

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 5, 2004 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland Legislative Research Department
Mary Torrence, Revisor of Statutes
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Bill Bider, Director, Bureau of Waste Management, Kansas Department of Health and Environment, 1000 SW Jackson, Ste. 320, Topeka, KS 66612-1366
Randall Allen, Executive Director, Kansas Association of Counties, 6206 SW 9th Terrace, Topeka, KS 66615
Kenneth Meier, Chairman, Board of Harvey County Commissioners, Courthouse, PO Box 687, Newton, KS 67114-0687
Stanley Rasmussen, US Army, CREO, 601 E. 12th, Ste. 647, Kansas City, MO 64106
John Peterson, Waste Connections of Kansas, Inc. 1206 W. 10th, Topeka, KS 66604
Steve Kearney, Waste Management, 1200 W. 10th, Topeka, KS, 66604

Others attending:

See Attached List.

Chairperson Joann Freeborn called the meeting to order. She reviewed the committee agenda for next week. On Tuesday, February 10, a hearing on **HB2583** - Recreational trails; noncompliance by responsible party; remedies. On Thursday, February 12, a review on Federal Watershed Program by Jeff Gross, Assistant State Conservationist, Natural Resources Conservation Services and a hearing on **HB2674** - Loan program to pay certain costs of rehabilitation of watershed dams.

Raney Gilliland, Legislative Research Department, gave a review of **HB2607**.

Chairperson Freeborn opened the hearing on **HB2607**.

HB2607: Solid waste permits; preliminary site evaluation; time limits for review of applications; permit fees.

Bill Bider, Director, Bureau of Waste Management, KDHE, was welcomed. He testified in support of the bill which was introduced by KDHE as a step toward improving the landfill permitting process in Kansas. The bill was developed by HDHE in cooperation with a landfill permitting task force consisting of public and private landfill operators, local government officials, and representatives of environmental interest groups and state agencies. The proposed bill does not represent total consensus of the task force, but it does take into consideration the concerns and opinions of task force members. (See attachment 1)

Randall Allen, Executive Director, Kansas Association of Counties, was welcomed to the committee and presented testimony in support of the bill. He believes the bill provides for a new process preliminary to the formal permitting process, in which a facility applicant provides a preliminary site evaluation report to KDHE, for its early review for determination as to whether the site satisfies the minimum requirements set forth in rules and regulations. Any acceptance of the report by the Secretary cannot be considered final approval of the proposed waste disposal area. Rather, the preliminary report provides early guidance to the county before the county undergoes the usually controversial zoning process and any other decision-making processes associated with siting a solid waste facility. (See attachment 2)

CONTINUATION SHEET

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE at 3:30 p.m. on February 5, 2004 in Room 231-N of the Capitol.

Kenneth Meier, Chairman, Board of Harvey County Commissioners, was welcomed. He testified in support of the bill and believes it will ensure that some vital information would be gathered and made available to Boards of County Commissioners before a decision regarding locating a solid waste disposal facility is made. The KDHE preliminary report ought to include pertinent geological and hydrological data found at the proposed disposal facility site. That information would be most helpful in enabling Boards of County Commissioners to make good decisions regarding the location of solid waste disposal facilities. (See attachment 3)

Stanley Rasmussen, US Army, CREO, was welcomed to the committee and presented testimony in support of the bill. While his office has no objections to the primary intent of the bill in requiring a preliminary site evaluation prior to submitting a permit application for a solid waste disposal area, he does see a potential for conflict in Section 1, Subsection (f)(2) of the proposed bill language (see bill page 5, line 17). The provision in question provides a fee exemption for cities, counties, other political subdivisions, or state agencies, but does not provide a similar exemption for the federal government. His office welcomes the opportunity to work with the committee on any matter that may affect Defense installations and agencies in the state of Kansas. (See attachment 4) Committee questions and discussion followed.

Written testimony in support of the bill was submitted by Jay Barnes, Kansas Natural Resource Council. (See attachment 5)

Written testimony in support with amendments was submitted by Shawn Herrick, Kansas Landfill Association. (See attachment 6)

John Peterson, Waste Connections of Kansas, was welcomed. He presented testimony in opposition to the bill, on behalf Mark Adams, Region Engineering Manager for Waste Connections of Kansas. Waste Connections is supportive of earlier involvement by Kansas Department of Health and Environment in the landfill development process. The local planning and zoning authorities may benefit from input from KDHE on site suitability prior to making a zoning decision on a landfill application. He offered several changes to the bill and believes an increase to the existing flat permitting fee should be considered instead. (See attachment 7)

Steve Kearney, Waste Management of Kansas, Inc., was welcomed. He testified in opposition to the bill. This bill was developed by KDHE regarding landfill permitting this past fall. Waste Management decision makers were invited to one meeting in September regarding what has eventually become **HB2607**. Following the September meeting they received a letter from KDHE dated October 3, 2004 with a copy of a draft bill attached. A letter was drafted on behalf of the industry by the Midwest Region of the National Solid Waste Management Association chapter detailing their concerns. Copies of both letters are attached to the testimony. During the committee's deliberations of this matter he requests that they review those communications that voice not only Waste Management's substantive concerns regarding the then draft legislation, but also what they came away from the meeting with collective understanding vs. the characterization by KDHE. (See attachment 8) Committee questions and discussion followed.

Bill Bider, Director, Bureau of Waste Management, KDHE, introduced Ron Hammerschmidt, Division of Environment, Kansas Department of Health and Environment.

Chairperson thanked Mr. Bider and other conferees for testifying and the committee for their attention. She closed the hearing on **HB2607**.

The meeting adjourned at 5:20 pm. The next meeting is scheduled for Tuesday, February 10, 2004.



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

Testimony on House Bill 2607: The Landfill Permitting Process

to

House Environment Committee

by

William L. Bider

Director, Bureau of Waste Management

February 5, 2004

Thank you for this opportunity to present testimony on House Bill 2607. This bill was introduced by KDHE as a step toward improving the landfill permitting process in Kansas. The bill was developed by KDHE in cooperation with a landfill permitting task force consisting of public and private landfill operators, local government officials, and representatives of environmental interest groups and state agencies. The proposed bill does not represent total consensus of the task force, but it does take into consideration the concerns and opinions of task force members.

The need to reevaluate the landfill permitting process became evident in 2003 as KDHE processed a permit application for a new regional landfill in Harper County for Sedgwick County's solid waste. There was major opposition to the landfill with hundreds of letters received by the governor and other elected officials requesting help to stop the issuance of the permit. Legislation was introduced in 2003 to stop the landfill, but it did not pass. Presently, KDHE's processing of this landfill application has stopped due to a court decision related to the local zoning action. While that case is appealed by the applicant, discussions are taking place in Sedgwick County related to building a new landfill.

In the spring of 2003, KDHE began to study ways to improve the permitting process and developed a plan for receiving input from interested parties. Meetings were held with the governor's Natural Resources Sub-Cabinet, other state agencies including Wildlife and Parks and the Kansas Geological Survey, interested legislators, and finally the permitting task force. A key outcome of these meetings was the identification of a need to develop and share more information about proposed sites with local officials and the public early in the permitting process.

Currently, KDHE is statutorily prohibited from becoming involved in reviewing technical information about a site until after local zoning actions occur. This means zoning authorities and county commissioners must make land use decisions which may have environmental implications without the benefit of KDHE's expertise. Commissioners are pressured to address environmental factors in special

use or conditional use permits granted for landfills, even though they may have little technical expertise and limited site information to do so.

