

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 14, 2002 in Room 231-N of the Capitol.

All members were present except: Representative Jeff Peterson - excused  
Representative Ted Powers - excused

Committee staff present: Raney Gilliland, Kansas Legislative Research Department  
Mary Torrence, Revisor of Statute's Office  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Representative Jerry Henry  
Bill Bider, Director, Bureau of Waste Management, 1000  
SW Jackson, Ste. 320, Kansas Department Health and  
Environment, Topeka, KS 66612  
Jeff Weatherly, Atchison Casting Corporation, PO Box 188,  
Atchison, KS 66002-0188  
Steve Miller, Sunflower Electric Power Corporation, PO Box  
980, Hays, KS 67601  
Edward Moses, Managing Director, Kansas Cement Council,  
800 SW Jackson, Suite 1408, Topeka, KS 66612  
James Wadley, Professor of Law, Washburn University  
School of Law, 1700 SW College Avenue, Topeka, KS 66604

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She opened **HB2704** for discussion and possible action.

**HB2704: Solid waste management planning process.**

Bill Bider, Director, Bureau of Waste Management, Kansas Department of Health and Environment, was welcomed to the committee. He reviewed a proposed amendment submitted by the Department. ( See attachment 1)

Rep. Vaughn Flora made a motion to adopt the amendment proposed by KDHE, on page 3, line 6, after submitted "or as revised by the county commission". Rep. Becky Hutchins seconded the motion. Motion carried.

Rep. Vaughn Flora made a motion the bill be passed favorably as amended. Rep. Becky Hutchins seconded the motion. Motion carried.

The Chairperson opened **HB2705** for discussion and possible action.

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

Bill Bider, Director, Bureau of Waste Management, Kansas Department of Health and Environment, explained the proposed amendment by KDHE. (See attachment 2)

Rep. Vaughn Flora made a motion to adopt the proposed amendment by KDHE, line 23, (E) "that directly transfer such material to an end-user"; line 31, add sub-section (d) "failure of a business or facility to complete and submit the recycling, reuse, and composting annual report form to the department shall disqualify the business or facility from receiving any solid waste grants". Rep. Laura McClure seconded the motion. Motion carried. Rep. Dennis McKinney voted no. Rep. Sharon Schwartz voted no.

Rep. Vaughn Flora made a motion the bill be passed favorably as amended. Rep. Ray Merrick seconded the motion. Motion carried. 9 yeas, 5 nays.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol  
at 3:30 p.m. on February 14, 2002.

The Chairperson called the committee's attention to a Kansas Recycling Survey - 2001, that had been distributed by the Kansas Department of Health and Environment, for review. (See attachment 3)

The Chairperson opened hearing on **HB2686**.

**HB2686: Solid waste tonnage fees; lower fee for industrial waste disposed of at landfill operated by the generator of the waste.**

Representative Jerry Henry was welcomed. He presented a copy of a **Substitute Bill for HB2686**, which he had requested. He introduced Bill Bider, KDHE. (See attachment 4)

Bill Bider, Director, Bureau of Waste Management, Kansas Department of Health and Environment, was welcomed. He presented testimony in support of the substitute bill developed to replace **HB2686**. The department initially worked with Atchison Casting Corporation to develop the original bill which establishes a new solid waste tonnage fee schedule for solid waste disposed of in on-site industrial landfills. The new fee schedule would reduce the tonnage fee paid by some businesses and eliminate the tonnage fee exemption in current law for some wastes including cement kiln dust, electric power plant fly ash and bottom ash, and foundry sand. The maximum tonnage fee that any business would pay under the bill, as proposed, would be \$3,000 per year. KDHE believes that the substitute bill provides a fair method of fee collection for the facilities which operate on-site industrial landfills. There is another benefit to the substitute bill compared to the original bill. Landfill owners will be able to submit all of their fees as part of the annual permit renewal process which they are already carrying out. They will not need to submit monthly or quarterly reports with tonnage fee payments. Much less paperwork will be required. (See attachment 5)

Jeff Weatherly, Atchison Steel Casting and Machining, was welcomed to the committee. He testified in support of the substitute bill. Revisions made to the bill greatly improve current requirements for ASCM who owns and operates a solid waste landfill solely for company nonhazardous wastes. The strength of the proposed language comes from a united effort between industry and the Kansas Department of Health and Environment. He believes the support of this bill will ultimately benefit the regulator as well as the regulated. Time and resources will be saved and the KDHE cost recovery assessment will be more fairly distributed in a more simplified manner. (See attachment 6) Discussion followed.

