

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 P.M. on March 7, 2006 in Room 231-N of the Capitol.

All members were present except:

- Representative Bill Light- excused
- Representative Pat George- excused
- Representative Vaughn Flora- excused

Committee staff present:

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

Conferees appearing before the committee:

- Ron Hammerschmidt, Kansas Department of Health of Environment
- John Mitchell, Director, Bureau of Environmental Field Services, Department of Health and Environment
- James Gulliford, Regional Administrator, Region VII, United State Environmental Protection Agency

Others attending:

See attached list.

Chairperson Freeborn asked that everyone in the gallery sign the guest log. She announced the agenda for Thursday, March 9th's meeting: Possible action on **SB386 - Air contaminant emission sources, regional haze** and **SB453 - Environmental laws; compliance audit privilege; immunity; lesser penalties for violations**. Unless more bills are received by the committee, there will be no scheduled meeting the week of March 13. There will be a meeting on March 21st for the purpose of approving the committee minutes .

Chairperson Freeborn opened **SB362 - Solid waste, industrial facilities, permits** for final action.

A copy of a letter from Steve Mitchell, Sunflower Electric, was given to each committee member (See attachment 1) stating that Sunflower Electric is willing to accept the balloon offered at the Tuesday, March 2nd meeting by Kansas Department of Health and Environment(KDHE). A copy of the balloon is also attached (See attachment 2).

Representative Sloan moved to adopt the balloon submitted by KDHE, Representative Johnson seconded, motion carried.

Representative Hayzlett moved that SB362 be recommended, as amended, favorable for passage, Representative Olson seconded, motion carried. Representative Hayzlett will carry the bill.

Chairperson Freeborn opened the hearing on **SB453**.

Ron Hammerschmidt, Kansas Department of Health and Environment, introduced John Mitchell, Director, Bureau of Environmental Field Services, KDHE. Mr Mitchell testified as a proponent. (See attachment 3).

James Gulliford, Regional Administrator, Region VII, United States Environmental Protection Agency, proponent, testified. (See attachment 4).

Questions and discussion followed the testimony.

Chairperson Freeborn adjourned the meeting at 4:16. The next scheduled meeting is Thursday, March 9th.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: 03/07/06

NAME	REPRESENTING
DAVE Holthaus	KEC
Steve Miller	Sunflower
Andy Shaw	Waste Mgmt Inc.
John Mitchell	KDHE
Becky Delpsh	EPA Region 7
Shari Albrucht	KDHE
Karen Flournoy	EPA Region 7
Bill Bider	KDHE
Estelle Montgomery	Hein Law Firm
Steve Kragney	WASTE MANAGEMENT
Bill Brady	" Comechows -
Tom Hill	self
TOM DAY	KCC
Jennifer Lyon	Ineger, Smith, & Associates
Shawn Herdick	KS Landfill Assn.
SEAN MILLER	KS Dairy Assn
Charles Benjamin	KS Sierra Club

From: "Miller, Steve" <smiller@sunflower.net>
To: <freeborn@house.state.ks.us>
Date: 3/3/2006 8:09:58 AM
Subject: Senate Bill 362

March 3, 2006

Representative Freeborn,

As we discussed yesterday evening, Sunflower is willing to accept the amendment offered by the KDHE yesterday during their testimony. After considering the risk the State could face from "some" landfill operators should this proposal become law, we are sympathetic to the agencies dilemma and have determined that it is in the best interest of all to accept the amendment as proposed by Mr. Bider yesterday.

Please accept our thanks for holding the hearing yesterday. We sincerely appreciate the cooperation you and your committee have shown us, and we look forward to your next meeting on Tuesday.

Sincerely,

Steve Miller
Sr. Mgr., External Affairs
Sunflower Electric Power Corporation
(785) 623-3364
smiller@sunflower.net

Sunflower people value, and expect one another to behave in ways that consistently exhibit the characteristics of Technical Competency, Respect and Dignity, Accountability, Integrity, Trustworthiness and Servant Leadership. We believe the consistent application of these core values in reaching the "best answer" in all cases will best enable us to fulfill our mission statement of providing reliable, long-term power supply and transmission services to our Member-Owners at the lowest possible cost consistent with sound business and cooperative principles.

