operators may chose to maintain their Class II status and implement a thorough waste screening and separation program for restricted wastes. This option may be most feasible for small landfills which can reasonably screen every load.

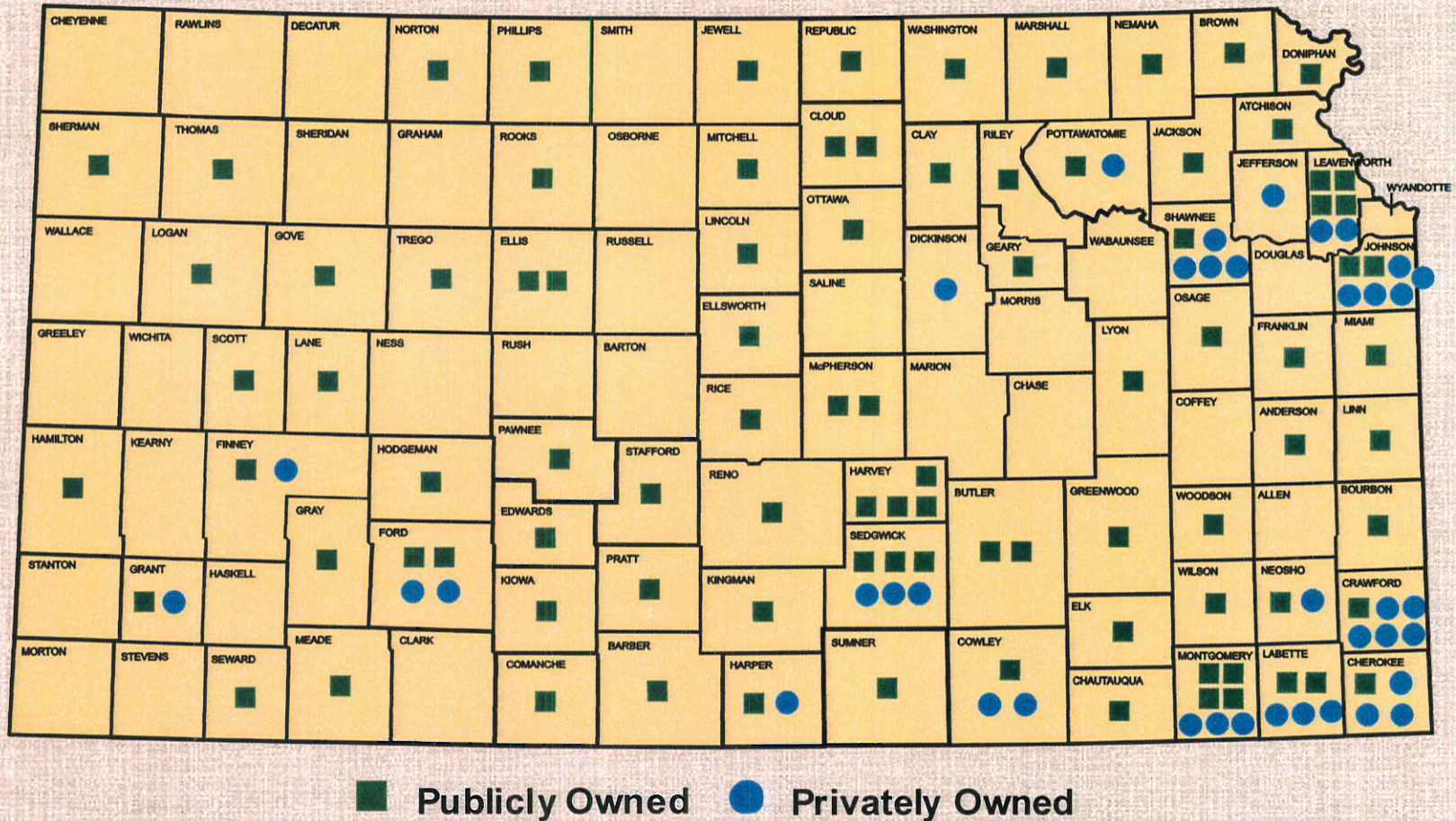
I would be happy to answer any questions.

C&D Landfill Violations for Disposal of Unauthorized Waste

Common Restricted wastes which are difficult to keep out



Location of C&D Landfills



Testimony of Dan Harden
Before the House Environment Committee
Regarding House Bill 2703
12 February 2002

Representative Joann Freeborn
Chair

Representative Freeborn, and members of the House Environment Committee; my name is Dan Harden. I am a registered professional engineer in Kansas. I have been employed since 1976 as the Riley County engineer and have been involved at the county level with solid waste management continuously during that time.

