

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairman Robert Tyson at 8:37 a.m. on March 22, 2002 in Room 423-S of the Capitol.

All members were present except: Senator Lana Oleen - excused
Senator Christine Downey - excused

Committee staff present: Raney Gilliland, Legislative Research Department
Lisa Montgomery, Office of Revisor of Statutes
Deborah McIntire, Committee Secretary

Conferees appearing before the committee:
Representative Daniel Thimesch
Bill Bider, Director, Bureau of Waste Management
Judy A. Moler, General Counsel/Legislative Services Director
Bill Sneed, Kansas Construction & Demolition Landfill Association
Scott Young, Kansas Construction & Demolition Landfill Association
L. Frank Young, P.E., Director, Neosho County Public Works Department
Barton O. Ives, DOD Regional Environmental Coordinator, Region 7

Others attending: See attached list

Chairman Tyson opened the hearing on **HB 2703**.

Briefing on HB 2703

HB 2703 would modify the definition of "construction and demolition" waste in the statutes dealing with solid waste. In addition, the bill would create two classes of "construction and demolition" landfills—a Class I construction and demolition landfill and a Class II construction and demolition landfill—to be permitted by the Kansas Department of Health and Environment.

Testimony on HB 2703

The first conferee and proponent was Representative Daniel Thimesch. He testified that this bill would give Kansas more opportunities to dispose of construction and demolition waste, providing a visual demonstration. (Attachment 1).

The second conferee and proponent was Bill Bider (Director, Bureau of Waste Management). He testified that KDHE's best chance of maintaining the inert landfills without triggering federal standards is to recognize that a higher class of landfill is needed for contaminated loads. This bill provides that regulatory framework and allows KDHE to permit both types of construction and demolition facilities, depending upon the preference of the landfill owners. (Attachment 2). Questions and discussion followed.

Written testimony was provided by Judy A. Moler (General Counsel/Legislative Services Director, Kansas Association of Counties) in favor of this bill (Attachment 3).

Bill Sneed, representing the Kansas Construction and Demolition Landfill Association, introduced Scott Young, the fourth conferee and opponent. Scott testified that while the association agrees that some new regulation for construction and demolition landfills in Kansas is appropriate and necessary, it believes that the issues addressed in this bill should be placed in the public forum for discussion. (Attachment 4). Questions and discussion followed.

Written testimony was submitted by L. Frank Young, P.E. (Director, Neosho County Public Works Department) (Attachment 5) and Barton O. Ives (DOD Regional Environmental Coordinator, Region 7) (Attachment 6) in opposition to this bill.

CONTINUATION SHEET

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE at 8:37 a.m. on March 22, 2002
in Room 423-S of the Capitol.

Chairman Tyson closed the hearing on **HB 2703**.

The meeting adjourned at 9:30 a.m.

The next meeting is scheduled for March 25 at 8:30 a.m.

**SENATE NATURAL RESOURCES COMMITTEE
GUEST LIST**

DATE: March 22 2002

NAME	REPRESENTING
Bill Speed	C+D Landfill Assn.
Larry O'Donnell	O'Donnell & Sons Const Co.
Maureen O'Donnell	O'Donnell & Sons Const Co.
Jim HOLMES	HOLLAND
Ted McAnany	Asphalt S&S
Kandy Alewine	Deffenbaugh and
Maissa Luce	C+D Landfill Assn.
John C. Sotterberg	Deffenbaugh
Bill Bider	KDHE
Scott Young	C+D Landfill Assn.
Clint Riley	KDWP
DENNY ROCH	POLSINELLI SHELTON WELTE
Kath Dammron	(Deffenbaugh)
Wendy Hains	Kansas Cement Council
Leslie Kaufman	Ks Farm Bureau

DAN THIMESCH
 REPRESENTATIVE, 93RD DISTRICT
 30121 WEST 63RD STREET SOUTH
 CHENEY, KANSAS 67025
 (316) 531-2995

STATE CAPITOL
 ROOM 278-W
 TOPEKA, KANSAS 66612-1504
 (785) 296-7680
 1-800-432-3924
 (DURING SESSION)



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
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 ENVIRONMENT
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 TAX, JUDICIAL & TRANSPORTATION BUDGET
 SUBCOMMITTEE
 CAPITOL RESTORATION
 SOUTH/CENTRAL/SEDGWICK COUNTY DELEGATION
 GULF WAR ADVISORY BOARD

March 22, 2002

HB 2703
 TESTIMONY FOR SENATE NATURAL RESOURCES

HB 2703 establishes a new class of landfill for the disposal of construction and demolition waste that is mixed with waste that has a potential to impact the environment, such as chemical containers (caulking tubes, paint cans, sealants, etc.). The new class is called "Class 1."