Steve Miller, Sunflower Electric Power Corporation, was welcomed to the committee. He provided testimony in opposition to the bill as written and expressed support of the proposed substitute bill. He was accompanied by Wayne Penrod, Sunflower's Senior Manager, Environment and Production Planning, to answer any technical questions the committee might have regarding their landfill operations at their coal-fired power plant near Garden City, Kansas. The cost to operate the landfill is expensive, very expensive, but Sunflower is committed to operating it according to the established rules and regulations. All of these requirements are imposed by a regulatory structure created by and in accordance with federal, state and local statutes and ordinances. They would like for the bill to be modified so that KDHE would be granted the authority to revise its current fee schedule to one that more closely matches its cost of regulating each landfill operator, and hopes those fees are not mileage sensitive. (See attachment 7)

Edward Moses, Managing Director, representing Kansas Cement Council, was welcomed. He testified in opposition to the bill and is aware the proposed substitute bill would address many of the concerns listed in their testimony. The Council is prepared to provide limited support for this compromise pending the receipt of more detailed information on how the fees in the substitute would be assessed. Specifically, they support language that would cap the fees for Cement Kiln Dust at \$1,000 per anum. They simply urge the committee and the legislature to carefully consider the impacts a policy change may have upon this industry, which provides employment to over 400 people, and products that keep construction costs competitive in Kansas communities. (See attachment 8) Mr. Moses introduced Robert Hickman, Safety Engineer Manager, Ash Grove Cement; Jim Shea, Plant Manager, Fredonia; and Paul Peters, Lafarge Corporation, in attendance today.

Written only testimony was submitted by Joe Dick, Kansas City Board of Public Utilities, in opposition to the original bill. (See attachment 9) Discussion followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol  
at 3:30 p.m. on February 14, 2002.

The Chairperson closed the hearing on **HB2686**.

Chairperson Freeborn welcomed James Wadley, Professor of Law, Washburn University School of Law, to the committee. He addressed the committee on Kansas Water Law. He stated that Kansas has a very interesting water rights structure that distinguishes it in some important ways from other states and puts it ahead of the curve. Other states have looked to Kansas for direction on how to solve some difficult water problems. Water problems are not going away and are becoming increasing more frequent. One thing that always seems to crop up when dealing with water problems are property rights, on one hand you have the State's interest in managing the resource and on the other you have individual interests which are very tightly tied to their own well being and economic success. Water is a life sustaining resource and how to deal with the water rights issue is always a difficult question. The State owns the water as it exists in place as a resource and that empowers the State to do an awful lot of things. It has empowered this State to determine the rules that would be appropriate for accessing the resource. In 1945 the State decided to change the rules, through the Legislature. It changed from a system from which the State granted its permission to someone who wanted access to the water from a land ownership base system to a system where you needed to apply to the system to acquire that water right. The applications go to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture. That permission is granted in a very formal type of way, whether or not that permission is granted depends on things that the Legislature can control. Those water rights are granted on the type of use and the use has to be beneficial. Individuals do not get ownership of the water, what they get is a right to access the water. The law describes this as "usufruct", the concept is of use and enjoyment. In our system this is known as a real property right, you own the right as real property but you do not own the water. As you exercise the right and reduce the water to possession the interest changes, and then the water is actually owned as personal property by the water right holder. So the exercise through the usufruct kind of idea converts the State's interest in the water in place into a personal interest on the part of the water right holder. Once the system has granted that permission it becomes quite difficult for the system to restrict the ability to use it. Water rights are not unlimited rights, they are limited in a variety of ways. They are limited by the nature of the right being a usufruct right it is tied to the question of use and to the question of propriety of use. Our system in Kansas works on a propriety basis and we tend to recognize superiority in those who have acquired their water rights earlier than those who might wish to be granted a right later in time. Late comers may have their rights reduced or even terminated if a water shortage exists. The State does have a fair amount of control over some of those limitations. It is the job of the Legislature to define what constitutes beneficial use, we haven't chosen to do that, the statute doesn't give us a very correct definition, and we have to depend on the courts to give us some meaning. The Chief Engineer has defined beneficial uses through rules and regulations. The Legislature has control over the circumstances and conditions under which permission is granted. The public has some trust obligations to the public at large as to how the water is used. The Legislature can determine the circumstances under which individuals can qualify for water rights prospectively and in the meaning of what is beneficial. What the Legislature cannot do is destroy property rights. The way the law currently stands, unless there is a direct physical intrusion into the property interest, in most instances there has to be a complete destruction of the economic value of that interest before it constitutes a taking. Recent decisions by the United States Supreme Court suggests that antecedent claims against the property where the system may insert those at some later point in time doesn't constitute taking. Discussion followed.

