

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 P.M. on March 2, 2006 in Room 231-N of the Capitol.

All members were present except:

Representative Josh Svaty- excused
Representative Vaughn Flora- excused

Committee staff present:

Raney Gilliland, Legislative Research Department
Emalene Correll, Legislative Research Department
Lisa Montgomery, Revisor of Statutes Office
Pam Shaffer, Committee Secretary

Conferees appearing before the committee:

Tom Gross, Bureau of Air and Radiation, Department of Health and Environment
Whitney Damron, Attorney on behalf of Empire District Electric Company
Steve Miller, Senior Manager-External Affairs, Sunflower Electric
Bill Bider, Director-Bureau of Waste Management, Department of Health and Environment

Others attending:

See attached list.

Chairperson Freeborn asked for everyone to please sign the conferee list. She announced the agenda for next Tuesday, March 7 meeting: Possible action on **SB362 - Solid waste, industrial facilities, permits**, and a hearing on **SB453 - Environmental laws; compliance audit privilege; immunity; lesser penalties for violations**.

Chairperson opened the hearing on **SB386 - Air contaminant emission sources, regional haze**. Raney Gilliland, Legislative Research Department gave an overview of the bill. Each committee member was given a copy of the fiscal note for the bill (See attachment 1).

Tom Gross, Bureau of Air and Radiation, Department of Health and Environment, proponent, testified (See attachment 2).

Whitney Damron, Attorney on behalf of Empire District Electric Company and other electric utilities, proponent, testified (See attachment 3).

Questions and discussion followed the testimony.

Chairperson Freeborn closed the hearing on **SB386**.

Chairperson Freeborn opened the hearing on **SB362**. Raney Gilliland, Legislative Research Department gave an overview of the bill. Each committee member was given a copy of the fiscal note for the bill. (See attachment 4).

Steve Miller, Senior Manager-External Affairs, Sunflower Electric, proponent, testified (See attachment 5).

Bill Bider, Director-Bureau of Waste Management, Department of Health and Environment, proponent, testified. As part of his testimony, Mr. Bider offered a balloon, which is part of his testimony attachment. (See attachment 6).

Questions and discussion followed the testimony.

Chairperson Freeborn adjourned the meeting at 4:45. The next scheduled meeting is Tuesday, March 7.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

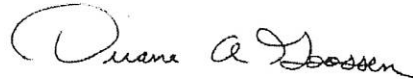
DATE: 03/02/06

NAME	REPRESENTING
Bill Bider	KDHE
John C. Bottenberg	BOTTENBERG & ASSOC
Andy Shaw	Waste Mgmt Inc
Whitney Dama	Empire District Electric Co.
Tom Ammerschmitt	KDHE
Joan Gross	KDHE
Ashley Ostrom	Intern PR Rep. Wilm
Lindsey Douglas	Hein Law Firm
SEAN MILLER	KS Dairy Assoc
Dore Halthaus	KEC
ROGER RANDALL	KCPL
John Peterson	Capital Strategies
Wendy Williams	KAPA
Wendy Williams	KAPA
Mark Schreiber	Westar Energy
Craig Swartzendruber	Westar Energy
Jeremy Jewell	Westar Energy

The Honorable Carolyn McGinn, Chairperson
January 26, 2006
Page 2—386

and office supplies; and \$3,500 for one-time expenditures for capital outlay, for a total of \$91,152. The Department would fund the FTE position and operating expenditures from the Air Quality Fee Fund. Any fiscal effect resulting from the passage of this bill would be in addition to amounts recommended in *The FY 2007 Governor's Budget Report*.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Aaron Dunkel, KDHE
Kimberly Winn, League of KS Municipalities



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on Senate Bill 386 to
House Environment Committee
Presented by
Thomas Gross, Bureau of Air and Radiation**

March 2, 2006

Madam Chair Freeborn and members of the House Environment Committee, I am pleased to appear before you today to request your support for passage of a bill related to implementing the federal Clean Air Mercury and Regional Haze rules.