The Preliminary Site Evaluation

This bill would create a new step in the landfill permitting process requiring applicants to complete a "preliminary site evaluation" (PSE). A report will be prepared by every solid waste facility applicant and submitted to KDHE for review. The report will include preliminary information about site hydrogeology; it will evaluate the site with respect to applicable location restrictions, and it will identify all applicable standards of design and operation that apply to the proposed facility. More specific details of the PSE will be defined in future rules and regulations adopted by KDHE. When the report is considered complete by KDHE, it will be provided to local government officials and the public will be notified that KDHE has completed the review. Local planning officials or county commissioners will decide whether to hold a public meeting to review the PSE report.

KDHE believes that this new preliminary site evaluation will aid local officials in making land use decisions. It will also provide information to the public very early in the permitting process to avoid the perception that important information has been withheld until all of the zoning and permitting decisions have been made. Finally, it will allow KDHE to review certain technical information about the site in order to answer questions raised by government officials and the public rather than be limited to general answers about the landfill permitting process.

Other Provisions of Bill

This bill also includes provisions to:

1. Revise the permit application fee for large municipal solid waste landfills to be equal to KDHE's actual cost of processing the permit application with an initial permit fee of \$10,000. Additional incremental payments of \$5,000 are possible for complex sites and reimbursement down to a minimum of \$5,000 could apply to less complex sites.
2. Establish time limits for KDHE's review of the PSE and permit application documents. This provision was recommended by task force members to avoid unwarranted delays in the review of applications.

Some persons may believe that additional improvements to the landfill permitting process are needed. KDHE does believe that some areas need to be further evaluated, but any such changes can be made in rules and regulations. The department already has statutory authority to write comprehensive landfill siting, design, and operating regulations. It is KDHE's intention to continue work with interested stakeholders to determine what changes should be made, if any.

Thank you for allowing us to provide testimony on this bill. I would be happy to answer any questions.



KANSAS
ASSOCIATION OF
COUNTIES

Testimony concerning HB 2607
House Environment Committee
February 5, 2004
Presented by Randall Allen, Executive Director
Kansas Association of Counties

Madam Chair and members of the committee, my name is Randall Allen, Executive Director of the Kansas Association of Counties. Thank you for the opportunity to testify *in support of HB 2607*, a KDHE bill concerning the permit application process for solid waste facilities.

The KAC was invited to participate in KDHE's review of the permitting process. Both Judy Moler, KAC Legislative Services Director/General Counsel, and Ken Meier, Harvey County Commissioner who is both very knowledgeable and interested in solid waste issues, participated in the KDHE-convened work group. Based on their comments, we commend the department for bringing the parties together and for leading the group through a good study process.

As you know, the bill provides for a new process *preliminary to* the formal permitting process, in which a facility applicant provides a preliminary site evaluation report to KDHE for its early review for determination as to whether the site satisfies the minimum requirements set forth in rules and regulations. Any acceptance of the report by the Secretary cannot be considered final approval of the proposed waste disposal area. Rather, the preliminary report provides early guidance to the county before the county undergoes the usually controversial zoning process and any other decision-making processes associated with siting a solid waste facility.

We believe that decision-makers should be armed with as much information as early as possible to make the best possible decisions in behalf of their constituents. The intent of HB 2607 is grounded in this desire for additional information. While it would slow the permitting process initially, it seems to us a responsible approach that would only improve the process. We urge the committee to study this proposal and report it favorably for passage.

If you have questions, I would be happy to respond. Thank you.

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 Randall Allen or Judy Moler by calling (785) 272-2585.

6206 SW 9th Terrace
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Fax 785•272•3585
email kac@ink.org

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2-5-04
Attachment 2



HARVEY COUNTY, KANSAS

ADMINISTRATION DEPARTMENT

COURTHOUSE
P.O. BOX 687
NEWTON, KANSAS 67114-0687

PHONE: 316-284-6806

FAX: 316-284-6856

TESTIMONY BEFORE THE KANSAS HOUSE COMMITTEE ON ENVIRONMENT

FEBRUARY 5, 2004

**KENNETH MEIER, CHAIRMAN
BOARD OF HARVEY COUNTY COMMISSIONERS**

Honorable Chairman Freeborn and Distinguished Members of the Committee:

I am pleased to be able to appear before you today in support of House Bill 2607 amending K.S.A. 65-3407. My name is Kenneth Meier. Currently, I am the Chairman of the Board of Harvey County Commissioners. Also, recently I was appointed by KDHE to serve with an ad hoc committee to consider landfill siting procedures, criteria, and regulations.

In Harvey County we have worked with a number of solid waste issues during the past decade. During my tenure as a Harvey County Commissioner, we have:

- constructed a Materials Recovery Facility and promoted mandatory county-wide residential curbside recycling,
- closed a Municipal Solid Waste landfill and constructed a Transfer Station,
- developed a successful Construction and Demolition recycling operation at our C&D landfill,
- initiated the permitting process to expand our composting operation to include not only yard and wood waste but source-separated organics as well.

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Attachment 3*

We have worked with KDHE on numerous occasions through a variety of permitting applications as we have dealt with the processing and disposal of solid waste in Harvey County. It is because of my direct experience in working with solid waste issues and with KDHE that I strongly support the proposed amendments to the permitting process as outlined in HB 2607.

Those of us who work in local government are asked to make decisions that profoundly affect the quality of people's lives. Sometimes these decisions are simple and arouse no ire. Other times the decisions are controversial and fraught with financial and political implications for our constituents. In every case, we make better and more reasonable decisions if we have access to good information beforehand.

HB 2607 will ensure that some vital information would be gathered and made available to Boards of County Commissioners before a decision regarding locating a solid waste disposal facility is made. In addition to soil type, distance requirements from streams and waterways, and zoning information, the KDHE preliminary report ought to include any other pertinent geological and hydrological data found at the proposed disposal facility site. That information would be most helpful in enabling Boards of County Commissioners to make good decisions regarding the location of solid waste disposal facilities.

Again, thank you for this opportunity to address you today. I would urge you to support HB 2607 and assist in enacting it into law.



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

05 February 2004

Re: House Bill 2607

Honorable Joann Freeborn
Chairperson, House Environment Committee
Room 281-W State Capitol Building
Topeka, KS 66612

Dear Representative Freeborn:

I am writing to you concerning the proposed amendments to K.S.A. 65-3407 as contained in House Bill 2607, which is currently before your committee.

While this office has no objections to the primary intent of the bill in requiring a preliminary site evaluation prior to submitting a permit application for a solid waste disposal area, I do see a potential for conflict in Section 1, Subsection (f)(2) of the proposed bill language (see bill page 5, line 17). The provision in question provides a fee exemption for cities, counties, other political subdivisions, or state agencies, but does not provide a similar exemption for the federal government.

As you may recall, the House Committee on Environment supported H.B. 2860 in 2000 that was eventually passed by the Legislature and signed by Governor Graves on 10 April 2000. Among other things, that bill added the federal government to the previous list of state and local governmental entities that were exempted from construction and demolition landfill tonnage fees. In 2000, the amendment to add the federal government to fee exemption list was necessary to resolve a conflict between the Kansas Department of Health and Environment and Fort Leavenworth. Amending the fee exemption language of HB 2607 to be consistent with that previously adopted for C&D waste fees would eliminate the issue that had both KDHE and the Army at an impasse prior to 2000.