Professor Wadley continued by stating that in our system we have given statutory authority to the Chief Engineer to oversee the allocation of water rights where water rights are transferred from one party to another either through the process we are describing or voluntarily. Water rights can be sold to someone else but still have to go through the transfer process with the Chief Engineer, otherwise there is no way to know who has the water rights and who can track it. This sale or exchange becomes an opportunity to reexamine the beneficial use of the water.

The second issue addressed was groundwater, which is particularly difficult to deal with because we can't see it. Our system has developed in such a manner where water right holders make as many judgments as they can about water availability but you really can't do that with groundwater because you can't see it even if you drill a well. It's really hard to tell how deep the resource is. Problems concerning groundwater were what caused our system to take the turn it took in 1945. We didn't have a good system for dealing with water underground. So when the Legislature adopted the 1945 statute, that we describe as prior appropriations, that



## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol  
at 3:30 p.m. on February 14, 2002.

describes how we deal with water on the surface. Most states have different ways to deal with water underground. When Kansas adopted its statute in 1945 it became a unified jurisdiction, which says we are going to use the same rules no matter where the water is found. So the rules underground are essentially the same as the rules on the surface. There are places around the state where the need for groundwater far exceeds the surface water availability. We have had to try to adjust our system to be sensitive to that. We have adjusted in two ways, one is that we have adopted area wide management and the other is to try to reflect the ability of the resource to regenerate itself. A couple of our groundwater management districts operate on a safe yield policy where people can take what the natural system puts back every year. That is the measure of how much we allow to be appropriated. The up side of this is that it guarantees that there will be water forever. Most of our groundwater districts don't work that way. So we have to follow what is known as a water mining policy for slowly extracting it faster than mother nature can recharge it. The down side of that is at some point we may discover that we don't have any water left. Each groundwater district is going to function differently. In 1968 the Legislature adopted a policy that was so complicated no one tried to institute a groundwater management district. In 1972 the Legislature adopted a policy that is now used by groundwater management districts. The Legislature wanted to give the locals some measure of input into how the water is being used. The difficulty is that the Legislature in choosing how it allocated power between the Chief Engineer and the groundwater management districts choose to give the Chief Engineer the power to make rules and regulations and to the groundwater management districts the power to make policies and recommendations as to what the rules and regulations should be. The Chief Engineer has to do rules and regulations for the entire state and in doing so can make rules and regulations that apply in groundwater management districts also. When the Legislature crafted this policy they clearly wanted some measure of local control and input but did not want this process to eclipse the general management authority over water resources that has been given to the Chief Engineer. So the allocations statutes supercede the groundwater management statutes. Groundwater management districts don't grant water rights, only the Chief Engineer can and the final decision is the Chief Engineer's. Water rights in groundwater management districts is the same for water rights everywhere, someone who owns the water right owns the water right but doesn't own the water. Probably what the Legislature intended is that the groundwater management districts have input into the problem of groundwater management rather than control over the groundwater rights, which are two very different concerns or interests. Discussion followed.

Chairperson Freeborn thanked Professor Wadley for addressing the committee today.

The meeting adjourned at 5:40 p.m. The next meeting is scheduled for Tuesday, February 19, 2002.

# HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 14, 2002

NAME	REPRESENTING
Steve Miller	Sunflower Electric
WAYNE PENROD	Sunflower Electric
Mark Toews	Farm Bureau
Jim Schmidt	KFB
Richard Larson	KFB
Dana Zarkowski	Farm Bureau - Enviro Programs
Alvin <sup>and</sup> JAN KROEKER	Ks Farm Bureau (Mpherson @ tag)
Wendy Williams	Kansas Cement Council
Woody Moses	Kansas Cement Council
James D. Shea	Ash Grove Cement Co.
Robert Hickman	Ash Grove Cement Co.
Paul Peters	Lafarge - NA
Whitney Damron	Empire District Electric Co.
Steve Johnson	Kansas Gas Service
MARK SCHREIBER	Westar Energy
John Frederick	The Boeing Company
Craig Swartz	Westar Energy
Shawn Herint	MATDA
STEVE KEARNEY	WASTE MANAGEMENT



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-

House Environment  
 2-14-02  
 Attachment 1

**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.

(d) Failure of a business or facility to complete and submit the recycling, reuse, and composting annual report form to the department shall disqualify the business or facility from receiving any solid waste grants awarded pursuant to K.S.A. 65-3415 and amendments thereto, or to receive any monetary disbursement for such grants that have already been awarded.

House Environment  
2-14-02  
Attachment 2





*This page completed by 11/11/02*



# KANSAS RECYCLING SURVEY - 2001

The purpose of this survey is to determine the recycling rate of Kansas for the period of Jan. 1, 2001, through Dec. 31, 2001.

Please fill out this form as completely as possible and **return by February 28, 2002**, using the provided postage-paid envelope, or by mailing to:

Kansas Department of Health and Environment  
Bureau of Waste Management  
1000 SW Jackson, Suite 320  
Topeka, KS 66612-1366

**ALL INFORMATION RECEIVED WILL REMAIN CONFIDENTIAL.**

**If you have any question, please call: Kent Foerster (785) 296-1540**

**Please fill in information, or make any necessary corrections below:**

Survey #: FIELD(  
COMPANYID)

Contact: FIELD(CONTACT)

Phone #: FIELD(PHONE)

Company/Agency Name: FIELD(COMPANY)

Fax #: FIELD(FAX)

Address: FIELD(ADDRESS1)  
FIELD(ADDRESS2)  
FIELD(CITY), FIELD(STATECD) FIELD(ZIP)

E-mail address: \_\_\_\_\_

Web Site: \_\_\_\_\_

**Your Category** (please check one that best describes your company/agency):

- Private hauler
- Government agency with collection crew
- Large generator (grocery stores, retail chains, government facilities) that self-hauls to a processor or end user
- Scrap metal, paper, plastic, tire, or yard trimmings processor
- Glass beneficiation plant
- Material Recovery Facility
- Buy-back center
- Drop-off center
- Transfer stations that recover recyclables from waste on site
- Public or private composting facility
- Recycling plant
- Disposal facility that recovers recyclables from waste on site
- Other: \_\_\_\_\_

**Do Not Recycle** \_\_\_\_\_

Included is an EPA Scope of Activities Table. Please refer to it as an example of what to include as recycling when completing the table on page 2. Also, see footnote for definitions of processor, broker and mill. The purpose of asking where materials are sent is to help determine the flow of recyclables within the state and to determine the best way to administer our survey.

*House Environment  
2-14-02  
Attachment 3*

TO BE COMPLETED UPON ADR: 2 request

Please report all quantities in tons (1 ton = 2,000 lbs). Only report Kansas generated materials.

If you need information on volume to weight conversions, please call: Shelly Hawks (785)296-1123 or Kent Foerster (785)296-1540.

Municipal Solid Waste (MSW) Recyclable Material	Tons Recycled	Do you send materials to: P - Processor B - Broker M - Mill Other - please specify	Name and location of facility you send materials to:
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Commingled Materials  
(describe in comments section)

Glass

Lead-Acid Batteries

Metals:

Aluminum

Other Metals

(No auto bodies)

Paper:

Old Newspaper

Old Corrugated Containers

Other Paper

Plastic

Tires

Wood

Other MSW

Recyclables:

**Processor** - Intermediate operators that handle recyclable materials from collectors and generators for the purpose of preparing materials for recycling.