Over the last decade, air pollution control activities in the United States have changed from a focus on controlling air pollutants on a city, county, or multi-county basis to addressing air pollution problems on a regional or multi-state basis. Many air pollutants can travel long distances and affect air quality hundreds of miles distant. The federal mercury and regional haze rules were a result of this new understanding of the role of transport in air pollution. The changes proposed in this legislative initiative are necessary for the Department of Health and Environment to implement these two federal rules in Kansas.

In March of 2005, the Environmental Protection Agency issued a rule to reduce mercury emissions from new and existing coal-fired power plants. The Clean Air Mercury rule provides an option for states to participate in a federal market-based cap-and-trade program that will reduce nationwide utility emissions of mercury in two phases. The first reductions would be required by 2010. The second phase, due in 2018, requires coal-fired power plants to meet a nationwide cap of 15 tons of mercury emissions. To implement the rule in Kansas, the Department will be required to adopt the federal regulations regarding the cap and trade program and prepare a State Implementation Plan for submission to EPA by November of this year. The cap and trade program will allow Kansas utilities greater flexibility and cost savings in complying with the rule. Under the cap and trade program, each electric generating unit will receive a mercury allowance. Utilities will be able to buy and sell mercury allowances on an open market. The proposed legislation addresses the participation by Kansas utilities in the cap-and-trade program.

The Regional Haze Program was created by the 1990 amendments to the Clean Air Act. The purpose of the Regional Haze Program is to improve visibility in federally designated Class I areas such as national parks, wilderness areas, national memorial parks, and international parks. There are 156 Class I areas across the country. EPA proposed the regional haze regulations in

July of 1997 (40 CFR Part 51.308). The rule requires States to establish goals to improve visibility on the haziest days and ensure no degradation occurs on the clearest days.

The federal rule requires the State of Kansas to submit to EPA a regional haze State Implementation Plan (SIP) that includes controls on Kansas air pollution sources that affect Class I areas in neighboring states. Kansas may submit its Part 51 SIP utilizing a regional planning process with one or more surrounding states. Kansas participates in the nine-state Central states Regional Air Planning organization (CENRAP). This organization is jointly completing technical analysis and developing emission management strategies for the group. These recommendations will be provided to KDHE for review and use in developing the regional haze SIP. Kansas must submit the regional haze SIP no later than December 2007.

One of the principal elements of the Regional Haze Program is the installation of Best Available Retrofit Technology (BART) for certain existing large air pollution sources placed into operation between 1962 and 1977. The rule requires each state to develop a list of BART-eligible sources; conduct an analysis of the benefits of installing pollution control equipment on the BART sources; and develop emission limits for each source. The implementation of control strategies, including BART, is to be phased in through 2013 in order to meet the reasonable progress goals established for each Class I area. A periodic report on progress is due every five years.

The proposed statutory changes will add regional haze to the definition of the term "air pollution" and will add a new definition for the term "regional haze". The changes will also add to the powers of the Secretary of KDHE by providing authority to develop a State Implementation Plan that would provide for controls on sources of air pollution in Kansas when those sources affect air quality in other states. The changes also add the authority for the Secretary to develop or participate in cap and trade or offset programs to provide for a more cost-effective means of achieving air pollution reduction goals. This provision would be used in implementing the mercury rule and could also apply to the regional haze rule.

The Department has held numerous meetings and conference calls with industries that will be affected by these rules to obtain their input into the implementation process. I have slides that illustrate some of the concepts that I have discussed. I thank you for the opportunity to appear before the House Environment Committee and will gladly stand for questions the committee may have on this topic.

House Environment Committee

March 3, 2006

Senate Bill 386 Regional Haze Rule and Clean Air Mercury Rule

Thomas Gross
Bureau of Air and Radiation
Kansas Department of Health and Environment

Why address regional haze?