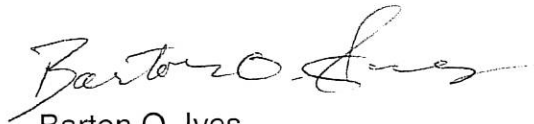
In the U.S. Supreme Court case of Massachusetts v United States, 435 U.S. 444 (1978), the Supreme Court established a "3-pronged" test for analyzing when the federal government can and cannot pay a state/local government-imposed fee for services. One of the requirements of the Massachusetts case is that the federal government must not be treated differently in the enforcement of the fee requirement than other regulated entities. Our concern, in 2000 and again today in 2004, is that the proposed bill language exempts state and local government entities from payment of the fee and should also include the federal government in that exemption.

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As the Department of Defense, Regional Environmental Coordinator for Standard Federal Region VII, which includes the State of Kansas, I want to bring this concern to your attention. Accordingly, I request that you and the House Environment Committee consider amending the bill language to include "federal government" in list of fee-exempted entities [see proposed bill Section 1, Subsection (f)(2)].

My office welcomes the opportunity to work with you and your committee on any matter that may affect Defense installations and agencies in the state of Kansas. If you have any questions, please feel free to contact me by telephone at (816) 983-3449, or e-mail at barton.ives@us.army.mil. I thank you for the opportunity to comment on H.B. 2607 and would appreciate it if you would share this letter with members of your committee.

Sincerely,



Barton O. Ives
DoD Regional Environmental Coordinator
Region VII

Copies Furnished:

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health)

Commander, U.S. Army Combined Arms Center and Fort Leavenworth

Commander, 24th Infantry Division (Mech) and Fort Riley

The Adjutant General of Kansas

Commander, 89th Regional Readiness Command, U.S. Army Reserve

Army Installation Management Agency (Northwest Region)

U.S. Army Environmental Center

Commander, Kansas City District, U.S. Army Corps of Engineers

Commander, 22nd Air Refueling Wing, McConnell Air Force Base

Commander, 184th Refueling Wing, McConnell AFB & Smoky Hill ANG Range

Commander, 190th Air Refueling Wing, Kansas Air National Guard, Forbes Field

Commander's Representative, Kansas Army Ammunition Plant

Commander's Representative, Sunflower Army Ammunition Plant

Air Force Regional Environmental Coordinator

Navy Regional Environmental Coordinator

Director of KDHE Division of Environment

Director of KDHE Bureau of Waste Management

From: "Jay Barnes for KNRC" <jay@knrc.ws>
To: "Vaughn Flora" <flora@house.state.ks.us>, "Lee Tafanelli" <tafanelli@house.state.ks.us>, "Joann Freeborn" <freeborn@house.state.ks.us>
Date: Thu, Feb 5, 2004 5:28 AM
Subject: Written Testimony - Support for HB 2607 - solid waste permits

To Chairperson, Vice Chairperson, and Ranking Minority Member,
House Environment Committee

Submitted for Committee consideration in lieu of in-person testimony

I write for Kansas Natural Resource Council in general support of House Bill 2607, an act concerning solid waste management, and in specific support of those provisions that outline a preliminary site evaluation and KDHE review process. These provisions are extremely valuable to local officials faced with the complex decisions of landfill siting and are essential to the quality and and uniformity of siting decisions across the state, and ultimately to the quality of our environmental legacy.

Landfill siting decisions are permanent decisions. They do and should rest in local officials' hands – but they need to be made with the greatest of care for the long-range impact on public health and the environment.

Two situations confront local officials faced with landfill siting decisions. They must consider the suitability, availability, and cost of land for the site – and they must make those decisions within limited resources, and usually with limited technical expertise.

The suitability factor is of greatest importance in the long-range impact of the decision – there will be trash in the ground forever, certainly long after the site is paid for. Our landfill sites are some of the most apparent of the many environmental legacies we leave to future generations. It is critical that the suitability of alternative sites should be addressed as early as possible in the decision process to insure that the issue is not side-tracked by perfectly valid availability and cost issues, or by early commitments and investments that realistically prevent suitability from being the primary consideration.

The measures of HB 2607 that call for preliminary evaluation and KDHE review do not take landfill siting decisions out of local officials' hands. They do help insure that suitability is a primary consideration in their decisions, and they insure that all local officials faced with these decisions, regardless of their size and resources, have objective technical expertise available to them as early as possible in their decision process.

Amending Kansas statutes to provide these services for local officials will help insure a better environmental legacy for future Kansans than we will have without them. Your favorable consideration of these provisions will provide that insurance.

Jay Barnes, Executive Director
Kansas Natural Resource Council
PO Box 21346
Wichita, KS 67208
316-686-6043
jay@knrc.ws

*House Environment
2-5-04
Attachment 5*

Statement of the
Kansas Landfill Association

Before the House Environment Committee

February 5, 2004

House Bill 2607
concerning solid waste management

*House Environment
2-5-04
Attachment 6*

Madam Chairperson, and Members of the Committee:

On behalf of the members of the Kansas Landfill Association (KLA) we would like to submit our position on House Bill 2607. We would respectfully request that the following issues be considered by the committee.

The KLA is a newly formed trade association. As a statewide organization of private landfill owners and operators, members are dedicated to promoting economically responsible, science-based environmental policies in the waste management industry. The Association advocates activities which merge sound business principals with protection of human health and the environment. Our mission includes representing members in the formation of legislation and support in the application of public policy as pertains to the solid waste industry in Kansas.

This organization is very interested in protecting the ability for private businesses to compete in this industry in an environmentally and fiscally prudent manner. Members of the KLA support all reasonable efforts to protect the environment while providing the necessary service of solid waste management.

On page four beginning on line 11 (B) and beginning on line 42 (E) It seems reasonable for the department to recoup costs of processing permits. However, there should be some control or a limit to the expenditures necessary for modifying or acquiring a permit from the department. This bill opens the door for extreme increases in the cost of doing business. We suggest a cap of \$20,000.

On page five beginning on line 17 (2) Cities, counties, other political subdivisions and state agencies are in direct competition with private operations. Therefore, by exempting them from substantial permitting fees, there is a noticeable competitive advantage. Private companies do not have the luxury of tax support and their fees for services have to be competitive; every dollar counts. We suggest removing lines 17-19 on page 5.

Finally, the new sections in the bill that allow the Kansas Department of Health and Environment (KDHE) earlier involvement in the landfill siting process raises some concerns among the membership. It is feared that this too will raise costs without benefit. It is understood that the intent is to prevent controversy about where a landfill is located. However, public fears are emotionally based and when the department gets involved will not solve this intrinsic landfill siting problem.

The KLA and its members would like to make it clear that, as an industry, we want to cooperate and help to be part of the solution to solid waste issues. Thank you for your consideration and addressing these issues. For further comment or questions, please feel free to contact Shawn Herrick at the KLA office at 785.286.1110. or Jim Carlson, KLA President and Suflower Electric Power Corp., Supervisor of Environment at 620.272.5467.

HOUSE ENVIRONMENT COMMITTEE

House Bill No. 2607

Mark Adams

Waste Connections of Kansas, Inc.