**Broker** - Acts as an agent or intermediary between sellers and buyers of recyclable materials.

**Mill** - Where final recycling takes place.

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Municipal Solid Waste (MSW) Recyclable Material	Tons Recycled	Do you send materials to: P - Processor B - Broker M - Mill Other - please specify	Name of facility you send materials to
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Other Recyclables:  
(see EPA Scope Table)

Non-MSW Recyclable Material	Tons Recycled	Where do you send materials?	Comments
Agricultural Waste			
Automobile Bodies			
Combustion Ash			
Construction/Demolition			
Industrial Process Waste			
Municipal Sewage Sludge			
Preconsumer Waste			
Used Oil			
Other:			

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Thank You*

**JERRY HENRY**  
REPRESENTATIVE, FORTY EIGHTH DISTRICT  
ATCHISON AND JEFFERSON COUNTIES  
3515 NEOSHO RD.  
CUMMINGS, KANSAS 66016  
HOME: (913) 367-2050  
STATE CAPITOL—284-W  
TOPEKA, KANSAS 66612-1504  
(785) 296-7688  
1-800-432-3924



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
RANKING DEMOCRAT HEALTH AND HUMAN SERVICES  
MEMBER: SOCIAL SERVICES BUDGET COMMITTEE  
BUSINESS, COMMERCE AND LABOR COMMITTEE  
S R S. LEGISLATIVE TRANSITION OVERSIGHT  
COMMITTEE  
JOINT COMMITTEE ON CHILDRENS ISSUES  
NCSL ASSEMBLY ON FEDERAL ISSUES—  
HEALTH COMMITTEE

## Testimony to House Environment Committee

Representative Jerry Henry

February 14, 2002

Madam Chairperson and members of the committee, Thank you for the opportunity to discuss House Bill 2686. House Bill 2686 is the result of many months of work between the Kansas Department of Health and Environment and a number of Kansas Industries.

After the introduction of HB2686, a number of industry representatives and the Department of Health and Environment worked to improve the regulations of certain industrial solid waste facilities.

Because of the input from various industry representatives, we believe that we have arrived to a point where it has become necessary to propose a substitute bill for House Bill 2686.

The Kansas Department of Health and Environment has provided a lot of the research on this matter and I would like to ask them at this time to explain the history for House Bill 2686 and to provide the details for the substitute bill.

*House Environment  
2-14-02  
Attachment 4*





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

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**Testimony on Substitute to House Bill 2686**

to

**House Environment Committee**

presented by

Bill Bider, Director, Bureau of Waste Management  
Kansas Department of Health and Environment  
February 14, 2002

The Kansas Department of Health and Environment appreciates this opportunity to provide testimony in support of the substitute bill developed to replace House Bill 2686. The department initially worked with Atchison Casting Corporation to develop the original bill which establishes a new solid waste tonnage fee schedule for solid waste disposed of in on-site industrial landfills. The new fee schedule would reduce the tonnage fee paid by some businesses and eliminate the tonnage fee exemption in current law for some wastes including cement kiln dust, electric power plant fly ash and bottom ash, and foundry sand. The maximum tonnage fee that any business would pay under the bill, as proposed, would be \$3,000 per year.

In response to industry comments and as requested by the House Environment Committee, KDHE worked with the Office of the Revisor of Statutes to develop a substitute bill which would ensure that every landfill permit holder paid enough fees to cover KDHE's annual costs of regulating the landfill; however, annual permit renewal fees were to be used rather than tonnage fees. Landfill owners already pay \$1,000 per year to renew their permits, but this amount does not fully cover the department's costs for inspections, inspection report preparation, permit modifications, groundwater monitoring oversight, insurance and financial assurance reviews, public notices, and compliance and enforcement activities when necessary. Because no state general funds are used to pay for solid waste program expenses, fees must fully cover all program costs.