CC: "Dave Holthaus" <dholthaus@kec.org>

SENATE BILL No. 362

By Committee on Utilities

1-12

10 AN ACT concerning solid waste; relating to solid waste disposal areas;
11 amending K.S.A. 65-3407 and 65-3415b and K.S.A. 2005 Supp. 65-
12 3402 and repealing the existing sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2005 Supp. 65-3402 is hereby amended to read as
16 follows: 65-3402. As used in this act, unless the context otherwise
17 requires.

18 (a) "Solid waste" means garbage, refuse, waste tires as defined by
19 K.S.A. 65-3424, and amendments thereto, and other discarded materials,
20 including, but not limited to, solid, semisolid, sludges, liquid and con-
21 tained gaseous waste materials resulting from industrial, commercial, ag-
22 ricultural and domestic activities. Solid waste does not include hazardous
23 wastes as defined by subsection (f) of K.S.A. 65-3430, and amendments
24 thereto, recyclables or the waste of domestic animals as described by
25 subsection (a)(1) of K.S.A. 65-3409, and amendments thereto.

26 (b) "Solid waste management system" means the entire process of
27 storage, collection, transportation, processing, and disposal of solid wastes
28 by any person engaging in such process as a business, or by any state
29 agency, city, authority, county or any combination thereof.

30 (c) "Solid waste processing facility" means incinerator, composting
31 facility, household hazardous waste facility, waste-to-energy facility, trans-
32 fer station, reclamation facility or any other location where solid wastes
33 are consolidated, temporarily stored, salvaged or otherwise processed
34 prior to being transported to a final disposal site. This term does not
35 include a scrap material recycling and processing facility.

36 (d) "Solid waste disposal area" means any area used for the disposal
37 of solid waste from more than one residential premises, or one or more
38 commercial, industrial, manufacturing or municipal operations. "Solid
39 waste disposal area" includes all property described or included within
40 any permit issued pursuant to K.S.A. 65-3407, and amendments thereto.

41 (e) "Person" means individual, partnership, firm, trust, company, as-
42 sociation, corporation, individual or individuals having controlling or ma-
43 jority interest in a corporation, institution, political subdivision, state

1 agency or federal department or agency.

2 (f) "Waters of the state" means all streams and springs, and all bodies
3 of surface or groundwater, whether natural or artificial, within the bound-
4 aries of the state.

(g) "Secretary" means the secretary of health and environment.

7 (h) "Department" means the Kansas department of health and
environment.

8 (i) "Disposal" means the discharge, deposit, injection, dumping, spill-
9 ing, leaking or placing of any solid waste into or on any land or water so
10 that such solid waste or any constituent thereof may enter the environ-
11 ment or be emitted into the air or discharged into any water.

12 (j) "Open dumping" means the disposal of solid waste at any solid
13 waste disposal area or facility which is not permitted by the secretary
14 under the authority of K.S.A. 65-3407, and amendments thereto, or the
15 disposal of solid waste contrary to rules and regulations adopted pursuant
16 to K.S.A. 65-3406, and amendments thereto.

17 (k) "Generator" means any person who produces or brings into ex-
18 istence solid waste.

19 (l) "Monitoring" means all procedures used to (1) systematically in-
20 spect and collect data on the operational parameters of a facility, an area
21 or a transporter, or (2) to systematically collect and analyze data on the
22 quality of the air, groundwater, surface water or soils on or in the vicinity
23 of a solid waste processing facility or solid waste disposal area.

24 (m) "Closure" means the permanent cessation of active disposal op-
25 erations, abandonment of the disposal area, revocation of the permit or
26 filling with waste of all areas and volume specified in the permit and
27 preparing the area for the long-term care.

28 (n) "Postclosure" means that period of time subsequent to closure of
29 a solid waste disposal area when actions at the site must be performed.

30 (o) "Reclamation facility" means any location at which material con-
31 taining a component defined as a hazardous substance pursuant to K.S.A.
65-3452a and amendments thereto or as an industrial waste pursuant to
this section is processed.

34 (p) "Designated city" means a city or group of cities which, through
35 interlocal agreement with the county in which they are located, is dele-
36 gated the responsibility for preparation, adoption or implementation of
37 the county solid waste plan.

38 (q) "Nonhazardous special waste" means any solid waste designated
39 by the secretary as requiring extraordinary handling in a solid waste dis-
posal area.