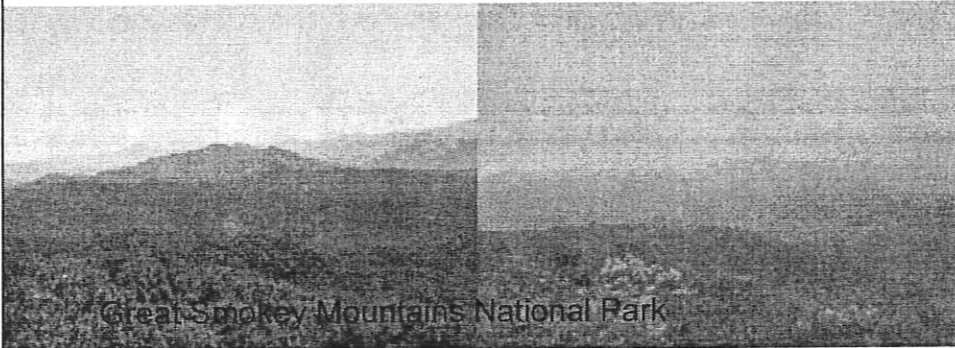
- Section 169A, federal Clean Air Act:

“Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.”

- Preamble to 40 CFR Part 51

“EPA has concluded in today’s final rule that all States contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area and, therefore, must submit regional haze SIPs.”

What is regional haze?

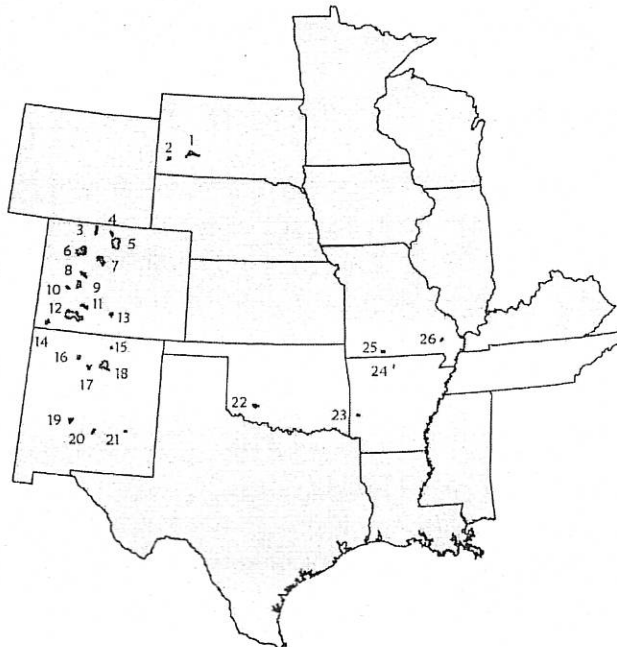


Great Smokey Mountains National Park

Very fine particles and gases that scatter or absorb light – Sulfates, Nitrates, Carbon....

Class I Areas Within 350 Miles of the State of Kansas

- 1 Badlands NP
- 2 Wind Cave NP
- 3 Mount Zirkel Wilderness
- 4 Rawah Wilderness
- 5 Rocky Mountain NP
- 6 Flat Tops Wilderness
- 7 Eagles Nest Wilderness
- 8 Maroon-Bells Snowmass
- 9 West Elk Wilderness
- 10 Black Canyon of the Gunnison NM
- 11 La Garita Wilderness
- 12 Weminuche Wilderness
- 13 Great Sand Dunes NM
- 14 Mesa Verde NP
- 15 Wheeler Peak Wilderness
- 16 San Pedro Parks Wilderness
- 17 Bandelier NM
- 18 Pecos Wilderness
- 19 Bosque del Apache
- 20 White Mountain Wilderness
- 21 Salt Creek
- 22 Wichita Mountains
- 23 Caney Creek Wilderness
- 24 Upper Buffalo Wilderness
- 25 Hercules-Glades Wilderness
- 26 Mingo



Timeline

- State implementation plan due Dec, 2007
- First round controls implemented by 2013
- Show reasonable progress through 2018
- Baseline for current visibility 2000–2004
- Natural visibility conditions by 2064



Regional haze reductions in three ways

- Credit for controls from other regulations
 - Motor vehicles
 - Fuels
 - Clean Air Interstate Rule

- BART – best available retrofit technology

- “Just in case” controls
 - Everything that’s not BART

Best available retrofit technology

- BART sources--large industrial sources built between 1962 and 1977 that emit haze causing pollutants
- 18 potential BART sources in Kansas
- BART control requirements based on:
 - Cost
 - Visibility improvement
 - Current controls in place
 - Remaining useful life of source
 - Energy and non-air quality impacts