I am here today representing the Kansas Association of Counties to urge you to support House Bill 2703. The Kansas Association of Counties urges you to support this legislation, as it is permissive rather than mandatory. It will give the Kansas Department of Health and Environment and counties a degree of flexibility in managing construction and demolition debris, while preserving the quality of the Kansas environment.

The Kansas Association of Counties urges the committee to pass out of committee House Bill 2703.

I stand for questions.

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Attachment 9*

February 8, 2002

Honorable Joan Freeborn, Chair
Environment Committee
Kansas House of Representatives
300 S.W. 10th Ave., Room 155-E
Topeka, KS 66612-1504

Dear Representative Freeborn,

As demonstrated by our C & D Landfill permit application and our current C & D transfer station operation, C & D Recyclers of Kansas, Inc. strongly believes in sorting, segregation and recycling of C & D wastes. (See enclosed training brochure.)

We strongly support House Bill No. 2703 for the following reasons:

1. This bill allows C & D Recyclers of Kansas greater operational flexibility in providing recycling and disposal services to our clients. This also provides our clients with additional flexibility in choosing their operational approach and subsequent C & D waste stream costs.
2. It is our understanding from the BWM staff that additional environmental safe guards, (ground water monitoring and 12" compacted clay liner with 10⁻⁷ permeability) will be required for permitting a Class I C & D Landfill. We have no problem with these safeguards relative to the flexibility, as described previously, provided by this level of operation and protection.

We encourage you to support Bill No. 2703.

Sincerely,

C & D RECYCLERS OF KANSAS, INC.



Phillip E. Brothers,
Manager

cc: Ron Hammerschmidt
Yavonne Anderson
Bill Bider
Dennis Degner
Paul Graves



Polsinelli | Shalton | Welte

A Professional Corporation

Memorandum

TO: REPRESENTATIVE JOANN FREEBORN, CHAIR
HOUSE ENVIRONMENT COMMITTEE

FROM: WILLIAM W. SNEED

RE: HOUSE BILL 2703

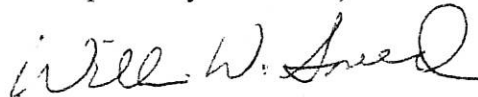
DATE: FEBRUARY 12, 2002

Madam Chair, Members of the Committee, my name is Bill Sneed and I am Legislative Counsel for the Kansas Construction and Demolition Landfill Association. We appreciate this opportunity to voice our concerns on HB 2703.

In lieu of lengthy testimony, please accept this memorandum as our formal opposition to HB 2703. As the committee is aware, the Association believes HB 2738 to be a better resolution to this issue.

Thus, on behalf of my client, I respectfully request that the committee not act favorable on HB 2703. If you have questions, please feel free to contact me.

Respectfully submitted,



William W. Sneed

WWS:pmk

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2-12-02
Attachment 11

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Memorandum

TO: REPRESENTATIVE JOANN FREEBORN, CHAIR
HOUSE ENVIRONMENT COMMITTEE

FROM: SCOTT YOUNG

RE: HOUSE BILL NO. 2738

DATE: FEBRUARY 11, 2002

Madam Chair, Members of the Committee: My name is Scott Young and my law firm represents the Kansas Construction and Demolition Landfill Association ("Association"). The Association has as its members owners and/or operators of construction and demolition landfills. At our request, your Committee introduced H.B. 2738. As will be explained later in this memorandum, we believe this proposal provides a balanced approach at addressing the concerns of the Kansas Department of Health and Environment ("KDHE"), as well as improving the siting of construction and demolition ("C & D") landfills in Kansas, and at the same time allowing Kansas businesses to continue to operating without imposing unnecessary or unsupported requirements and constraints.

Initially, I believe it is important to review the facts that have led us to this point.

More than a year ago, the KDHE announced that it had decided to revise and to expand its regulation of C&D landfills in Kansas. To help it identify issues and to determine appropriate measures, the KDHE hosted two meetings with selected owner/operators and other individuals interested in C&D landfills in the first half of 2001.

In August 2001, the KDHE circulated draft C&D landfill rules revisions. At the same time the Department requested comments from interested parties as well as feedback regarding the likely fiscal impact of these rule revisions if implemented. These draft rules did not reflect many of the issues and concerns raised by the C&D landfill owners and operators with the KDHE had met.

A group of C&D landfill operators, predecessors of the Kansas C&D Landfill Association, joined together to respond to the KDHE's proposal and requests. To better understand the KDHE's issues and concerns, representatives of these landfills met with Secretary Graeber, Dr. Hammerschmidt, Mr. Bider, Mr. Degner and others of the Department. The Department encouraged these C&D landfill operators to submit specific suggestions and alternatives.