HB 2703 establishes no new requirements for the 131 existing C & D landfills (called Class II) which are presently subject to statutory restrictions regarding the types of which, which they receive.

HB 2703 broadens the C & D definition to include some materials such as lunch bags, cups, and bottles, and treated wood from construction or demolition projects. Such materials could be disposed of at either a Class I or Class II C & d landfill.

This bill is good for Kansas because it establishes an opportunity for businesses or local governments to operate full-service C & D landfills which are able to dispose of just about any type of waste generated at a construction or demolition site. Such landfills would need to be constructed with a clay liner and monitor the groundwater (detailed design standards would come in later rules and regulations). C & D landfill owners also have the option to continue operating under current rules which require thorough waste screening to remove prohibited wastes.

I respectfully ask you to pass out HB 2730 favorable for passage to give Kansas more opportunities to dispose of construction and demolition waste.

Senate Natural Resources Committee

Date 3-22-02

Attachment # 1



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

Testimony on House Bill 2703
presented to
Senate Natural Resources Committee

by
Bill Bider, Director, Bureau of Waste Management
March 22, 2002

The Department of Health and Environment appreciates this opportunity to provide testimony in support of HB 2703, a bill introduced by the department. This bill would authorize KDHE to issue permits for a new class of construction and demolition (C & D) landfills. The new class would be an intermediate type of facility between the current unlined and unmonitored C & D landfills and the higher technology municipal solid waste landfills which have multi-layer liners, leachate collection systems, gas monitoring and collection systems, and groundwater monitoring systems.

Current state law and federal regulations prohibit the disposal of certain types of waste in Kansas' 131 permitted Kansas C & D landfills because these facilities are not designed or operated to receive wastes that may contain hazardous constituents that could contaminate the environment. An example of such a waste would be chemical containers which have not been thoroughly emptied. State law also prohibits the disposal of furniture and appliances in C & D landfills because such wastes are considered municipal solid waste which is subject to other landfill standards. However, many restricted wastes are commonly generated at construction or demolition sites and C & D contractors often mix restricted materials in with the waste they send to C & D landfills. This creates ongoing compliance problems for landfill operators.

When contaminated loads arrive at a C & D landfill, the operator must try to separate restricted materials from the waste or divert contaminated loads to municipal solid waste landfills which are permitted to receive such wastes. This bill would give landfill owners or new applicants a new choice for how to deal with contaminated loads. They would have the option to convert their facility to a Class I C & D landfill which could dispose of certain commonly generated, but restricted, materials including caulking tubes, chemical containers, furniture, appliances, and friable asbestos. The current and proposed landfill options are illustrated further in the attached figure.

If this bill becomes law, KDHE would develop and adopt regulations for Class I landfills which conform with applicable federal regulations (40 CFR Part 257.5) for landfills which dispose of "conditionally exempt small quantity generator (CESQG)" hazardous waste. This is necessary because chemical containers are frequently not empty and the material they contain often exhibits hazardous waste characteristics. The standards of design and operation which will need to apply to Class I

DIVISION OF ENVIRONMENT
Bureau of Waste Management

Senate Natural Resources Committee

Date 3-22-02

Attachment # 2

facilities in addition to standards which apply to existing C & D landfills include a clay liner (or a demonstration that naturally occurring conditions offer equivalent groundwater protection), a method to pump leachate from the bottom of the landfill, and a limited groundwater monitoring program.