Clean Air Mercury Rule

- ◆ Creates mercury limits for new and existing coal-fired power plants greater than 25 megawatts
- ◆ Optional market-based cap and trade program in 2 phases:
 - Phase 1 (2010-2017) cap = 38 tons nationwide -- 1446 lb for Kansas
 - Phase 2 (2018 and beyond) cap = 15 tons nationwide -- 570 lb for Kansas
- ◆ States have flexibility on how to achieve the required reductions

EPA Role

- ◆ Set state budgets
- ◆ Establish trading program
- ◆ Administer tracking system
- ◆ Define allowance allocation parameters

KDHE Role

- ◆ Prepare and submit state implementation plan by November, 2006
- ◆ Prepare administrative regulations with mercury allocation program
- ◆ Allocate mercury allowances

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E-Mail: wbdamron@aol.com

TESTIMONY

TO: The Honorable Joann Freeborn
And Members Of The
House Environment Committee

FROM: Whitney Damron
On Behalf Of
The Empire District Electric Company

And

Aquila Corporation
Board of Public Utilities (BPU)
KCPL
Kansas Electric Cooperatives, Inc.
Sunflower Electric Power Corporation
Westar Energy

RE: SB 386 - An Act concerning air contaminant emission sources.

DATE: March 2, 2006

Good afternoon Madam Chair Freeborn and Members of the House Environment Committee. I am Whitney Damron and I appear before you today on behalf of my client, The Empire District Electric Company, and six other electric utilities which are listed above, in support of SB 386 that would allow the Kansas Department of Health and Environment to adopt rules and regulations relating to regional haze.

Representatives of all seven utilities have worked together over the past few months with KDHE and come together to support this legislation.

House Environment Committee
March 2, 2006
Attachment 3

Regional haze is a national problem caused by multiple sources over a wide area. Visibility is affected by difference sources at different times of the year and under different weather conditions. Some significant contributors to visibility impairment include car and truck emissions, power generation plants, wildfires, agriculture fires and wind-blown dust. To reduce haze, and to meet requirements of the Clean Air Act, in April of 1999, the Environmental Protection Agency (EPA) issued a regional haze rule aimed at protecting visibility in 156 Federal areas. The rule seeks to reduce the visibility impairment caused by many sources over a wide area. Federal areas that may be affected by Kansas emissions are wilderness areas located in several surrounding states.

Under EPA requirements, states must develop their implementation plans by December, 2007. States will identify facilities that will have to reduce emissions under Best Available Retrofit Technology (BART) and then set BART emissions limits for those facilities.

SB 386 provides rule and regulation authority to the Kansas Department of Health and Environment to implement the regional haze rule. Absent this authority, the Environmental Protection Agency would take the lead. The signators to this testimony believe KDHE has the capability to implement the regional haze rule in an appropriate manner.

In closing, I would note that representatives of the co-sponsors of this testimony are present and available to respond to your questions, as am I. And also, we would all like to express our appreciation to KDHE for working with the electric industry to bring this legislation forth.

SB 386 was passed by the Senate 39-0 with no amendments. Attached to my testimony is a copy of the Supplemental Note for your review as well.

On behalf of Empire and the electric industry in Kansas, I thank you for your time today and respectfully ask for your favorable consideration of SB 386.



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Full History on bill 386

S 0386
Bill by Utilities
Air contaminant emission sources, regional haze. Effective date: Statute
01/18/2006 S Introduced -SJ 945
01/19/2006 S Referred to Natural Resources -SJ 956
02/09/2006 S CR: Be passed by Natural Resources -SJ 1046
02/14/2006 S COW: Be passed -SJ 1063
02/15/2006 S FA: Passed; Yeas 39 Nays 0 -SJ 1068
02/16/2006 H Received and introduced -HJ 1228
02/17/2006 H Referred to Environment -HJ 1236
02/22/2006 H Hearing: Thurs., 3/02/2006, 3:30 pm, Rm 231-N

See [Bill History Legend](#) for abbreviations and explanations.