February 5, 2004

Madam Chair and Members of the Committee:

I am Mark Adams, employed as Region Engineering Manager for Waste Connections of Kansas, Inc. I have 15 years of solid waste management experience and I have held several technical and operating positions for private waste services companies in West and Midwest, Europe, Asia and Australia.

First, I would like to make it clear that Waste Connections is supportive of earlier involvement by KDHE in the landfill development process. The local planning and zoning authorities may benefit from input from KDHE on site suitability prior to making a zoning decision on a landfill application.

I would like to make several comments about HB 2607 and they are as follows:

1. The purpose of the PSE is to determine whether the site is a suitable location for a landfill and not a site characterization analysis. Information beyond a Location Restrictions review would not be relevant or appropriate at this stage in the landfill development process. Site characterization work becomes relevant as part of the permitting process and the data from these expensive studies are utilized to develop design, construction, operating, monitoring and closure/post closure plans. Requiring site characterization work as part of the PSE runs counter to other language contained in the Bill. On page 2, beginning at line 24, the bill states, "A preliminary site evaluation report shall be considered a pre-application document and not part of an application for a permit for a solid waste disposal area." Any PSE requirements beyond specifically addressing location restrictions inevitably extends the scope of the document to studies and material that would form part of the permit application and KDHE's approval of the PSE would by extension, arguably indicate approval of elements of the permit application.
2. The scope of the PSE should be clarified. It is important that the developer of the landfill clearly understands the scope of the PSE. As outlined above, the PSE should be limited to a Location Restrictions Review and the words, "...but not be limited to:" on page 1, line 27 should be stricken.
3. Waste Connections understands that KDHE requires additional monies to adequately cover the cost of permit reviews. However, the Bill should not discriminate between private and public entities for fee amounts on page 4. Additionally, the mechanism for unlimited additional permit fee payments raises the following issues:

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Attachment 7*

- a. Permit applicants have historically received comments that are not based on any rule/regulatory citation(s), but rather based on guidance, best management practice, or policy aspects of the submittal. Should the applicant pay for any KDHE resources applied to anything or just review based on rules/regulations?
- b. How would KDHE measure the efforts of employees engaged in the permit review process to ensure cost efficient review? What kind of benchmarks would the KDHE use?
- c. What system would the KDHE develop to provide up to date manpower cost and expense tracking schedules on permit projects?

Perhaps an increase to the existing flat permitting fee should be considered instead.

Thank you for allowing me to testify today. I would be pleased to answer any questions.

Testimony on Behalf of Waste Management of Kansas, Inc
In opposition to House Bill 2607
February 5, 2004
Before the House Environment Committee

Madam Chair and members of the House Environment Committee:

Thank you for taking the time to listen to the views of Waste Management regarding House Bill 2607. I am Steve Kearney and am appearing today on their behalf.

House Bill 2607 developed by KDHE regarding landfill permitting this past fall. Waste Management decision makers were invited to one meeting in September regarding what has eventually become House Bill 2607.

Following the September meeting we received a letter from KDHE dated October 3, 2004 with a copy of a draft bill attached. A letter was drafted on behalf of the industry by the Midwest Region of the National Solid Waste Management Association chapter detailing our concerns. Copies of both letters are attached to my testimony. During your deliberations of this matter I would request that you review those communications that voice not only our substantive concerns regarding the then draft legislation, but also what we came away from the meeting with as our collective understanding vs. the characterization by KDHE.

Those two communications gave rise to a flurry of others between KDHE and NSWMA which are also attached. You can see clearly that the industry had never indicated it's support of this concept and opposes it still. Some of the specific objections and points we want to make regarding the bill before you today are as follows:

1. It will be difficult to permit any new facility in Kansas, due to the additional bureaucracy created, which will slow down the permitting process. Many of you can still recall the extensive debate of this issue in the KS legislature when the body voted and decided not to go beyond Subtitle D requirements.
2. KDHE is inserting itself into the local decision making process which we believe is bad for a variety of reasons, including:
 - a. Prematurely spent state resources
 - b. Loss of objectivity of permit review due to citizen emotions
 - c. Greater responsibility and liability on behalf of the State of Kansas
 - d. Politics of the locale affecting a neutral state agency.
3. How will KDHE staff be able to attend local meetings on this project, hear the objections of local citizens, and maintain the objective/scientific perspective required to review the site/project from a purely environmental and unemotional view. (p. 2 (5) "The

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Attachment 8*

secretary shall direct department staff to be available to participate in public meetings convened and hosted by local government officials.")

4. Landfill siting is always a controversial issue that needs to be debated locally, before being elevated to the State level, as anticipated by our current law. It is the responsibility of those proposing the project to do a good job upfront to allay the concerns of local citizens.

5. This bill lacks specificity for the Preliminary Site Evaluation (PSE). If passed, the legislature will give KDHE authority to create new rules that are not limited to the specifics stated in the bill. This concerns us greatly from a time and money perspective. (p. 1, Section 1 (b) (1), "...but not limited to..")

6. The bill requires high permitting fees for privates only, specifically stating that public projects are not required to pay these fees. This is unfair and gives an advantage to public sector projects. Private industry should not have to compete with the public sector. (p. 5, (2) "A city, county or town...exempt...")

7. The bill creates excess administrative burden for KDHE to track the costs of permitting private facilities. KDHE staff will have to track time spent on private projects, keep a balance sheet for cost overruns or reimbursements back to the applicant. (p. 4,(B) "The secretary shall monitor and document expenses related toand shall refund...If the Secretary expends all....additional permit fee payments in \$5,000 increments.....The Secretary, upon request, shall provide to the applicant records of expenditures...")

8. Because the bill is a revenue generator for KDHE, will that affect decision making and timeframes? Will supplemental information be requested of private permit applications in an attempt to delay the project, increase timeframes, and generate additional revenue for KDHE? Also, the timeframes are indefinite and an applicant could end up trying to amend their permit for an extensive period of time to no avail. (p. 1, Section 1, (3).

These are some of our major concerns many of which were voiced at the September meeting with KDHE. I would once again commend the attachments to you as you prepare for debate on this measure. Thank you for your time and attention.



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

October 3, 2003

RECEIVED
OCT 03 2003

Steve Kearney
Kearney Law Office
1200 W 10th
Topeka KS66604

Re: Draft Legislation and Summary of Feedback Received in September 24, 2003 Landfill Siting and Permitting Task Force Meeting

Dear Steve,

As we agreed in our task force meeting on September 24, 2003, KDHE immediately went to work following the meeting to develop a summary of the overall feedback received from the task force regarding key policy questions and a draft bill for introduction during the 2004 Legislative Session. The meeting summary and draft bill have been reviewed and approved by KDHE upper management including Secretary Roderick Bremby and Ron Hammerschmidt, Director, Division of Environment. It is now time for the task force to review the documents and provide comments, so we can finalize the proposed bill over the next several weeks. A copy of each document and a list of task force members who attended the meeting is enclosed for your review.

As we concluded in the meeting, there were only a few issues that needed to be included in the draft bill. Most issues and recommended improvements to landfill permitting could be addressed in revisions to solid waste regulations because it was determined that current law already gives the secretary authority to adopt regulations related to siting restrictions, standards of design and operation, and post-closure requirements.

The primary issue to be included in the draft bill, involves the preparation of the preliminary site evaluation (PSE). We have tried to limit the scope of the PSE to an evaluation of applicable siting criteria. This evaluation will ensure that no prohibitive siting criteria existed and it would compare the site to "optimal" site characteristics which will be defined later in regulations. It will also identify any applicable enhanced standards which may apply because the site exhibits one or more non-optimal characteristics.