When the original bill was drafted, KDHE estimated that the annual cost to oversee a complex facility could be \$3,000 to \$4,000, perhaps even higher for a facility with compliance problems. This led to the establishment of a maximum tonnage fee of \$3,000, which when added to the annual permit renewal fee of \$1,000 would give a maximum annual payment of \$4,000 per year for a landfill owner. The substitute bill eliminates all tonnage fees for disposal in on-site industrial landfills (K.S.A. 65-3415b) but maintains this maximum annual fee amount. The substitute bill revises K.S.A. 65-3407(e) to establish new annual renewal fees ranging from \$1,000 per year for very simple or inactive facilities

which are maintaining their permits for future use, to \$4,000 per year for complex facilities with groundwater monitoring, frequent permit modifications, and complex design features. KDHE would be required to develop a fee schedule in regulations based upon facility characteristics.

The net impact of this bill on revenue to the solid waste management fund should be minor. Overall, it is estimated that about \$5,000 to \$10,000 less will be collected from affected businesses; however, that estimate is based upon several assumptions which are uncertain. About 20 industrial landfill owners that paid tonnage fees in 2000 would no longer be subject to the those fees. These landfill owners paid a total of only \$65,000 in 2000. About 30 facilities will be subject to a higher annual permit renewal fee in the future. If we assume that the average increase will be about \$2,000, they will pay \$60,000 more per year yielding a net reduction in revenue of only \$5,000. If the average increase is only \$1,000, revenue will decrease by \$35,000 per year.

KDHE believes that the substitute bill provides a fair method of fee collection for the facilities which operate on-site industrial landfills. There is another benefit to the substitute bill compared to the original bill. Landfill owners will be able to submit all of their fees as part of the annual permit renewal process which they are already carrying out. They will not need to submit monthly or quarterly reports with tonnage fee payments. Much less paperwork will be required.

I would be happy to answer any questions.



**ATCHISON STEEL  
CASTING & MACHINING**

HOUSE TESTIMONY  
ENVIRONMENT COMMITTEE  
February 14, 2002  
House Bill #2686

Madam Chairperson and members of the Committee:

Thank you for the opportunity to address the committee in support for the revised language in House Bill – 2686 (HB-2686). I am Jeff Weatherly the environmental engineer for Atchison Steel Casting and Machining (ASCM), located in Atchison, Kansas.

Revisions made to HB-2686 greatly improve current requirements for ASCM who owns and operates a solid waste landfill solely for company nonhazardous wastes. The strength of the proposed language comes from a united effort between industry and the Kansas Department of Health and Environment (KDHE).

There are two distinct advantages for those affected by the revised HB-2686. First, the current method of KDHE revenue recovery is through fees based on landfilled tonnage. This method of fee recovery is emphatically unfair to ASCM as our annual cost for 2001 was \$25,237 to landfill our own waste at our own landfill. Some companies paid nothing while we paid the lion's share because we could not benefit from the few established exemptions. In addition to tonnage fees, we dutifully paid our annual \$1,000 landfill operating permit fee. Therefore, the net annual impact to ASCM exceeds \$26,000. When compared to other similar situations across Kansas, it would seem that ASCM is unfairly assessed while following the current regulatory language.

Second, simplifying the regulatory language through tonnage fee elimination in favor of an annual progressive-scale permit fee makes better use of time and resources. Under the current language, quarterly reports are required to be submitted to KDHE in order to assess the tonnage fee. This poses additional labor and paperwork on both the part of industry and KDHE. Industry would rather pay a reasonable and known annual permit fee opposed to a fluctuating tonnage fee on a quarterly basis.

Therefore, ASCM hereby testifies in favor of the revised language represented in HB-2686.

Support of this bill will ultimately benefit the regulator as well as the regulated. Time and resources will be saved and the KDHE cost recovery assessment will be more fairly distributed in a more simplified manner.

Passage of the revised HB-2686 would also demonstrate that seemingly unfair requirements could be appropriately amended through mutual cooperation between industry and KDHE.

Again, I wish to thank you for the opportunity to express our support for the revised language represented in HB-2686. I will be happy to answer any questions you or the committee may have.