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SESSION OF 2006

SUPPLEMENTAL NOTE ON SENATE BILL NO. 386

As Recommended by Senate Committee on
Natural Resources

Brief*

SB 386 would make amendments to the statutes dealing with air quality. The bill would create new a definition for regional haze as visibility impairment that is caused by the emission of air contaminants from numerous sources located over a wide geographic area. The definition of "air pollution" would be augmented by the addition of language to include contaminants that would contribute to the formation of regional haze.

The bill would give additional clarification to the authority of the Secretary of the Department of Health and Environment (KDHE) to prepare and develop plans that address air pollution originating in Kansas that affects air quality in Kansas or in other states, or both. One other modification to the authority of the Secretary with regard to air quality would allow the Secretary to enter into contracts with local governments, other states, or interstate or interlocal agencies, in addition to the current authority to enter into such agreements with state agencies or subdivisions, municipalities, the federal government, or private entities. New authority would be given to the Secretary to implement or participate in intrastate or interstate emissions trading programs or other programs that demonstrate equivalent air quality benefits for the prevention, abatement and control of air pollution in Kansas or in other states, or both.

Background

This bill was introduced at the request of a spokesperson from KDHE. At the hearing on the bill, the spokesperson indicated over the last decade air pollution regulation in the United States had changed from a focus on controlling pollutants on a local level to requiring control decisions on a regional or multi-state basis. The Committee

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

was told that on March 15, 2005, the US Environmental Protection Agency (EPA) issued a rule to reduce mercury emissions from coal-fired power plants. In order to implement the Rule in Kansas, KDHE will be required to adopt the federal regulations regarding a cap and trade program and prepare a State Implementation Plan. The proposed legislation addresses the participation by Kansas utilities in the cap-and-trade program. The due date for the submission of the state implementation plan to EPA is November 17, 2006.

Others appearing in support of the bill included a representative of the Sierra Club. Another conferee represented the Empire District Company and six other electric utilities. A spokesperson from the Kansas Livestock Association also appeared before the Committee and indicated the organization does not oppose the bill.

The fiscal note on the bill indicates the Department of Health and Environment believes the passage of the bill would require the addition of 1.00 Environmental Scientist IV FTE position at \$68,177 to prepare state implementation plans; \$14,350 for communication equipment and travel; \$5,125 for professional and office supplies; and \$3,500 for one-time expenditures for capital outlay, for a total of \$91,152. The Department would fund the FTE position and operating expenditures from the Air Quality Fee Fund. Any fiscal effect resulting from the passage of this bill would be in addition to amounts recommended in *The FY 2007 Governor's Budget Report*.

January 19, 2006

The Honorable Carolyn McGinn, Chairperson
Senate Committee on Natural Resources
Statehouse, Room 222E-B
Topeka, Kansas 66612

Dear Senator McGinn:

SUBJECT: Fiscal Note for SB 362 by Senate Committee on Utilities

In accordance with KSA 75-3715a, the following fiscal note concerning SB 362 is respectfully submitted to your committee.

SB 362 would amend existing statutes regarding solid waste disposal to include provisions for the disposal of industrial waste generated by industrial facilities. The bill would allow landfill permits to be issued to industrial generators of waste that wish to operate an industrial landfill but do not own the land where the landfill would be located. Current law requires the permit applicant to own the land where the landfill is to be located. The bill would exempt industrial generators of waste from the landfill tonnage fee of \$1 per ton, even though they do not dispose of the waste in an on-site landfill owned by the industrial facility generating the waste.

The Department of Health and Environment indicates that passage of the bill would not have a fiscal effect because no fees have ever been collected from the industrial facilities. Because of a corporate restructuring at one facility, the facility now appears to owe the tonnage fees. Under SB 362, the fees, estimated at \$100,000 per year, would not be paid. Similar revenue losses could occur at other facilities that cease owning their landfills, or at newly permitted industrial landfills where the permit holder does not own the land where the landfill is located.