Based on the issues raised in the Department's rule proposal, particularly as identified and highlighted as a result of the meeting with the Department, the Association submitted a detailed proposal to the KDHE together with a detailed analysis of the probable fiscal impacts of

*House Environment
2-12-02
Attachment 12*

the Department's proposal for all Kansas C&D landfills. The Association has provided copies of these materials to you. A map identifying the location of the approximately 130 C&D landfills in Kansas is attached.

Within two weeks of the Association's submission of these materials to the KDHE, Secretary Graeber indicated that the Department was contemplating abandoning its rulemaking approach and pursuing legislation instead. This change of direction was confirmed at a meeting of representatives of these landfills had with Dr. Hammerschmidt and other members of the Department in early December 2001. The Department indicated, at this meeting that much of the substance of the Department's circulated draft rules would be utilized as the rules for the Class 1 C&D landfills if KDHE's proposed legislation were to be enacted.

The Department did not respond substantively to the proposals submitted by the Association, its estimate of the likely fiscal impact of the KDHE rule proposal of industry, or, as far as the Association is aware, to any other comments or analyses submitted to the Department at its request. Rather the Department submitted to the Legislature what has become H.B. 2703.

Also, during the time we were in discussions with KDHE, the Association conducted a review of the KDHE's C&D landfill files that revealed the Department has not identified any groundwater contamination associated with C&D landfill operations in Kansas. This was confirmed by KDHE management at the December meeting between the Association and the Department,

The members of the Kansas C&D Landfill Association agree with the Department that regulation of C&D landfills should be made more consistent and, in general, require a more thoughtful, more protective of the environment than the Department's current established system. The Association believes that C&D landfills provide a useful and effective service for the citizens of Kansas without threatening the long term viability or health of Kansas, its citizens, or its groundwater.

The text of the memo that follows outlines the approach proposed by the Association.

1. Construction and Demolition Waste: K.S.A. § 65-3402(u). This is found on page 3, line 10 and lines 17-23.

Summary of Statute:

This provision defines what constitutes "construction and demolition waste" in Kansas.

Issue. The Department's interpretation of what constitutes construction and demolition waste in Kansas has evolved over time. However, this change in interpretation has not been instigated by any changes in the statute itself or modifications in implementing rules. The functional result of the Department's change in interpretation is that virtually the only items considered to be construction and demolition waste are those specifically named in the subsection. As a result of this unnecessarily narrow interpretation, the KDHE has issued many needless notices of violation to Kansas C&D landfills.

Resolution. The changes proposed by the Association are consistent with the Department's current approach to interpreting the law by adding additional items which arise from construction and demolition activities. Each of the materials proposed to be added are limited to those circumstances when they occur as the result of construction and demolition activities. No attempt is made to allow for the disposal of hazardous waste as construction and

demolition waste. The language regarding “friable asbestos” is exactly the same as in the Department’s bill. The Association acknowledges that there are respiratory health concerns associated with friable asbestos and believe that if handled at C&D landfills it must be in a special manner as circumscribed by the Department.

The definition is further modified to make clear that certain other materials which might occur in construction and demolition landfills such as free liquids or sealed garbage bags should not be treated as C&D waste in any case. (Page 3, lines 26-27.)

2. C&D Landfill Requirements. This is found on page 4, lines 32-43.

This is a new provision.

Summary of Statute:

This provision establishes minimum basic requirements for construction and demolition landfills in Kansas.

Issue: Current law and regulations do not establish minimum and consistent basic requirements for C&D landfills.

Resolution. This provision establishes a number of specific requirements for all C&D landfills. Each C&D landfill must be fenced with controlled access when open to avoid the possibility of open dumping. There should be adequate signs to let the public know what kinds of waste are permitted and there be a specific requirement that there be cover placed upon construction and demolition waste on a regular basis.

Furthermore, new C&D landfills should be located consistently in locations which are outside 100 year flood plains, do not threatened endangered species, and are not located close to the property lines without the consent of the adjoining landowner. Similarly, C&D landfills should not be constructed where the lowest point of disposal is within specified distance of naturally occurring aquifer. This protects naturally occurring groundwater. Finally, existing landfills are given the opportunity to complete their useful life in accordance with existing permits and rules.

3. Groundwater Protection and Remediation. This is found on page 5, lines 22-30.

This is a new provision.

Summary of Statute.

This provision authorizes the KDHE to take action to protect Kansas groundwater.