In accordance with the wishes of the majority of task force members, we have also added provisions which require the department to respond to PSEs, applications for new landfills, and applications for major modifications to existing facilities within reasonable time periods. Currently, the department is not required to respond within any period of time.

October 3, 2003

Page 2

One other important change was added to the bill even though it was not discussed with the task force. The department is proposing to increase the permit application fee for a new Subtitle D landfill from \$5,000 to \$25,000 and for a major modification to a Subtitle D landfill to from \$0 to \$10,000 ("major" is defined as increasing the permitted capacity by 10% or more). This change was recommended by the governor's cabinet in response as assessment of actual costs to the department and the need to properly assess user fees in environmental regulatory programs. The bill would require KDHE to monitor actual efforts related to such applications and return unspent funds down to a \$5,000 minimum fee for either type of action. The department may also assess additional fees beyond \$25,000 or \$10,000, if documented expenditures exceed these amounts.

The summary of feedback to our policy questions does not include every single comment or concern raised by task force members, but rather, we tried to paint an accurate picture of overall opinions, including the few areas where there was disagreement. When the group disagreed, we tried to point out the recommendations of the majority. We do have more detailed notes which have recorded the more specific opinions of each individual.

Please respond to me with your comments or questions by October 24, 2003. Comments should be submitted in writing either by letter or e-mail (wbider@kdhe.state.ks.us). If you would like to talk before submitting your written comments, please call me at (785) 296-1612.

Based upon the nature and extent of comments, we will decide how to communicate back to the task force. If comments are very minor we will likely just make them and let everyone know we are moving forward. If comments are more significant, we will likely present such comments to the whole task force for consideration. Hopefully, this could be done through an efficient process, perhaps by e-mail. If we can agree on this bill, the next step will be to set up a future meeting to work on the changes to the regulations. One question for everyone: Should we extend invitations to active or experienced landfill consultants to participate in the task force as we move into drafting changes to the regulations?

Thank you in advance for your time to review these documents.

Sincerely,



William L. Bider

Director

Bureau of Waste Management

C Secretary Roderick Bremby
Ron Hammerschmidt
Susan Kang, KDHE Legislative Director
Dennis Degner > Paul Graves > John Monroe

Task Force to Evaluate Landfill Siting and Permitting Process

Task force members who participated in the September 24, 2003 meeting in Topeka

Bill Upman	Waste Management, Inc.
Julie Ketcham	Waste Management, Inc.
Bill Ridge	McPherson Solid Waste Utility
Ken Meier	Harvey County Commissioner, KAC Board Member
Joe Pajor	City of Wichita, Public Works
Mark Adams	Waste Connections, Inc.
Randy Alewine	Deffenbaugh Industries, Inc.
Chiquita Cornelius	Kansas Business and Industry Recycling Program
Ed Saas	Leavenworth County, Solid Waste
Bob Helm	City of Salina, Landfill Manager, SWANA President
Darryl Basham	Allied Waste
Judy Moler	Kansas Association of Counties
Curt Archibald	Norton County
Chris Hase	Kansas Department of Wildlife and Parks
Cindy Kemper	Johnson County Environmental Department
Jim Carlson	Sunflower Electric Utility
Steve Kearney	Waste Management lobbyist
Charles Benjamin	Sierra Club
Chuck Hill	Cornejo (Wichita)
Larry Jumper	Thomas County, Solid Waste
Mike Tabor	Seward County Landfill
John Bottenberg	Deffenbaugh lobbyist
John Peterson	Waste Connections, Inc. lobbyist

Task force members unable to meet on September 24

Susan Erlenwein	Sedgwick County, Natural Resources/Solid Waste
Chris Mammoliti	Kansas Department of Wildlife and Parks
Charles Peckham	Northwest Kansas Solid Waste Management Authority
John Scarbrough	Pratt County, Solid Waste
Charlie Sedlock	N.R. Hamm Quarry, Landfill Manager

KDHE Participants

Bill Bider	Director, Bureau of Waste Management
Dennis Degner	Chief, Solid Waste Permits Section
Paul Graves	Chief, Landfill Permitting Unit
John Monroe	Chief, Hydrogeologic Unit
Christine Mennicke	Chief, Waste Policy, Regulations and Data
Shari Feist Albrecht	Division Policy Analyst



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Bill Bider, Director
Bureau of Waste Management
Kansas Department of Health and the Environment
Curtis State Office Building
1000 SW Jackson St.; Suite 320
Topeka, KS 66612-1366

October 23, 2003

Dear Bill:

Thank you for the opportunity to participate in the Task Force meeting on September 24. Members of the Kansas Chapter of the National Solid Wastes Management Association (NSWMA) has reviewed the meeting summary and draft legislation and have the following comments for your consideration.

Of primary concern to the industry are the very high permitting fees of \$25,000 and additional \$10,000 increments that were never discussed in the Task Force (TF) process. These come as a surprise to us and cause our industry a great deal of concern; particularly, because KDHE stated during the meeting that these legislative and regulatory proposals would not require additional resources. Furthermore, it is our understanding that the current tipping fee fully covers funding for your agency. More detail on this issue and our concerns are provided below in comment items #1 and #6.

The following detailed comments express our concerns about the process, how it was characterized, and the resulting legislation.

Process:

- 1) At the August meeting, expectations were set by KDHE that a TF would be set up and that two meetings would take place to discuss these issues. These are complicated issues that take more than one day to resolve. There was pressure from KDHE throughout the meeting that TF members "had to give their input today". Regardless, a letter from KDHE to the TF was received after the September 24 meeting stating that KDHE would essentially pursue their agenda regardless of what the TF concluded. The issue of KDHE lacking resources to carry out these activities was raised during the TF meeting, to which KDHE responded that these activities would not require additional resources. No other discussion of fee increases occurred during the meeting, yet the legislation has significant fee increases and gives KDHE the latitude to raise fees throughout the permitting process to meet the drain on resources that the KDHE proposed process would entail.
- 2) No consensus model or discussion of how the group would arrive at consensus occurred. This added to the confusion during the meeting when the first vote was taken, with KDHE deciding at that time not to take a vote. Only two votes were taken during the meeting, both on the same issue of whether a Preliminary Site Evaluation (PSE) should be required, yet the meeting minutes cite many instances of the "Majority Voted". On the two votes taken, the first was rescinded by KDHE due to confusion amongst the group. Our main question is, what constituted consensus? Was it a two-thirds majority vote or simple majority or some other definition? Given the 12 to

10 vote on the PSE, should we assume that a simple majority was the definition of consensus?

Meeting Minutes:

3) There was substantial discussion throughout the meeting about the landfill siting process being controversial and that additional science provided by KDHE through a PSE would not resolve these issues. This needs to be reflected in the meeting minutes. Using what seems to be KDHE's definition of consensus, there was overwhelming opposition from the group that any changes to the current landfill siting and permitting process would not allay concerns from neighbors, (residents involved in a landfill siting process) and that significant Public Relations work needed to be done by the proposer early on in the process to reduce citizen concerns. In fact, as a local official pointed out, "the citizens are only looking for whoever will say "No" to the project".