42 (r) "Recyclables" means any materials that will be used or reused, or
43 prepared for use or reuse, as an ingredient in an industrial process to
make a product, or as an effective substitute for a commercial product.

1 “Recyclables” includes, but is not limited to, paper, glass, plastic, munic-
2 ipal water treatment residues, as defined by K.S.A. 65-163 and amend-
3 ments thereto, and metal, but does not include yard waste.

4 (s) “Scrap material processing industry” means any person who ac-
cepts, processes and markets recyclables.

5 (t) “Scrap material recycling and processing facility” means a fixed
7 location that utilizes machinery and equipment for processing only
8 recyclables.

9 (u) “Construction and demolition waste” means solid waste resulting
10 from the construction, remodeling, repair and demolition of structures,
11 roads, sidewalks and utilities; untreated wood and untreated sawdust from
12 any source; treated wood from construction or demolition projects; small
13 amounts of municipal solid waste generated by the consumption of food
14 and drinks at construction or demolition sites, including, but not limited
15 to, cups, bags and bottles; furniture and appliances from which ozone
16 depleting chlorofluorocarbons have been removed in accordance with the
17 provisions of the federal clean air act; solid waste consisting of motor
18 vehicle window glass; and solid waste consisting of vegetation from land
19 clearing and grubbing, utility maintenance, and seasonal or storm-related
20 cleanup. Such wastes include, but are not limited to, bricks, concrete and
21 other masonry materials, roofing materials, soil, rock, wood, wood prod-
22 ucts, wall or floor coverings, plaster, drywall, plumbing fixtures, electrical
23 wiring, electrical components containing no hazardous materials, nonas-
24 bestos insulation and construction related packaging. “Construction and
25 demolition waste” shall not include waste material containing friable as-
26 bestos, garbage, furniture and appliances from which ozone depleting
27 chlorofluorocarbons have not been removed in accordance with the pro-
28 visions of the federal clean air act, electrical equipment containing haz-
29 ardous materials, tires, drums and containers even though such wastes
30 resulted from construction and demolition activities. Clean rubble that is
31 mixed with other construction and demolition waste during demolition
or transportation shall be considered to be construction and demolition
waste.

34 (v) “Construction and demolition landfill” means a permitted solid
35 waste disposal area used exclusively for the disposal on land of construc-
36 tion and demolition wastes. This term shall not include a site that is used
37 exclusively for the disposal of clean rubble.

38 (w) “Clean rubble” means the following types of construction and
39 demolition waste: Concrete and concrete products including reinforcing
40 steel, asphalt pavement, brick, rock and uncontaminated soil as defined
in rules and regulations adopted by the secretary.

41 (x) “Industrial waste” means all solid waste resulting from manufac-
42 turing, commercial and industrial processes which is not suitable for dis-
43

1 charge to a sanitary sewer or treatment in a community sewage treatment
2 plant or is not beneficially used in a manner that meets the definition of
3 recyclables. Industrial waste includes, but is not limited to: Mining wastes
4 from extraction, beneficiation and processing of ores and minerals unless
those minerals are returned to the mine site; fly ash, bottom ash, slag and
flue gas emission wastes generated primarily from the combustion of coal
7 or other fossil fuels; cement kiln dust; waste oil and sludges; waste oil
8 filters; and fluorescent lamps.

9 (y) "Composting facility" means any facility that composts wastes and
10 has a composting area larger than one-half acre.

11 (z) "Household hazardous waste facility" means a facility established
12 for the purpose of collecting, accumulating and managing household haz-
13 ardous waste and may also include small quantity generator waste or ag-
14 ricultural pesticide waste, or both. Household hazardous wastes are con-
15 sumer products that when discarded exhibit hazardous characteristics.

16 (aa) "Waste-to-energy facility" means a facility that processes solid
17 waste to produce energy or fuel.

18 (bb) "Transfer station" means any facility where solid wastes are
19 transferred from one vehicle to another or where solid wastes are stored
20 and consolidated before being transported elsewhere, but shall not in-
21 clude a collection box provided for public use as a part of a county-op-
22 erated solid waste management system if the box is not equipped with
23 compaction mechanisms or has a volume smaller than 20 cubic yards.

24 (cc) "Municipal solid waste landfill" means a solid waste disposal area
25 where residential waste is placed for disposal. A municipal solid waste
26 landfill also may receive other nonhazardous wastes, including commer-
27 cial solid waste, sludge and industrial solid waste.