Issue. The KDHE has not documented or attempted to document the prevalence or extent, if any, of groundwater pollution associated with operations of C&D landfills.

Resolution. This provision authorizes the KDHE to require the use of soil liners, response actions, groundwater monitoring and methane gas collection with a C&D landfill that has been found or be easily expected to harm any waters of the state.

4. **Technical Advisory Council.** This is found on page 5, lines 31-43, and page 6, lines 1-25.

This is a new provision.

Summary of Statute.

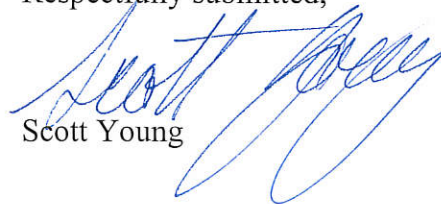
This provision establishes a technical advisory council made up of knowledgeable private individuals with which the KDHE can regularly obtain advice and counsel regarding C&D landfills.

Issue. This will formalize the process to assist KDHE and adequately avail itself to industry knowledge and experience in connection with C&D landfills, particularly where it intends to substantially modify and expand regulation.

Resolution. This statute establishes a technical advisory council made up of representatives of organizations which own or operate construction and demolition landfills as well as knowledgeable private individuals appointed by the Governor. The council will assist the KDHE during its implementation of this statute as well as continued regulatory efforts both now and in the future.

On behalf of the Association, we want to thank the Committee for its review of H.B. 2738. As stated earlier, we contend that this bill strikes an equitable balance between the concerns of the environment and the needs of Kansas business. We respectfully request that the Committee act favorably on H.B. 2738.

Respectfully submitted,



Scott Young

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Attachments

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

Testimony on House Bill 2738
to
House Environment Committee
presented by
Bill Bider, Director, Bureau of Waste Management
Kansas Department of Health and Environment
February 12, 2002

The Kansas Department of Health and Environment appreciates this opportunity to present testimony in opposition to House Bill 2738. This bill was introduced on behalf of a small coalition of construction and demolition (C & D) landfill owners. The bill is being proposed as an alternative to HB 2703 introduced by KDHE to establish a new class of C & D landfill. Both bills were introduced to address a major ongoing problem that many C & D landfill owners are having in complying with waste disposal restrictions set forth in existing state law. The statutory definition of C & D waste establishes the types of waste which may be legally disposed in C & D landfills which have no protective liners or leachate collection systems and no required groundwater monitoring. The current definition includes inert materials which pose little or no risk to groundwater supplies and it specifically restricts some wastes which are commonly generated at construction or demolition sites. One restricted waste which is very difficult to keep out of C & D waste is chemical containers. A few pictures are attached which show examples of restricted wastes which are commonly found at during KDHE inspectors.

KDHE proposed HB 2703 to give landfill owners and applicants a choice to either: (1) operate standard C & D landfills and implement a thorough screening program to identify and remove any unauthorized waste before disposal occurs or (2) to establish a higher standard C & D landfill which can take additional wastes commonly generated at C & D sites. HB 2738 takes a totally different approach to solving this problem. This bill proposes to expand the definition of "construction and demolition waste" to include the same wastes which KDHE proposes to allow in the higher class of C & D landfills, but without enhanced design or operations.

KDHE believes that the HB 2738 proposal is unacceptable because it conflicts with federal regulations and it ignores environmental risks. To understand these claims, we must more thoroughly examine the additional wastes which this bill proposes to add to the C & D definition. They include some minor amounts of municipal solid waste, friable asbestos, furniture, appliances, and most importantly, caulking tubes, whether full or empty, and other "empty" chemical containers. It is KDHE's opinion that the inclusion of caulking tubes and "empty" chemical containers would trigger federal landfill regulations found in 40 CFR Part 257.5, which apply to any landfill which receives

"conditionally exempt small quantity generator" (CESQG) waste. Many types of caulking tubes and chemical containers which are not thoroughly empty would be classified as CESQG waste.

These federal 257.5 regulations require groundwater monitoring and other standards of design and operation which are not included in Kansas' C & D regulations. Therefore, the expansion of our C & D definition to include these wastes could result in an EPA decision to revoke their earlier approval of our state landfill permitting program for these types of landfills. In addition, every C & D landfill would become subject to the federal standards even if they were operating a screening program to remove such materials because state law would allow CESQG waste to be disposed. Furthermore, facilities would be subject to third lawsuits because they were not complying with federal standards.