Sincerely,




Duane A. Goossen
Director of the Budget

cc: Aaron Dunkel, Health & Environment
Kimberly Winn, League of Kansas Municipalities

House Environment Committee
March 2, 2006
Attachment 4



SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy® Cooperative 

TESTIMONY SUBMITTED TO THE HONORABLE JOANN FREEBORN AND MEMBERS OF THE HOUSE ENVIRONMENT COMMITTEE IN SUPPORT of SB 362

Presented by
Steve Miller, Senior Manager, External Affairs
Sunflower Electric Power Corporation

March 2, 2006

Good afternoon Madam Chair and members of the Committee. My name is Steve Miller and I thank you for providing Sunflower this opportunity to speak today on Senate Bill 362.

As you may know, we have been actively working to expand the generating capacity at Holcomb Station for several years. We recently announced an agreement to build two new power plants in conjunction with a Colorado cooperative, and we hope to announce a third plant in the near future. The value of these projects will be approximately \$3.6 billion.

We have operated the industrial landfill at the Holcomb site when our first plant went into commercial operation in 1983. In 2002, a corporate reorganization resulted in the existing permit and associated acreage becoming an asset of a Sunflower subsidiary known as Holcomb Common Facilities (HCF). This change leaves us technically not in compliance with the existing statutes.

The reason our landfill is in HCF and consequently separated from Sunflower's operating company is because the lenders that will finance these new plants require that their borrowers have a secure, contractual access to, or ownership of, the solid waste facilities needed for the operation of the new plants. They are unwilling to find themselves in a situation where their borrowers have no place to dispose of used coal. This is what drives our need for these changes to the current statutes.

With that background, let me describe what we proposed with this legislation:

- First, we've **added the definition of industrial facility** to clarify the nature of an entity that generates industrial waste. Under the current law, when our project is completed it would be considered as four facilities with only one landfill unless these changes are made.

- Secondly, this bill would **provide the authority for the Secretary of the KDHE to accept applications for a solid waste facility from either a land owner or a landfill operator**. Currently, only a land owner can make application for a landfill permit. This change we are proposing would not restrict the Secretary's current authorities related to permit issuance in any regard.
- Finally, the bill **provides for the continuation of the exemption from tipping fees for privately-owned landfills** where the waste is generated by an industrial facility and disposed on that facility's site.

During the hearings in the Senate Natural Resources Committee, the KDHE made several suggestions for changes in our original proposal that we accepted. What you have before you today represents that revised language. We were thankful that we could work with the agency to modify the original proposal in a way that was acceptable to both of us.

This is an important piece of legislation to Sunflower and is crucial to our continued development at the Holcomb Station.

We ask for your support of this proposal and would be happy to answer any questions you may have at the appropriate time.

SESSION OF 2006

SUPPLEMENTAL NOTE ON SENATE BILL NO. 362

As Amended by Senate Committee on
Natural Resources

Brief*

SB 362 would amend three statutes that are a part of the act under which solid waste disposal areas are regulated.

The bill would create a new category of solid waste disposal area defined as an "industrial facility." The term would include all operations, processes, and structures involved in the manufacture or production of goods, commodities, materials, or other products located on or adjacent to an industrial site. An industrial facility would include all processes and applications generating industrial waste that may be disposed of at a solid waste disposal area.

Other provisions of the bill would clarify existing law with respect to requirements for financial assurances for closure and postclosure which must be in place as a condition of the granting of a permit from the Kansas Department of Health and Environment. Current provisions of law outlining the types of financial assurances required for a permittee would apply to those permittees who own the land where a solid waste processing facility or disposal area is located. New provisions would provide more restrictive financial assurance requirements if the permittee does not own the land where the solid waste processing facility or disposal area is located. Those financial assurances for closure and postclosure care, when the permittee does not own the land, would include a trust fund, a surety bond guaranteeing payment, or an irrevocable letter of credit.

Another provision of current law would be modified to clarify that industrial waste disposed of at a facility would not be required to pay the state's solid waste tipping fee if the facility is either operated by or for an industrial facility. Under current law industrial waste disposed of on the site of the permittee's disposal facility is not subject to the state's tipping fee.