28 (dd) "Construction related packaging" means small quantities of
29 packaging wastes that are generated in the construction, remodeling or
30 repair of structures and related appurtenances. "Construction related
31 packaging" does not include packaging wastes that are generated at retail
establishments selling construction materials, chemical containers gener-
ated from any source or packaging wastes generated during mainte-
34 nance of existing structures.

35 (ee) "Industrial facility" includes all operations, processes and struc-
36 tures involved in the manufacture or production of goods, materials, com-
37 modities or other products located on, or adjacent to, an industrial site
38 and is not limited to a single owner or to a single industrial process. For
39 purposes of this act, it includes all industrial processes and applications
that may generate industrial waste which may be disposed at a solid waste
disposal area which is permitted by the secretary and operated for the
industrial facility generating the waste and used only for industrial waste.

43 Sec. 2. K.S.A. 65-3407 is hereby amended to read as follows: 65-

1 3407. (a) Except as otherwise provided by K.S.A. 65-3407c. and amend-
2 ments thereto, no person shall construct, alter or operate a solid waste
3 processing facility or a solid waste disposal area of a solid waste manage-
4 ment system, except for clean rubble disposal sites, without first obtaining
a permit from the secretary.

6 (b) Every person desiring to obtain a permit to construct, alter or
7 operate a solid waste processing facility or disposal area shall make ap-
8 plication for such a permit on forms provided for such purpose by the
9 rules and regulations of the secretary and shall provide the secretary with
10 such information as necessary to show that the facility or area will comply
11 with the purpose of this act. Upon receipt of any application and payment
12 of the application fee, the secretary, with advice and counsel from the
13 local health authorities and the county commission, shall make an invest-
14 igation of the proposed solid waste processing facility or disposal area
15 and determine whether it complies with the provisions of this act and any
16 rules and regulations and standards adopted thereunder. The secretary
17 also may consider the need for the facility or area in conjunction with the
18 county or regional solid waste management plan. If the investigation re-
19 veals that the facility or area conforms with the provisions of the act and
20 the rules and regulations and standards adopted thereunder, the secretary
21 shall approve the application and shall issue a permit for the operation of
22 each solid waste processing or disposal facility or area set forth in the
23 application. If the facility or area fails to meet the rules and regulations
24 and standards required by this act the secretary shall issue a report to the
25 applicant stating the deficiencies in the application. The secretary may
26 issue temporary permits conditioned upon corrections of construction
27 methods being completed and implemented.

28 (c) Before reviewing any application for permit, the secretary shall
29 conduct a background investigation of the applicant. The secretary shall
30 consider the financial, technical and management capabilities of the ap-
31 plicant as conditions for issuance of a permit. The secretary may reject
the application prior to conducting an investigation into the merits of the
application if the secretary finds that:

34 (1) The applicant currently holds, or in the past has held, a permit
35 under this section and while the applicant held a permit under this section
36 the applicant violated a provision of subsection (a) of K.S.A. 65-3409, and
37 amendments thereto; or

38 (2) the applicant previously held a permit under this section and that
39 permit was revoked by the secretary; or

40 (3) the applicant failed or continues to fail to comply with any of the
41 provisions of the air, water or waste statutes, including rules and regula-
42 tions issued thereunder, relating to environmental protection or to the
43 protection of public health in this or any other state or the federal gov-

1 erment of the United States, or any condition of any permit or license
2 issued by the secretary; or if the secretary finds that the applicant has
3 shown a lack of ability or intention to comply with any provision of any
4 law referred to in this subsection or any rule and regulation or order or
permit issued pursuant to any such law as indicated by past or continuing
violations; or

7 (4) the applicant is a corporation and any principal, shareholder, or
8 other person capable of exercising total or partial control of such corpo-
9 ration could be determined ineligible to receive a permit pursuant to
10 subsection (c)(1), (2) or (3) above.

11 (d) Before reviewing any application for a permit, the secretary may
12 request that the attorney general perform a comprehensive criminal back-
13 ground investigation of the applicant; or in the case of a corporate appli-
14 cant, any principal, shareholder or other person capable of exercising total
15 or partial control of the corporation. The secretary may reject the appli-
16 cation prior to conducting an investigation into the merits of the appli-
17 cation if the secretary finds that serious criminal violations have been
18 committed by the applicant or a principal of the corporation.