The group initially voted on whether a PSE should be conducted; however as questions arose during the vote and we believe, because it was clear that a majority of the TF opposed a PSE, KDHE decided to rescind the vote on this issue. As the meeting progressed, many conditions and limitations were added, the TF was asked once again to vote on the issue, with a 12 to 10 vote in favor of having a PSE conducted. This was after several statements by KDHE that legislation was going to be drafted and that comments were needed today. In Question #1 of the meeting minutes, three votes were cited on this issue, when only one bona fide vote was taken throughout the entire meeting. None of the conditions cited by TF members and agreed to by KDHE as an aspect of the vote were included in the draft legislation.

Furthermore, in Question #2, the meeting minutes state that a majority of the TF "appeared" to want to include the following information in the standardized PSE, and the minutes go on to list that information. These aspects of a PSE were not discussed by the TF; however, the TF did oppose any "optimal"/"suboptimal" characterizations of sites, which would suggest that these concepts not be part of a required PSE.

4) There was substantial discussion and references to the fact that Subtitle D addresses all siting concerns and that facilities can be designed and engineered to address any site deficiencies. These references need to be reflected in the minutes. No vote was taken on the siting criteria and KDHE proposal to define "optimal" and "suboptimal" sites; however there was significant opposition to having KDHE change the siting criteria. This needs to be reflected in the minutes. One TF member, Cindy Kemper, Johnson County Environmental Dept., rather than a majority of the TF members as cited in Question #3, noted that KDHE could do this without legislation, that they could simply write rules/regulations. No other member of the TF agreed with changing the siting criteria and we believe that KDHE did not call for a vote on this issue because they knew that there would be consensus in opposition. The draft legislation refers to "optimal" and "suboptimal" sites to be defined by KDHE. Many TF members will continue to oppose this initiative. The Kansas Chapter of NSWMA will continue to oppose this initiative.

Also regarding the siting criteria, the meeting minutes for Question #5 reflect KDHE's perspective on the issue of expanding or revising siting criteria, not the position of the TF as noted previously.

5) On Question #8, the minutes should state "Given the KDHE recommendation to adopt new

regulations related to optimal site characteristics...." because, as previously stated, only one member of the TF suggested that KDHE could do this without legislation, while the majority/consensus was to not change the siting criteria.

Draft Legislation:

6) No permit fees were ever discussed by the TF; however KDHE responded to questions about additional resource requirements by stating that additional resources were not needed. The new permit fee increases in item (f) (1), page 3, of the draft legislation therefore should be deleted. These are substantial fees that will be an economic burden to our industry, increase rates to businesses and citizens and be a disincentive for siting landfills.

7) The PSE language, item (b) (1), page 1, includes references to "optimal" and "suboptimal" sites which should be deleted since the consensus of the TF was for KDHE to not change the siting criteria. References in legislation will lead to the assumption and justification by KDHE to embark on a long and expensive task of formulating new rules and regulations that go beyond Subtitle D and go beyond what neighboring states use as siting criteria. In effect, by continuing to pursue this agenda of establishing new siting criteria, KDHE will drive up the cost of waste disposal and make neighboring states more attractive for disposal options. In essence, more waste will be managed out of state and the increased cost to meet these new regulations will be borne by commercial and residential customers of waste disposal services.

8) We have significant concerns with the timeframe requirements in the legislation and would suggest that the KDHE consider the process used in Missouri. In Missouri, once an application is submitted, the Department has 30 days to determine completeness. If determined to be complete, the Department has 180 days to issue a comment letter or issue a permit. If this deadline is missed, the applicant receives their permit by default. If a comment letter is issued, the applicant has 60 days to respond and can ask for an extension. The Department then has 120 days to review the revised application and again issue a permit or comment letter, with the permit being issued by default if the deadline is missed. If a comment letter is issued, the applicant has 60 days to respond and then the DNR can either issue or deny the permit.

In general, regulatory agencies in many states are looking at permitting timeframes, the process their staffs undergo to issue permits and looking at ways to streamline the permitting process. Process improvement methods typically used by the private sector are being used by state agencies to improve customer service. They are widely supported by the business community.

If the Missouri process described above is unacceptable to KDHE, we submit the following in items 9) and 10) below for your consideration:

9) The timeframe of 90 days, item (b) (3), page 1, for review of a PSE by KDHE will delay the process significantly, especially if new, arbitrarily determined "optimal" and "suboptimal" criteria are established. It is highly likely that the timeframe will be exceeded if the siting criteria are changed. Industry proposed using a fatal flaw analysis, basically existing Subtitle D criteria, to determine if the site was preliminarily adequate. New siting criteria were never discussed in

relationship to or as part of the PSE. A shorter, 30 day timeframe for KDHE review, with reference to Subtitle D criteria should be included in the draft legislation.

10) The timeframe for permit review on page 2, item 5 (c) should be reduced to 90 days. The draft legislation stating 180 days for permit review is too long. Providing an allowance of time that is significantly over what should be required for an activity usually results in meeting that time allowance. In other words, it will take 180 days to review a permit and not a day less, which will likely result in additional permitting requirements, more time to review the permit, with the end result being that no company will want to site a landfill in Kansas.

Again, we thank you for the opportunity to provide comment during the process and we look forward to continuing to work with you in the future.

Sincerely,

Peggy Macenas
Kansas Chapter of the National Solid Wastes Management Association (NSWMA)

Cc:
Roderick Bremby, Secretary of the Environment
Ron Hammerschmidt, KDHE
Dennis Degner, KDHE



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K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

November 7, 2003

Steve Kearney
Kearney Law Office
1200 W 10th
Topeka KS 66604

Re: KDHE Response to Task Force Comments on Draft Bill to Improve Landfill Siting and Permitting

Dear Steve:

KDHE received five written comments from task force members related to the September 24, 2003 task force meeting and our written follow-up documents including draft legislation and a summary of the feedback received in the meeting. Overall, the comments offered several constructive ideas to improve our proposed bill. In response, we have made several significant changes to our original proposal. It is noteworthy, that those persons who submitted comments did not all agree. In fact, there were very different opinions offered on several points. We have considered all points of view and attempted to strike the proper balance making revisions that are most consistent with the overall direction recommended by the task force.

In the following paragraphs, this letter identifies key comments and our response to them. A revised copy of the proposed bill is attached.

#1 - Problems with comparing proposed sites to "optimal site characteristics"

Several persons commented that we should avoid the use of the term "optimal site," or any similar terminology in both the law and the regulations. The reason for this recommendation is that if a site is labeled as "non-optimal," it would be very unlikely that a local zoning authority would ever be willing to zone it for a landfill. This makes sense to us and the intent was not to prohibit the development at sites which have some non-optimal characteristics, but to simply point out that some additional design and operational challenges may exist at the site.

Response: To avoid the negative stigma associated with the "non-optimal" label, we have removed this concept entirely from the proposed statutory language. However, in order to still generate meaningful information which can be shared with local government authorities and the public prior to zoning, it has been replaced with a requirement to "describe site characteristics (in the PSE) in accordance with criteria established in rules and

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regulations adopted by the secretary.” This information will not lead to site labels, but it will provide everyone with enough information to know whether any special design or operating requirements are appropriate to minimize impacts to human health or the environment.