This bill does not require any existing C & D landfill to upgrade to the Class I standards. Many counties have already concluded that it is feasible to operate a thorough screening program following technical guidance recently provided by KDHE to all C & D owners. In some cases, counties or private companies may find it to be in their interest to establish Class I facilities to provide better service to their customers and to minimize screening requirements. Class I landfills may be most desirable in more highly populated areas where thorough screening would be difficult. Another scenario where a Class I C & D landfill could be the preferred alternative includes counties which transfer their waste and have no nearby municipal solid waste landfill for highly contaminated loads. It is noteworthy that even Class I facilities will need to carry out some screening for regulated quantities of hazardous waste.

Opponents to this bill have questioned whether federal rules really prohibit the disposal of thoroughly empty chemical containers in existing C & D landfills. The answer is: "they do not." If contractors and landfill owners and operators could be sure that all caulking tubes, paint cans, and containers for adhesives, sealants, and the wide variety of construction-related chemicals were always empty, Kansas could broaden its C & D waste definition to allow "empty chemical containers." But real world experience confirms that such assurances can never be provided. And, as stated above, if chemical containers are not empty, many will contain regulated amounts of CESQG waste. Because landfill operators cannot realistically check every container to ensure that they are empty, we must assume that the federal rules which are applicable to landfills that receive CESQG waste would apply if Kansas broadens its C & D definition to include chemical containers.

Class I landfills should provide a cost effective way to dispose of contaminated loads of C & D waste. The cost of disposal of uncontaminated C & D currently ranges from about \$5 to \$15 per ton at an existing C & D landfill. However, the costs increase to \$25 to \$40 per ton if the mixed load is diverted to an MSW landfill. Disposal costs in a new Class I C & D landfill should fall between the two ranging from about \$15 to \$20 per ton.

It is KDHE's goal to maintain our state's C & D landfills, but we must ensure that only inert materials are disposed of in landfills which have no liners or groundwater monitoring. Our best chance of maintaining the inert landfills without triggering federal standards is to recognize that a higher class of landfill is needed for contaminated loads. This bill provides that regulatory framework and allows KDHE to permit both types of C & D facilities, depending upon the preference of the landfill owners.

I would be happy to answer any questions.

Problem C&D Loads



Illegal

Legal (if non-hazardous or CESQG waste)

**Current Law
Construction &
Demolition Landfills
131 Facilities**

**Current Law
Municipal SW
Landfills
53 Facilities**



**Proposed New
Class I C&D
(complies with federal
standards)**

Inert C&D Waste

Restricted:

- **MSW**
- **Hazardous waste**
- **CESQG waste**
- **Chemical containers**
- **Furniture & appliances**

No liner

**No groundwater
monitoring**

**No hydrogeologic
assessment**

\$5 - \$15 per ton



All C&D waste plus

- **Chemical containers**
- **CESQG waste**
- **Furniture & appliances**
- **Friable asbestos**

**Clay Liner or demonstrate
naturally protective soil
Leachate collection
Groundwater monitoring**

\$15 - \$20 per ton

**Mixed household,
commercial, industrial
trash**

Restricted:

- **Regulated hazardous
waste**

**Multi-layer clay and
synthetic liner**

Leachate collection

**Complex hydrogeologic
assessment**

Groundwater monitoring

Multi-layer cap

\$25 - \$40 per ton





WRITTEN TESTIMONY
Before the Senate Natural Resources
HB 2703
March 22, 2002

By Judy A. Moler, General Counsel/Legislative Services Director

Thank you Chairman Tyson and Members of the Senate Natural Resources Committee for allowing the Kansas Association of Counties to provide written testimony on HB 2703.

The Kansas Association of Counties supports the passage of HB 2703. The KAC believes this bill would enact legislation that is permissive rather than mandatory. It will give the Kansas Department of Health and Environment as well as counties a degree of flexibility in managing construction and demolition debris while preserving the quality of the Kansas environment.

The Kansas Association of Counties respectfully requests the committee pass HB 2703.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

6206 SW 9th Terrace
Topeka, KS 66615
785•272•2585
Fax 785•272•3585
email kac@ink.org

Senate Natural Resources Committee
Date 3-22-02
Attachment # 3

Polsinelli | Shalton | Welte

A Professional Corporation

Memorandum

TO: SENATOR ROBERT TYSON, CHAIR
SENATE NATURAL RESOURCES COMMITTEE

RE: HOUSE BILL NO. 2703

DATE: MARCH 21, 2002

Mr. Chairman, 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 ("C&D") landfills located throughout the State of Kansas. The Association's Members include small, medium and large C&D Landfills. Many are privately owned and many are publicly owned.