19 (e) (1) The fees for a solid waste processing or disposal permit shall
20 be established by rules and regulations adopted by the secretary. The fee
21 for the application and original permit shall not exceed \$5,000. Except as
22 provided by paragraph (2), the annual permit renewal fee shall not exceed
23 \$2,000. No refund shall be made in case of revocation. In establishing
24 fees for a construction and demolition landfill, the secretary shall adopt
25 a differential fee schedule based upon the volume of construction and
26 demolition waste to be disposed of at such landfill. All fees shall be de-
27 posited in the state treasury and credited to the solid waste management
28 fund. A city, county, other political subdivision or state agency shall be
29 exempt from payment of the fee but shall meet all other provisions of
30 this act.

31 (2) The annual permit renewal fee for a solid waste disposal area
which is permitted by the secretary, owned ~~and~~ or operated by the facility
generating the waste and used only for industrial waste generated by such
34 facility shall be not less than \$1,000 nor more than \$4,000. In establishing
35 fees for such disposal areas, the secretary shall adopt a differential fee
36 schedule based upon the characteristics of the disposal area sites.

37 (f) Plans, designs and relevant data for the construction of solid waste
38 processing facilities and disposal sites shall be prepared by a professional
39 engineer licensed to practice in Kansas and shall be submitted to the
department for approval prior to the construction, alteration or operation
of such facility or area. In adopting rules and regulations, the secretary
may specify sites, areas or facilities where the environmental impact is
43 minimal and may waive such preparation requirements provided that a

1 review of such plans is conducted by a professional engineer licensed to
2 practice in Kansas.

3 (g) Each permit granted by the secretary, as provided in this act, shall
4 be subject to such conditions as the secretary deems necessary to protect
5 human health and the environment and to conserve the sites. Such con-
6 ditions shall include approval by the secretary of the types and quantities
7 of solid waste allowable for processing or disposal at the permitted
8 location.

9 (h) ~~As a condition of granting~~ **Before issuing or renewing** a permit
10 to operate ~~any~~ **a solid waste** processing facility or **solid waste** disposal
11 area ~~for solid waste~~, the secretary shall require the permittee to **dem-**
12 **onstrate that funds are available to ensure payment of the cost of**
13 **closure and postclosure care and provide liability insurance for ac-**
14 **cidental occurrences at the permitted facility.** (1) ~~Provide~~ **If the per-**
15 **mittee owns the land where the solid waste processing facility or**
16 **disposal area is located or the permit for the facility was issued**
17 **before the date this act is published in the Kansas register, the per-**
18 **mittee shall satisfy the financial assurance requirement for closure**
19 **and postclosure care by providing** a trust fund, a surety bond guar-
20 anteeing payment, ~~an~~ irrevocable letter of credit or insurance policy, ~~to~~
21 ~~pay the costs of closure and postclosure care, or (2) pass by passing~~ a
22 financial test or ~~obtain~~ **obtaining** a financial guarantee from a related
23 entity, to guarantee the future availability of funds ~~to pay the costs of~~
24 ~~closure and postclosure care~~. The secretary shall prescribe the methods
25 to be used by a permittee to demonstrate sufficient financial strength to
26 become eligible to use a financial test or a financial guarantee procedure
27 in lieu of providing the **other** financial instruments ~~listed in (1) above~~.
28 Solid waste processing facilities or disposal areas, except municipal solid
29 waste landfills, may also demonstrate financial assurance ~~for closure and~~
30 ~~postclosure care~~ costs by use of ad valorem taxing power. ~~In addition, the~~

31 (2) **If the permittee does not own the land where the solid waste**
32 **processing facility or disposal area is located and the permit for the**
33 **facility is issued after the date this act is published in the Kansas**
34 **register, the permittee shall satisfy the financial assurance require-**
35 **ment for closure and postclosure care by providing a trust fund, a**
36 **surety bond guaranteeing payment, or an irrevocable letter of**
37 **credit.**

38 (3) The secretary shall require ~~the each~~ permittee of a **solid waste**
39 **processing facility or disposal area** to provide liability insurance cov-
40 erage during the period that the facility or area is active, and during the
41 term of the facility or area is subject to postclosure care, in such amount
42 as determined by the secretary to insure the financial responsibility of the
43 permittee for accidental occurrences at the site of the facility or area. Any