#2 - The scope of the preliminary site evaluation (PSE) needs to be more limited

Some comments recommended that the scope of the PSE be scaled way back and KDHE involvement be minimized or eliminated. Others were very supportive of the PSE concept and expressed their opinion that KDHE involvement was a necessity to ensure a proper technical review is completed and to add credibility to the process. The primary concerns with the PSE content related to the comparison of site characteristics to those of an “optimal site” and to identifying enhanced regulations that would be applicable to comply with non-optimal sites.

Response: Our response to #1 above explained that we have eliminated the whole concept of “optimal” and “non-optimal” sites. KDHE believes that it is appropriate for the department to be involved in the PSE review process as originally proposed and that the majority of the task force agrees. The detailed work to be completed in the PSE still needs to be developed in regulations which will follow the statutory process. In addition to the new requirement to describe site characteristics according to certain criteria (to be defined in regulations), the revised minimum scope of a PSE shall include an evaluation of all applicable siting restrictions (a fatal flaws analysis) and a determination of applicable regulations for the type of facility and identified site characteristics. Some changes to the regulations may be appropriate to address certain site characteristics. With these changes, the PSE report should provide local decision-makers and the public with valuable information without placing a negative label on sites which are acceptable, but present some challenges.

#3 - The proposed permit fees for Subtitle D landfills are too high

Several comments were received indicating that the proposed permit fees were too high and would greatly burden the landfill industry. One comment letter also pointed out that KDHE did not discuss this issue with the task force in the meeting and even indicated that the proposed changes did not require additional funds for implementation.

Response: KDHE admitted in the letter which was sent out to the task force on October 3 that we had not addressed the permit fee issue, but we were including it in the draft bill to receive feedback from the task force. We also pointed out that we had received earlier support for the increased fees from high-ranking state officials who were looking for fairness in fee payments. We also agree that the proposed changes to the permitting

process, related primarily to the PSE, do not require the collection of additional fees. However, as explained in my letter to the task force, the proposed fee increase is our attempt to more properly assess fees based upon the actual work of the department to process an application. If these fees are not increased as proposed, the rest of the fee payers in the state will continue to subsidize the department's work to process complex Subtitle D permit applications. Even though landfills pay tipping fees, it cannot logically be argued that these later payments should be considered adequate payment for the application review process because there is no guarantee that the proposed landfill will ever receive a permit. KDHE continues to believe that increased fees tied directly to department work is a fair way to assess permit fees. It is also noteworthy that most state landfill permit fees greatly exceed our current \$5,000 fee for a new Sub D landfill. Data on other state fees can be provided upon request.

Despite the department's position stated above, it does seem appropriate to lower the initial fee from \$25,000 to \$10,000 for new applications and lower the incremental addition fees to \$5,000. These changes have been incorporated into the draft bill along with language to: (1) explain that permit processing work will cease if additional payments are not made within 14 days of notice and (2) require KDHE to provide detailed cost records documenting department expenditures related to the permit application, if requested.

#4 - KDHE time periods for permit reviews

Two comment letters indicated a need to keep the permit review process going. One letter strongly opposed the time periods proposed by KDHE in the draft legislation, preferring the Missouri times even though the Missouri time periods are actually longer than we proposed. The preference for the Missouri times is the reported added provision that the permit is automatically considered issued if the department does not act within the specified time periods. As an alternative to the Missouri times, that commenter proposed much shortened time periods (30 days for the PSE review and 90 days for the full permit review).

Response: KDHE believes the proposed time periods are reasonable given the overall workload and permit staff resources. It is not practical to assume that a thorough review of a complex landfill permit application, including the required public hearing and notice period, can be completed in the shorter time proposed. Solid waste permit section staff are responsible for over 400 active permits, many of which have ongoing modifications and all of which are subject to renewals. This work must continue as new applications come in and are reviewed. Based on this information, no changes to the permit review times were made.

#5 - New Siting Criteria

Two comment letters stated that no new siting criteria should be added to the law or regulations and that this was the recommendation of the task force.

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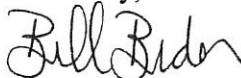
Response: KDHE agrees that the task force did not want to add any new siting restrictions to the law. Particularly, the task force did not want new prohibitive criteria added, such as the distance to a receptor (e.g., a stream, river, a well, etc.) or whether the proposed site was over "sensitive groundwater." However, we do not believe the task force recommended that such criteria should be totally ignored with respect to determining appropriate design or operating requirements. KDHE believes that some new criteria should be considered as part of the PSE to adequately define site characteristics. As stated earlier, these criteria will be listed in the PSE rules and regulations which are developed later in cooperation with the task force, but the PSEs will not result in labeling sites as optimal or non-optimal. These site characteristics will be useful in determining applicable regulatory standards and appropriate design and operations.

Some additional comments were received related to hazardous waste entering Kansas landfills, enhancements of post-closure/financial assurance rules, and hiring of consultants; however, none of the comments led to changes in the proposed bill or related regulations. KDHE will continue to support the right of a landfill permit applicant to hire their own professional consultants. KDHE does believe that we need to do something to address the potential for hazardous waste coming into our landfills from states that have less stringent rules on hazardous waste disposal. Also, we believe there needs to be a better system in place to review landfill status while a landfill is in post-closure to determine long-term risks and the adequacy of financial assurance. These will be addressed in more detail in the future with the task force.

Before we decide whether it is necessary to hold a follow-up meeting of the task force, we would like to receive feedback on the changes made to the proposed bill. If the task force is mostly satisfied, we will likely not meet until mid-winter to begin discussions on changes to regulations. If the task force has significant continuing concerns, we may schedule a meeting in early December.

Please respond to me with your comments or questions by November 21 (wbider@kdhe.state.ks.us). Thanks for your participation in this task force to improve landfill permitting which will assist local governments and boost public confidence in the process.

Sincerely,



William L. Bider

Director

Bureau of Waste Management

C Secretary Roderick L. Bremby
Ron Hammerschmidt
Dennis Degner, John Mitchell, Paul Graves, John Monroe, Shari Feist Albrecht



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Mr. Bill Bider
Director, Bureau of Waste Management
Kansas Department of Health and Environment
Curtis State Office Building
1000 SW Jackson, St., Suite 320
Topeka, KS 66612-1366

November 19, 2003

Dear Bill:

Thank you for the opportunity to once again provide comment on the KDHE Siting and Permitting proposal. We appreciate your effort to make some changes to the draft legislation, in particular, removing the negative connotation of a proposed site being classified as "suboptimal" and the reduction in permitting fees from \$25,000 to \$10,000 for new landfills. However, a number of additional issues remain.

Regarding the Preliminary Site Evaluation (PSE), industry suggested that a fatal flaws analysis be conducted. Although KDHE accepted this suggestion, additional evaluation is now required in the new draft that includes a determination of applicable regulations for the type of facility and identified site characteristics, but more importantly, new PSE requirements to be developed by KDHE. Applicable standards must be based on complete scientific data obtained by a comprehensive site characterization and not based upon preliminary site assessments. The existing KDHE rules include the detailed specifications for such a characterization and this work involves tremendous resources and expense. Investing such large sums of money in a project that has yet to receive local zoning will make it very difficult to site a landfill in Kansas. Therefore, the PSE should be focused specifically on a fatal flaw analysis.