The Association opposes the passage of H.B. 2703 ("Bill").

The Department has taken the position that the Bill will have no fiscal impacts. The Association believes that careful consideration and close analysis of the consequences of the Bill indicate that there may well be fiscal impacts. The Department has questioned Association's concerns about the Bill's fiscal effects on C&D landfills. The Association agrees that this matter should be looked at with great care and consideration and a concrete resolution reached.

The economic consequences arising from the changes in how C&D landfills may be regulated should not be artificially separated and "swept under the rug" through bureaucratic slight-of-hand. The State of Kansas needs to consciously and conscientiously establish the type of C&D landfill operations it wants to have, balancing carefully the advantages afforded the citizens of the state by the availability of construction and demolition landfills, the actual threats posed to the environment by their operation, and the nature and extent of environmental degradation which can arise from open dumping.

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

Senate Natural Resources Committee

Date 3-22-02

Attachment # 4

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 whom 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 the Department's proposal for all Kansas C&D landfills.

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 draft rules circulated in August, 2001 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. 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 Association agrees that some new regulation for C&D landfills in Kansas is appropriate and necessary.

The essence of the Department's proposal, embodied in the Bill, is to establish two separate classes of C&D waste. The Department believes that landfills which desire to accept what would be characterized as "Class 1" waste could accept such waste recognizing that additional protections would need be required.

These wastes include certain hazardous waste disposed of by conditionally exempt small quantity generators, furniture, materials, containers and appliances. The Department maintains that these materials represent an enhanced risk to the public. Furthermore, the Department contends that acceptance of such waste requires, under applicable federal regulations that what it characterizes as Class I C&D landfills would have to have liners and groundwater monitoring at a minimum. The Association believes that the Department creates its own conundrum in order to justify imposing significant burdens on most C&D landfills in Kansas. Members of the Association have no desire to accept conditionally exempt small quantity hazardous waste. The believe that C&D landfills are not appropriate for the disposal of hazardous wastes. If such wastes are not accepted at landfills, no requirement exists under federal law for C&D landfill to have either liners or groundwater monitoring.

Indeed, EPA has stated that:

EPA's role and the management of industrial non-hazardous waste, (which C&D landfill wastes are a small subset) is very limited. Under RCRA subtitle D, EPA issued minimal criteria prohibiting "open dumps" in 1979. The states, not EPA, are responsible for implementing the "open dumping" criteria and EPA has no back up enforcement rule. 62 F.R. 4284.

Furthermore, the Association believes that acceptance of the other materials which are not "hazardous" such as furniture, appliances with out CFCs, empty containers, etc. could not result in a mandate of significantly increased operational costs. The risks posed by these mundane and generally inert materials do not justify the cost contemplated by the Department as reflected in its August rulemaking.

As reflected in Mr. Bider's statements on behalf of the Department before the House Environment Committee, the Department intends the Bill to establish a platform from which it will significantly expand requirements imposed upon construction and demolition landfills. Requirements with significant cost implications and uncertain environmental benefits, unfunded mandates imposed on the vast majority of Kansas C&D landfills will be a certainty.

The Association supports improved and consistent regulation of C&D landfills in Kansas. However, it believes that public policy issues such as the ongoing viability of construction and demolition landfills in Kansas as well as the protection of Kansas' environmental resources would take place in an open and forthright discussion where all of the considerations are placed squarely before the people must bear the burdens and make the decisions.

On behalf of the Association, we want to thank the Committee for the opportunity to present the Association's views today. The Association believes that H.B. 2703 should be defeated and the Department encouraged to meet with legislators and industry representatives to consider more directly the issues which concern both the industry and the Department.