1 such liability insurance as may be required pursuant to this subsection or
2 pursuant to the rules and regulations of the secretary shall be issued by
3 an insurance company authorized to do business in Kansas or by a li-
4 censed insurance agent operating under authority of K.S.A. 40-246b, and
5 amendments thereto, and shall be subject to the insurer's policy provi-
6 sions filed with and approved by the commissioner of insurance pursuant
7 to K.S.A. 40-216, and amendments thereto, except as authorized by
8 K.S.A. 40-246b, and amendments thereto. Nothing contained in this sub-
9 section shall be deemed to apply to any state agency or department or
10 agency of the federal government.

11 (i) (1) Permits granted by the secretary as provided by this act shall
12 not be transferable except as follows:

13 (A) A permit for a solid waste disposal area may be transferred if the
14 area is permitted for only solid waste produced on site from manufactur-
15 ing and industrial processes or on-site construction or demolition activi-
16 ties and the only change in the permit is a name change resulting from a
17 merger, acquisition, sale, corporate restructuring or other business
18 transaction.

19 (B) A permit for a solid waste disposal area or a solid waste processing
20 facility may be transferred if the secretary approves of the transfer based
21 upon information submitted to the secretary sufficient to conduct a back-
22 ground investigation of the new owner as specified in subsections (c) and
23 (d) of K.S.A. 65-3407, and amendments thereto, and a financial assurance
24 evaluation as specified in subsection (h) of K.S.A. 65-3407, and amend-
25 ments thereto. Such information shall be submitted to the secretary not
26 more than one year nor less than 60 days before the transfer. If the
27 secretary does not approve or disapprove the transfer within 30 days after
28 all required information is submitted to the secretary, the transfer shall
29 be deemed to have been approved.

30 (2) Permits granted by the secretary as provided by this act shall be
31 revocable or subject to suspension whenever the secretary shall determine
32 that the solid waste processing or disposal facility or area is, or has been
33 constructed or operated in violation of this act or the rules and regulations
34 or standards adopted pursuant to the act, or is creating or threatens to
35 create a hazard to persons or property in the area or to the environment,
36 or is creating or threatens to create a public nuisance, or upon the failure
37 to make payment of any fee required under this act.

38 (3) The secretary also may revoke, suspend or refuse to issue a permit
39 when the secretary determines that past or continuing violations of the
40 provisions of K.S.A. 65-3409, subsection (c)(3) of K.S.A. 65-3407 or
41 K.S.A. 65-3424b, and amendments thereto, have been committed by a
42 permittee, or any principal, shareholder or other person capable of ex-
43 exercising partial or total control over a permittee.

1 (j) Except as otherwise provided by subsection (i)(1), the secretary
2 may require a new permit application to be submitted for a solid waste
3 processing facility or a solid waste disposal area in response to any change,
4 either directly or indirectly, in ownership or control of the permitted real
property or the existing permittee.

5 (k) In case any permit is denied, suspended or revoked the person,
6 city, county or other political subdivision or state agency may request a
7 hearing before the secretary in accordance with K.S.A. 65-3412, and
8 amendments thereto.
9

10 (l) (1) No permit to construct or operate a solid waste disposal area
11 shall be issued on or after the effective date of this act if such area is
12 located within ½ mile of a navigable stream used for interstate commerce
13 or within one mile of an intake point for any public surface water supply
14 system.

15 (2) Any permit, issued before the effective date of this act, to con-
16 struct or operate a solid waste disposal area is hereby declared void if
17 such area is not yet in operation and is located within ½ mile of a navi-
18 gable stream used for interstate commerce or within one mile of an intake
19 point for any public surface water supply system.

20 (3) The provisions of this subsection shall not be construed to pro-
21 hibit: (A) Issuance of a permit for lateral expansion onto land contiguous
22 to a permitted solid waste disposal area in operation on the effective date
23 of this act; (B) issuance of a permit for a solid waste disposal area for
24 disposal of a solid waste by-product produced on-site; (C) renewal of an
25 existing permit for a solid waste area in operation on the effective date
26 of this act; or (D) activities which are regulated under K.S.A. 65-163
27 through 65-165 or 65-171d, and amendments thereto.