HOUSE TESTIMONY HB-2686 (Rev).doc

*House Environment  
2-14-02  
Attachment 6*

ATCHISON STEEL CASTING & MACHINING DIVISION  
ATCHISON CASTING CORPORATION

400 SOUTH FOURTH STREET • P.O. BOX 188 • ATCHISON, KANSAS 66002-0188 • (913) 367-2121 • FAX (913) 367-2130

**TESTIMONY SUBMITTED TO THE  
HOUSE ENVIRONMENT COMMITTEE**

**By  
SUNFLOWER ELECTRIC POWER CORPORATION**

**February 14, 2002**

**COMMENTS ON HOUSE BILL 2686**

Thank you, Madam Chair and members of the Committee, for providing Sunflower time to share our thoughts with you on this proposed legislation. My name is Steve Miller. I am Sunflower's Senior Manager, External Affairs. Mr. Wayne Penrod, Sunflower's Senior Manager, Environment and Production Planning is with me today to answer any technical questions you might have regarding our landfill operations at our coal-fired power plant near Garden City, Kansas.

We come before you today to testify in opposition to House Bill 2686.

Kansas utilities annually dispose of nearly one million tons of flyash, scrubber sludge and other combustion waste byproducts associated with the generation of electricity. Sunflower produced nearly 90,000 tons of this material in 2001.

Like other utilities, we employ people with special knowledge and skills, and engage consultants, in the design, planning, and operation of our landfill. We have also created a trust fund that assures the proper maintenance of our site throughout the post-closure process.

The cost to operate the landfill is expensive—very expensive—but Sunflower is committed to operating it according to the established rules and regulations. All of these requirements are imposed by a regulatory structure created by and in accordance with federal, state and local statutes and ordinances.

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Currently, we are exempt from the tipping fees that would be created in House Bill 2686. This bill would remove that exemption in the interest of a more equitable balance of funding for those agency personnel who are necessary to regulate the industrial landfills across the state.

We respectfully request that the committee consider a more direct method of allocating these costs rather than removing the tipping fee exemption. Sunflower realizes that there are costs associated with this regulation and we are more than willing to pay our fair share of that cost.

We annually renew our operating permits with the KDHE. This renewal includes the payment of a \$1,000 fee to defray the costs of administering the permit program and performing the semi-annual inspections by the KDHE personnel. We agree that the cost of both the administrative and field work regularly exceeds the cost we've paid through that renewal fee.

We want to advocate that you modify this bill so that the Department would be granted the authority to revise its current fee schedule to one that more closely matches its cost of regulating each landfill operator. I would add, however, that I hope those fees are not mileage sensitive.

As you no doubt have heard before, those of us from western Kansas have a long way to drive to get to Topeka. While the Jeffery Energy Center trip is probably no more than a 60 mile drive, you're going to need a full tank of gas to get to our site near Holcomb because it is a 754-mile trip from downtown Topeka to Holcomb and back.

Finally, we ask that you please spare us all the unnecessary paperwork and all the time our employees would have to spend to weigh the 3,600 truckloads of material that

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contain the remains of our coal after it is burned in our plant and then buried in our landfill.

Thank you Madam Chairman for the time to share our views with the Committee. I would be happy to answer any questions.

## BACKGROUND

Sunflower Electric Power Corporation is a generation and transmission utility organized in 1957 by 6 rural electric distribution cooperatives. Headquartered in Hays, Kansas, Sunflower is governed by a Board of Directors that is appointed to represent the interests of its six Member systems.

Sunflower employs 200 people to operate the G&T, and is financed, for the most part, by the Rural Utilities Service (RUS), an agency of the United States Department of Agriculture. It is regulated, not only by the RUS, but by the Kansas Corporation Commission (KCC) as well.

Sunflower owns and operates six power plants, all of which are located in Finney County, near Garden City, Kansas. The largest plant, Holcomb Station is a 360 MW coal-fired unit that was placed in commercial operation in 1983. The other five generating plants are located in Garden City and are all natural gas-fired units. Collectively, these units can produce 235 MW of electricity bringing Sunflower's total generating capacity to 595 MW.