Despite reducing the permit fees for new landfills from \$25,000 to \$10,000, with increments of \$10,000 depending on resources required to process the permit, KDHE is now proposing a fee of \$10,000 with \$10,000 increments for landfill expansions. We continue to be very concerned about permit fees that will only be passed onto Kansas business, industry and citizens through increased trash collection and disposal rates. The industry has experienced a number of cases where the KDHE did not undertake a thorough review of a permit application. As a result, the applicant received new comments in subsequent reviews resulting in extensive delays in ultimate approval of the permit and significant additional costs to the applicant. This issue must be addressed, and the KDHE should consider how it would account for additional permitting costs that may be, at least in part, a function of deficiencies on the part of the Department.

The industry does not believe that the Task Force was amenable to the development of new siting criteria; whether they are locational, design or operating. Design or operating criteria were never discussed specifically by the Task Force. The Task Force opposed changes to the siting criteria.

NSWMA – KDHE

11/19/03

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Thank you for the opportunity to provide comment on the proposal. We look forward to hearing your next steps with the draft legislation. If you have any comments, you may reach me at 630-848-1101.

Sincerely,

Peggy Macenas
Kansas Chapter of the National Solid Wastes Management Association
NSWMA

Cc: Secretary Roderick L. Bremby
Ron Hammerschmidt, KDHE
Dennis Degner, KDHE



K A N S A S

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DEC 05 2003

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

December 3, 2003

Steve Kearney
Kearney Law Office
1200 W 10th
Topeka KS 66604

Dear Steve:

KDHE received written comments from five task force members on the revised draft legislation and associated explanation of changes provided in our letter to the task force dated November 7, 2003. Verbal comments were also received from a few task force members. Most comments indicated agreement with the changes made; however, some additional requests and points of emphasis were made. The following two changes to the proposed bill were made in response to new comments:

- The required distribution of the PSE report and KDHE's written analysis was expanded to include the chairperson of the relevant county or regional solid waste management planning committee.
- The time when KDHE will notify the public about a completed PSE was clarified to indicate that such notice would be given after KDHE determines that the PSE satisfies the minimum requirements set forth in rules and regulations and distributes the PSE report and department's written analysis to designated parties.

A copy of the revised draft bill is enclosed for your review. We believe that this bill is now suitable for introduction in the 2004 legislative session. We recognize that some task force participants still have some concerns; however, we believe this bill establishes proper balance given the conflicting viewpoints of interested parties. We all need to keep in mind, that there is still considerable work to be done by the task force to finalize this effort to improve landfill siting and permitting by revising the state solid waste regulations. KDHE will be scheduling a meeting sometime in January or early February to initiate discussions on developing new regulations for carrying out PSEs and for determining if other changes are appropriate with respect to siting criteria and site-specific standards.

In the following paragraphs, I address additional comments received on our November 7, 2003 draft bill. I will also explain the differing opinions offered by various task force members.

PSE Distribution

One commentator requested that the bill be changed to require KDHE to coordinate with the applicant before distributing the PSE report and written analysis to local officials. For several reasons, KDHE does not believe this is necessary or appropriate. First, the PSE report and written analysis will only be distributed after it is found to satisfy minimum requirements set forth in rules and regulations. Second, several comments were received emphasizing the need for KDHE to independently review and comment upon a proposed site without influence by the applicant. In fact, two commentators continue to

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believe that KDHE should independently carry out the PSE at the applicant's expense so that all information will be generated in a non-partial manner. They believe this is the only way the public will accept the information as trustworthy. While KDHE does not believe it is necessary for the department to complete the PSE, we do believe our review and written analysis should be done without influence by the applicant. KDHE may need to request additional information from an applicant if it is found that the PSE is deficient in any way.

PSE Content - Applicability of Standards as Defined in Rules and Regulations

One commentor believes that it is only possible to determine the applicability of standards following the detailed hydrogeological investigation which should not be carried out until after zoning is established. We agree that certain detailed design standards will be based upon site-specific factors, but this is not the kind of determination being proposed for the PSE. The details of the PSE requirements, including more specificity as to the determination of applicable regulations, will be established in the future PSE regulation. However, the law should direct KDHE to write those PSE regulations to address certain key areas. In this case, the proposal says the PSE should include the development of a list of applicable regulations which could be based upon factors such as the type(s) of waste that will be disposed of in the landfill, the proposed size of the landfill, the depth to groundwater, and the distances to various receptors, including environmental and human receptors. The PSE does not need to address detailed design features, but it should give local officials and the public adequate information to know what rules apply to such a facility.

Permit Fees

One commentor continues to believe that the proposed permit fees for Subtitle D landfills is too high. The commentor misstated the proposal by indicating that incremental fee payments of \$10,000 would be assessed as previously paid fees were consumed by department work. The proposal actually specifies that the additional fee payments would be made in \$5,000 increments.

KDHE and several other commentors believe it is appropriate for landfill applicants to pay a fee which is equal to the cost to the state for reviewing that application. It is our belief that it is inappropriate for the taxpayers of Kansas to subsidize the review of an application; thus, KDHE will maintain this provision in the bill and if it passes carefully account for departmental expenses and charge only the amount actually expended to review an application.

The commentor who was concerned about the permit fee increase for Subtitle D landfills complained about KDHE's past review of applications which, according to the commentor, at times resulted in incomplete comments or even errors which added to an applicant's costs. In recent years, KDHE has made major improvements in our permit review process to be as thorough and accurate as possible in our initial review to avoid inefficiencies. A review our comment letters submitted to applicants over the past two years will clearly demonstrate this practice.

Siting Criteria

Comments were clearly split on this issue. Two commentors strongly supported the addition of new siting criteria while one commentor, claiming to represent the majority of the task force, strongly opposes the addition of any new siting criteria. KDHE agrees that the majority of the task force did not want any new siting criteria added to the proposed bill; however, we believe this issue needs further discussion as part of the development of new and updated regulations. We know that there are several

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legislators who would like to add new stringent siting restrictions to the law, such as the distance to any river, but we believe it is more appropriate to address this issue in regulations which already have numerous siting criteria. In this way, we can study issues more thoroughly and base our decisions on better science. We have determined that KDHE already has clear statutory authority to expand landfill siting criteria as necessary to protect human health and the environment.

Optimal Site Characteristics

One commentator believes KDHE should have maintained the concept of "optimal site" in the law and compare any proposed site to those optimal characteristics which would have been defined in rules and regulations. Despite this belief, the commentator is satisfied with the new approach provided that the PSE continues to be a thorough effort with strong involvement by KDHE. Most important to this commentator is the need to adequately characterize the site before zoning so that local officials and the public can be provided with a reasonably good description of the site early in the process. The commentator believes that the dissemination of such information should not come late in the process after KDHE has thoroughly reviewed an application and made a preliminary determination that a permit can be issued.

KDHE continues to believe that valuable information can be developed and shared with local officials through the PSE without using the "optimal site" terminology.

Other Issues

One commentator emphasized the need for KDHE to continue moving forward to: (1) address the potential for hazardous waste being received at Kansas landfills from out-of-state, and (2) revise solid waste regulations as appropriate to improve post-closure care oversight and financial assurance. KDHE will continue to work on these areas.

If you have any questions or concerns, please feel free to contact me. At the present time, it appears that KDHE will introduce this bill into the House Environment Committee early in the session. Thank you so much for being part of this task force. I hope you continue to work with us as we move forward to develop new related regulations.

Sincerely,



William L. Bider

Director

Bureau of Waste Management

C Secretary Roderick Bremby

Ron Hammerschmidt, Susan Kang, Dennis Degner, Paul Graves, John Monroe