28 (m) Before reviewing any application for a solid waste processing fa-
29 cility or solid waste disposal area, the secretary shall require the following
30 information as part of the application:

31 (1) Certification by the board of county commissioners or the mayor
of a designated city responsible for the development and adoption of the
32 solid waste management plan for the location where the processing facility
33 or disposal area is or will be located that the processing facility or disposal
34 area is consistent with the plan. This certification shall not apply to a solid
35 waste disposal area for disposal of only solid waste produced on site from
36 manufacturing and industrial processes or from on-site construction or
37 demolition activities.
38

39 (2) If the location is zoned, certification by the local planning and
40 zoning authority that the processing facility or disposal area is consistent
with local land use restrictions or, if the location is not zoned, certification
41 from the board of county commissioners that the processing facility or
42 disposal area is compatible with surrounding land use.
43

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 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. These requirements

1 due to major natural disasters such as floods, tornados and fires unless
2 persons paying such fees are able to recover such fees from the federal
3 government. Except as otherwise provided by subsections (a) and (b), all
4 laws and rules and regulations of the secretary of revenue relating to the
5 administration, enforcement and collection of the retailers' sales tax shall
6 apply to such fee insofar as they can be made applicable. The secretary
7 of health and environment shall adopt any other rules and regulations as
8 necessary for the efficient and effective administration, enforcement and
9 collection thereof.

10 (f) The secretary of health and environment shall remit all moneys
11 collected from fees imposed pursuant to subsections (a) and (b) to the
12 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
13 amendments thereto. Upon receipt of each such remittance, the state
14 treasurer shall deposit the entire amount in the state treasury to the credit
15 of the solid waste management fund created by K.S.A. 65-3415a, and
16 amendments thereto.

17 Sec. 4. K.S.A. 65-3407 and 65-3415b and K.S.A. 2005 Supp. 65-3402
18 are hereby repealed.

19 Sec. 5. This act shall take effect and be in force from and after its
20 publication in the Kansas register.



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

Testimony before House Environment Committee

Kansas Environmental Audit Privilege and Immunity Law

**Presented by
John W. Mitchell
Director, Bureau of Environmental Field Services
Kansas Department of Health and Environment**

March 7, 2006

Good afternoon Chairperson Freeborn and members of the House Environment Committee. I am pleased to be here today to provide background and testimony on proposed changes to the existing Kansas environmental audit privilege and immunity law.

Audit privilege laws have been used by many states to provide immunity from prosecution or penalty mitigation for voluntarily disclosed environmental violations that were discovered either as a result of conducting an environmental audit or as part of an environmental management system. The spirit of such laws, both nationally and in Kansas, is to benefit environmental protection efforts by encouraging business and industry to take self-initiated actions to assess or audit their compliance with environmental laws and correct any violations found. Such laws should be attractive to businesses and industry regardless of size, but especially to small businesses who have never applied for or obtained necessary environmental permits, fearing the disclosure of information to state agencies would lead to enforcement and penalties.

The Kansas audit privilege law, K.S.A. 60-3332, et seq., was enacted in 1995. KDHE implemented a policy on environmental audits in 1997. Beginning in 2000, KDHE has maintained a log of audit submittals received. A review of that log reveals that very small numbers of Kansas businesses have taken advantage of the audit provision in the past six years (3 in 2000, 8 in 2001, 6 in 2002, 5 in 2003, 3 in 2004, and 8 in 2005) with the majority of the submittals coming from large corporations.

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House Environment Committee
March 7, 2006
Attachment 3

Since 1993, a total of 27 states have enacted audit privilege laws. Concerns that the initial laws were too permissive and allowed businesses guilty of even criminal violations to escape accountability have been raised on nearly all of those by the U.S. Environmental Protection Agency. All states, with the exception of Illinois and Kansas had addressed EPA's concerns prior to 2005. Illinois repealed its law in August 2005 and Kansas is attempting to make changes acceptable to EPA through this proposed legislation. While KDHE is not aware of Kansas businesses that have escaped criminal prosecution for environmental violations we are concerned that in some cases Kansas businesses have adopted the practice of making annual audit privilege claims rather than seeking to implement effective environmental management systems.