Sunflower also owns, in whole or in partnership with its Members, a high voltage transmission system with nearly 1,200 miles of 345 and 115 kV line. The transmission system is used to interconnect Sunflower with its wholesale customers throughout the region and to the 19,000 miles of distribution lines owned by Sunflower's distribution systems. That system provides electrical service to 50,000 meters serving 120,000 people in the 34 counties of western Kansas.

Those RECs include: Lane-Scott Electric Cooperative in Dighton, Pioneer Electric Cooperative in Ulysses, Prairie Land Electric Cooperative in Norton, Victory Electric Cooperative Association in Dodge City, Western Cooperative Electric Association in WaKeeney and Wheatland Electric Cooperative which is headquartered in Scott City, Kansas.

**Kansas Cement Council**  
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**TESTIMONY**

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**Date:** February 14, 2002

**By:** Woody Moses, Managing Director,  
Kansas Cement Council

**Regarding:** Solid Waste Fees, HB 2686

**Before:** The House Committee on Environment

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*Good Afternoon Madam Chair and Members of the Committee:*

My name is Edward R. (Woody) Moses, representing the Kansas Cement Council. We thank you for the opportunity to provide our comments on House Bill No. 2686.

The Kansas Cement Council is a coalition comprised of the Ash Grove Cement Co., Heartland Cement Co. and the Lafarge Corporation all of whom operate cement manufacturing plants in Southeast Kansas. At the beginning of the last 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 kilns, shipping cement to both coasts. Since that time market forces, more efficient production and lately environmental regulation have conspired to reduce that number to four active plants operating today. In order to compete with more modern and efficient plants in Oklahoma, Missouri and Mexico, all of these facilities have employed an amazing variety of techniques in the area of waste energy recovery. Were it not for the regulatory programs approved by previous legislatures these facilities would not be in operation today.

The intent of previous legislatures to provide sensible regulatory programs is evident in the current provisions of K.S.A. 2001 Supp. 65-3415b, which exempts certain wastes from fees when managed internally by generators. HB 2686 as drafted would reverse this policy. Consequently, we oppose HB 2686, in its current form, for the following reasons:

1. Adoption of HB 2686 would significantly increase operating costs for cement mills.
2. Adoption of HB 2686 would significantly alter state policy encouraging the responsible handling of wastes in an environmentally friendly manner.
3. The Kansas cement industry, unlike utilities with a protected rate base, would be unable to pass new costs along as they must compete in the free market against more modern cement mills.
4. Our industry already pays KDHE over \$500,000 per year in fees. Fees which have been raised significantly in the past few years.

The Kansas Cement Council is aware the proposed substitute for HB 2686, which would address many of the concerns listed above. We are prepared to provide limited support for this compromise pending the receipt of more detailed information on how the fees in the substitute would be assessed. Specifically, we support language that would cap the fees for Cement Kiln Dust at \$1,000 per anum.

In closing, we simply urge this committee and the legislature to carefully consider the impacts a policy change may have upon this industry, which provides employment to over 400 people, and products that keep construction costs competitive in Kansas communities.

Thank you for the opportunity to provide these comments. I will be happy to respond to any questions you may have at this time.

*House Environment*  
*2-14-02*  
*Attachment 8*





Good afternoon. My name is Joe Dick. I am the Regulatory Specialist from the Board of Public Utilities, Kansas City, Kansas. BPU is a municipally owned utility servicing approximately 65,000 drinking water customers and 55,000 electricity customers in Kansas City, Kansas and Wyandotte County.

Landfill issues are critically important to BPU, as we own and operate three permitted industrial monofills; one accepts wood chips from our tree trimming operations and the other two hold combustion waste by-products resulting from coal fired plant operations.

We believe it is not in the best interest of Kansas or for utilities generating electricity in Kansas to make changes to the regulations contained in K.S.A. 2001 Supp. 65-3415b and 65-3415f. We believe that utilities are already overburdened with a continuing stream of regulation and legislation. Further, considering the current state of flux in the entire electricity industry, it is not a good time to ladle on more expenses and more requirements.

We therefore request a committee action to direct the Kansas Department of Health & Environment, Bureau of Waste Management to allow the existing regulation to stay intact. We also request that there be no added fees of any kind to the operation of industrial landfills.