Respectfully submitted,


Scott Young

SAY:bks
27999 / 54514
SAYOU 168689

L. Frank Young, P.E.
Director

Neosho County
Organized 1864

COUNTY COMMISSIONERS
Donnie G. Yarnell-1st District
R.E. Clements-2nd District
Vernon Shultz-3rd District

Public Works Department

March 19, 2002

Senator Robert Tyson
Senate Natural Resources Committee
Room 423-S
Capitol Building
Topeka, Kansas

Dear Senator Tyson,

The Neosho County Commission wishes to express concerns over the passage of House Bill 2703 relating to establishment of another category of Construction and Demolition Landfills. We are concerned that this is another step in the process of eliminating small landfills from operating in Kansas. We feel our small landfill is very important to the economy of our community and should be protected from unnecessary bureaucratic requirements. We are afraid that the attitude of "bigger is better" prevails in the Department of Health and Environment and the presence of many small C&D landfills has been an irritant to the inspectors from KDHE and this is an attempt by that department to limit landfill numbers.

HB 2703 would establish another classification of C&D landfills that could supposedly be exempt from many of the restrictive rules and regulations as to what types of waste can be accepted. By allowing some domestic waste from construction sites to be placed in these Class I C&D landfills, KDHE will in turn require more stringent liner requirements, cover requirements, monitoring well requirements, leachate controls, and gas venting systems. Unfortunately, very few small landfills can afford these additions. This will favor the larger landfills that are now so large that KDHE cannot or will not regulate the waste they accept under the current laws. By requiring the "up-front" investment in the aforementioned improvements, KDHE hopes to lessen the inspection requirements on Class I landfills and allow them to bury more non-C&D waste. This will free up more inspectors to monitor the non-Class I landfills that will still be under the old waste classification requirements. Repeated violations, and there will be many, will then force these landfills to upgrade to Class I or close. Since few counties want to invest money in expensive upgrades of a marginal business venture at best, the end result will be as it was in the Sub-title D landfills. Regional private landfills will replace the small local C&D resulting in large volumes of C&D waste being transported over county and state roads to these regional facilities. Since C&D waste is typically heavy, the resulting road damage will then be paid for with already strapped road budgets.

Please monitor this bill very closely! On the surface it appears to be one that even we could support. However, the resulting rules and regulations that will quickly follow will only further encourage higher landfill rates and fewer places to accept C&D waste. This will result in more illegal dumping in county ditches and stream channels. Perhaps KDHE should classify C&D landfills by volume handled instead of requiring the same design criteria for all sizes.

Please review this bill from the rural consumer's point of view instead of the regulatory point of view. Local users are the ones that need served not the well-funded large landfill industry.
Thank you for consideration in this matter. Our Commission meets on Friday morning so we can be reached at 620-244-3818 if further information is needed.

Sincerely,



L. Frank Young P.E.
Neosho County Public Works Department

Senate Natural Resources Committee

Date 3-22-02

Attachment # 5

Cc Neosho County Commission

Courthouse-100 South Main Erie, Kansas 66733 Phone (620) 244-3855 FAX (620) 244-3860



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

March 20, 2002

RE: Kansas House Bill 2703

Honorable Robert Tyson
Chairman, Senate Natural Resources Committee
Room 423-S, State Capitol Building
300 SW 10th Street
Topeka, Kansas 66612

Dear Senator Tyson:

I am writing you on behalf of Department of Defense (DoD) installations in the state of Kansas to convey our reservations regarding HB 2703 that passed the House of Representatives.

In 2001, the Army Regional Environmental Coordinator for Region 7 participated with the State of Kansas and other interested parties in the rule-writing task force organized by the Kansas Department of Health and Environment (KDHE) to develop rules governing Construction and Demolition (C&D) Waste Landfills. Because both Fort Leavenworth and Fort Riley have C&D landfills, we have a vested interest in participating with KDHE in the development of C&D landfill regulations. However, this bill does not reflect the consensus reached in the meetings of the task force regarding the measures necessary to protect human health and the environment with respect to C&D waste landfills.

House Bill 2738, which was not reported from the House Committee on Environment, more accurately reflects our recollection of the measures agreed to by the task force of stakeholders. If the Natural Resources Committee ultimately reports HB 2703 "do pass," we recommend that the bill language be amended to apply the new requirements to C&D landfills established after the effective date of the new statute.

As the DoD REC 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.

Senate Natural Resources Committee

Date 3-22-02

Attachment # 6

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 2703 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