Background

This bill was introduced at the request of a spokesperson from Sunflower Electric Power Corporation. At the hearing on the bill, a representative of Sunflower explained that new generating facilities would be built at the Holcomb facility in conjunction with a Colorado cooperative, and the intentions are for all facilities to have access jointly to the industrial waste disposal facility at the current Holcomb plant. The conferee explained that Sunflower had reorganized and created a subsidiary that has become the permittee of the facility. The conferee explained, with the reorganization, Sunflower is not technically in compliance with current state solid waste disposal law.

Also testifying and providing proposed amendments was a spokesperson from the Kansas Department of Health and Environment. The conferee explained that the agency was neutral on the bill, but did have suggested amendments. The conferee explained that existing law requires a permittee to own the land where the disposal facility is located. The agency suggested the amendments which made the financial assurance requirements for closure and postclosure costs more restrictive in those cases where the permittee does not own the land where the disposal area is located as well as other amendments included in the bill.

Appearing in opposition to the bill was a representative of the Kansas Chapter of the Sierra Club.

The fiscal note on the original bill indicates that the Department of Health and Environment believes the bill would not have a fiscal effect because no fees have ever been collected from the industrial facilities. Because of a corporate restructuring at one facility, the facility now appears to owe the tonnage fees. Under SB 362, the fees, estimated at \$100,000 per year, would not be paid. Similar revenue losses could occur at other facilities that cease owning their landfills, or at newly permitted industrial landfills where the permit holder does not own the land where the landfill is located.



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

Testimony on Senate Bill 362
Presented to
House Environment Committee
By William L. Bider
Director, Bureau of Waste Management
March 2, 2006

KDHE appreciates this opportunity to provide testimony on Senate Bill 362. Overall, KDHE is taking a neutral position on this bill; however, if the Legislature decides to move forward with passage, we recommend that an amendment be made. This amendment is in addition to an earlier amendment recommended by KDHE and incorporated into the bill in the Senate. Our testimony today provides the new suggested amendment as well as a brief explanation of what this bill really accomplishes.

To understand what this bill will do, some background related to current law is needed. Existing law requires a landfill permit applicant to own the land where the landfill is to be located, if the landfill is a type that requires long-term monitoring or care (i.e., groundwater monitoring). In addition, to be exempt from the \$1 per ton state landfill tonnage fee, a landfill for industrial waste must be located on the same site where the waste is generated and the landfill must be owned and operated by the company generating the waste.

Due to corporate restructuring, an electric power generating company that previously owned an on-site landfill for its coal combustion wastes no longer owns the land where its landfill is located. That power company also has applied for a permit to expand its landfill to accommodate the planned development of additional power generating capacity. The new power generating unit will likely be owned by multiple parties. The expressed long-term goal of the power generating company is to remain as the landfill permit holder while maintaining their historical exemption from the tonnage fee. Changes to the law are necessary to accomplish this goal.

KDHE considers the exemption to tonnage fees to be a policy decision for the Legislature; thus, we are neutral on this point. However, when a permit holder does not own the land where a landfill is located, there is some increased concern related to long-term landfill care and financial responsibility. For this reason, an amendment was offered and accepted in the Senate to require that only the most secure financial assurance instruments be used when the

DIVISION OF ENVIRONMENT
Bureau of Waste Management
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 320, TOPEKA
Voice 785-296-1600 Fax 785-296-8909 <http://www.kdhe.state.kansas.gov>

House Environment Committee
March 2, 2006
Attachment 6

permit holder does not own the land where the landfill will be located. The bill now specifies that certain financial assurance instruments, including insurance and a corporate test, cannot be used when the permit holder does not own the land where their landfill is located. Allowable instruments include irrevocable letters of credit, trust funds, and surety bonds.

The new amendment we are offering today addresses another potential problem that could arise when the landfill permit holder does not own the land. It is possible that changes in operations or new structures may be needed at a landfill to protect human health and the environment. KDHE may direct a landfill permit holder to modify their facility through construction activity utilizing property that was not initially proposed for development in the permit application. Examples of facility modifications could be new stormwater controls (e.g., drainage channels, containment ponds, etc.), landfill gas collection and processing equipment, and leachate storage tanks. If KDHE directs the permit holder to make facility modifications that impact the landfill property, the permit holder may not be able to implement the modifications until the landowner consents. If the landowner does not agree or takes a long time to consider and approve of such a request environmental impacts could occur.