The proposed expansion of the definition of C & D waste would also increase the potential for environmental harm. Caulking tubes and chemical containers may release hazardous constituents which could reach groundwater, especially since C & D landfills do not have lined bottoms or leachate collection systems. Also, groundwater monitoring is not required at C & D landfills, thus groundwater water resources could be impacted without anyone's knowledge. The addition of the proposed types of municipal solid waste including bags, cups, newspapers, etc. could also lead to increased litter problems because the bill proposes covering the waste just every 30 days.

Finally, the expansion of the definition of C & D waste without the preventative standards KDHE intends to add in new rules and regulations for Class I C & D landfills, would increase public opposition to siting new landfills. Opposition is already significant whenever a new landfill is proposed, but it could be much worse if these wastes are allow without providing the public with assurances that the landfills will be properly designed, operated, and monitored.

Additional reasons why this bill should not be passed include:

1. The bill proposes to incorporate limited landfill standards into state law. Such design and operating regulations are not in state law for other types of solid waste management facilities.
2. KDHE has worked with a task force to develop draft C & D landfill regulations over the past 18 months. External task forces are always utilized to develop new or revised solid waste regulations. There is no need to establish a special "advisory council" in state law for C & D regulations only, especially since the proposed council includes no one to represent the interests of the public or environmental groups.
3. The "grandfathering" provisions in Section 1(d) are much too broad to allow for adequate environment protection. They prohibit the department from applying new requirements which may be deemed necessary to adequately protect human health and the environment.
4. Section 2 would limit KDHE's authority to require corrective actions to cases where the department carries out "scientific analyses and demonstrations" which prove that a landfill has caused harm or can be reasonably expected to cause harm. This provision conflicts with the basic principles of good waste management which are preventative rather than reactive.

I would be happy to answer any questions.

C&D Landfill Violations for Disposal of Unauthorized Waste

Restricted wastes which are difficult to keep out



Major quantities of non-C&D waste



Major Solid Waste Packages
Task Force/Advisory Group Information
1993-2001

House Environment
2-12-02
Attachment 14

regulation	meeting dates*	status	task force/advisory group composition
C&D Landfills	4/18/01, 7/13/00	draft	C&D landfill operators
Medical Waste	6/22/00	draft	health care professionals, med waste processors
Solid Waste Planning	4/25/00	draft	city and county solid waste program managers
Composting	6/24/97	in effect	compost facility operators, technical experts
Household Hazardous Waste	8/26/98, 5/12/98	in effect	HHW facility operators, HW transporters
Special Waste	5/16/95	in effect	solid waste facility operators, spill responders, consultants
Waste Tires	6/12/96	in effect	tire permit holders, scrap dealers
Off-site HW Treatment Fees	5/29/96	in effect	hazardous waste treatment facility reps, KCC
Small Landfill	5/25/95	in effect	county reps, consultants, state legislators
Transfer Stations	8/23/94	in effect	city and county solid waste representatives
MSW Landfills	5/6/93, 11/3/93	in effect	city and county solid waste representatives, consultants

* bold indicates attendance or member list attached

Testimony of Dan Harden
Before the House Environment Committee
Regarding House Bill 2738
12 February 2002

Representative Joann Freeborn
Chair

Representative Freeborn, and members of the House Environment Committee; my name is Dan Harden. I am a registered professional engineer in Kansas. I have been employed since 1976 as the Riley County engineer and have been involved at the county level with solid waste management continuously during that time.

I am here today representing the Kansas Association of Counties to urge you to oppose House Bill 2738. The Kansas Association of Counties urges you to oppose this legislation. The Kansas Association of Counties opposes this legislation because it is the understanding of the Association the U.S. Environmental Protection Agency will remove the "permitted program" status for the regulation of construction and demolition landfills from the Kansas Department of Health and Environment if this legislation is enacted. This will place the regulation of construction and demolition landfills in Kansas under the jurisdiction of the federal district court system. Any aggrieved party could then file a citizen enforcement suit under the provisions of the Resource Conservation and

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Recovery Act to enforce the law as it would apply to construction and demolition landfills in Kansas. The federal Resource Conservation and Recovery Act carries with it a provision for the payment of the plaintiff's legal fees in the event the plaintiff prevails in federal district court. Riley County has experienced this situation before the Kansas Department of Health and Environment had permitted program authority from the Environmental Protection Agency for the enforcement of the municipal solid waste federal regulations.

The present system of permitting construction and demolition landfills by the Kansas Department of Health and Environment is a permitted program. This is a much better situation for the enforcement of the federal construction and demolition landfill regulations in Kansas than is citizen suit enforcement.

The Kansas Association of Counties believes House Bill 2703 does a much better job of enhancing the regulated use of construction and demolition landfills Kansas, and encourages you not pass House Bill 2738 out of committee.