To address this concern, we are offering an amendment to be inserted in line 9 on page 10 that requires a landfill permit applicant to provide proof that the land owner has granted an easement to the permit applicant to perform whatever measures are necessary during the operation of the landfill and throughout the post-closure care period. In addition, the easement must be recorded on the property deed and run with the land if the property is transferred to a new owner. Without this new requirement, there is no assurance that necessary actions will be implemented to protect the environment when a landfill permit holder does not own the land where their landfill is located.

Thank you again for this opportunity to provide testimony on this bill. We would be happy to answer any questions you may have.

1 (3) For a solid waste disposal area permit issued on or after July 1,
 2 1999, proof that the ~~permittee~~ *applicant either* owns the land where the
 3 disposal area will be located *or operates the solid waste disposal area for*
 4 *an adjacent or on-site industrial facility*, if the disposal area is: (A) A
 5 municipal solid waste landfill; or (B) a solid waste disposal area that has:
 6 (i) A leachate or gas collection or treatment system; (ii) waste containment
 7 systems or appurtenances with planned maintenance schedules; or (iii)
 8 an environmental monitoring system with planned maintenance sched-
 9 ules or periodic sampling and analysis requirements. This requirement
 10 shall not apply to a permit for lateral or vertical expansion contiguous to
 11 a permitted solid waste disposal area in operation on July 1, 1999, if such
 12 expansion is on land leased by the permittee before April 1, 1999.

13 Sec. 3. K.S.A. 65-3415b is hereby amended to read as follows: 65-
 14 3415b. (a) There is hereby imposed a state solid waste tonnage fee of
 15 \$1.00 for each ton or equivalent volume of solid waste disposed of at any
 16 solid waste disposal area in this state other than solid waste enumerated
 17 in subsection (c) or solid waste disposal authorized by the secretary pur-
 18 suant to subsection (a) of K.S.A. 65-3407c, and amendments thereto.

19 (b) There is hereby imposed a state solid waste tonnage fee of \$1.00
 20 for each ton or equivalent volume of solid waste transferred out of Kansas
 21 through a transfer station, other than waste enumerated in subsection (c).

22 (c) The fees imposed by this section shall not apply to:

23 (1) Any waste tire, as defined by K.S.A. 65-3424, and amendments
 24 thereto, disposed in or at a permitted solid waste disposal area;

25 (2) sludges from public drinking water supply treatment plants, when
 26 disposed of at a monofill permitted by the secretary;

27 (3) clean rubble;

28 (4) solid waste solely consisting of vegetation from land clearing and
 29 grubbing, utility maintenance and seasonal or storm-related cleanup but
 30 such exception shall not apply to yard waste;

31 (5) construction and demolition waste disposed of by the federal gov-
 32 ernment, by the state of Kansas, or by any city, county or other unit of
 33 local government in the state of Kansas, or by any person on behalf
 34 thereof; and

35 (6) industrial waste disposed of at a solid waste disposal area which
 36 is permitted by the secretary, ~~and is owned and operated by the or op-~~
 37 ~~erated by or for the industrial~~ facility generating the waste and *which is*
 38 *used only for industrial waste generated by such industrial facility.*

39 (d) The operator of a solid waste disposal area or transfer station shall
 40 pay the fee imposed by this section.

41 (e) The secretary of health and environment shall administer, enforce
 42 and collect the fee imposed by this section. The secretary shall have the
 43 authority to waive such fee when large quantities of waste are generated

If the applicant does not own the land, the applicant shall also provide proof that the applicant has acquired and duly recorded an easement on the deed to the landfill property. The easement shall authorize the applicant to carry out landfill operations, closure, post-closure care, monitoring, and all related construction activities on the landfill property as required by applicable solid waste laws and regulations, as established in permit conditions, or as ordered or directed by the secretary. Such easement shall run with the land if the landfill property is transferred and the easement may only be vacated with the consent of the secretary.

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