In order to encourage Kansas to make changes in the existing audit law EPA has blocked federal authorization for newer state regulatory provisions. This in turn has resulted in Kansas businesses being subject to inspection and possible enforcement action for regulatory violations by both the state and federal governments. The proposed statutory changes would bring the Kansas law into line with other states and KDHE believes, the changes would be acceptable to EPA.

SB 453 would modify the existing law to:

- update definitions of "environmental audit" and "environmental audit report," and add and define the terms "owner or operator" and "person."
- Repeal a section of the law dealing with the procurement of reports in criminal investigations
- clarify that failure to label each document within the environmental audit report as a privileged document does not constitute a waiver of the privilege
- clarify that a person who conducts or participates in the preparation of an audit report and who has observed physical events of a violation may testify but is not compelled to testify or produce documents
- prohibit an employee of a regulatory agency from requesting, reviewing or otherwise using an audit report during an agency inspection
- provide that a party asserting the privilege under the law has the burden of establishing the applicability of the privilege
- provide additional reasons where a court or hearing officer could require disclosure of the audit as follows:
 1. the report was prepared to avoid disclosure of information in an investigative, administrative, criminal or civil proceeding that was underway or imminent or for which the owner of the facility has been provided written notification that an investigation into specific violations had been initiated;
 2. the audit report shows evidence of substantial actual personal injury; or
 3. the report shows an imminent and substantial endangerment of the public health or the environment
- provide that a person seeking disclosure of an audit report may review the report, but the review does not waive or make the administrative or civil evidentiary privilege inapplicable to the report
- add to the conditions under which the privilege would not extend to include:
 1. information that existed before the initiation and independent of the audit;

2. information prepared after the completion and independent of the audit;
and
 3. information, not otherwise privileged, that is developed or maintained in the course of regularly conducted business activity or regular practice
- clarify that in most instances there is still the authority of the regulatory agency to require technical or remedial action or to seek injunctive relief
 - specify that the immunity provided by the law from administrative or civil penalties does not apply where:
 1. cases of continuous or repeated violations of environmental law have occurred;
 2. violations result in a substantial economic benefit to the violator; and
 3. conditions of a voluntary disclosure are not met but a good faith effort was made to voluntarily disclose and resolve a violation, in which case regulatory authorities may consider the nature and extent of the effort made in deciding the appropriate enforcement response and consider reduction of penalties
 - clarify that immunity does not abrogate the responsibility of a person to report or correct violations, conduct remediation, or respond to third-party actions.

In addition, the Senate added two minor amendments. The first would clarify that nothing in this law shall prohibit the Division of Post Audit from having access during an audit approved by the Legislative Post Audit Committee to all environmental audit report documents in the custody of the agency. The second would require that the agency return environmental audit reports to the facility's owner or operator upon completion of the review of the report. KDHE had no objection to either of these amendments.

In conclusion, passage of SB 453 as proposed will remove the barriers to which EPA objects while continuing the Kansas audit privilege program.

Thank you for your time and attention and I would be happy to respond to any questions.

SESSION OF 2006

SUPPLEMENTAL NOTE ON SENATE BILL NO. 453

As Amended by Senate Committee on
Natural Resources

Brief*

SB 453 would amend various provisions of the Kansas Environmental Audit Privilege Law which was first enacted in 1995.

The bill would update definitions of "environmental audit" and "environmental audit report," and add and define the terms "owner or operator" and "person."

In addition, the bill would:

- Clarify that failure to label each document within the environmental audit report as a privileged document does not constitute a waiver of the privilege;
- Clarify that a person who conducts or participates in the preparation of an audit report and who has observed physical events of an violation may testify but is not compelled to testify or produce documents;
- Prohibit an employee of a regulatory agency from requesting, reviewing or otherwise using an audit report during an agency inspection;
- Provide that a party asserting the privilege under the law has the burden of establishing the applicability of the privilege;
- Provide that a court or hearing officer could require disclosure of the audit report if:
 - The report was prepared to avoid disclosure of information in an investigative, administrative, criminal or civil proceeding that was underway or imminent or for which the owner of the facility has been provided written notification that an

*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>

investigation into specific violations had been initiated;

- The audit report shows evidence of substantial actual personal injury; or
- The report shows an imminent and substantial endangerment of the public health or the environment;
- Provide that a person seeking disclosure of an audit report may review the report, but the review does not waive or make the administrative or civil evidentiary privilege inapplicable to the report;
- Add to the conditions under which the privilege would not extend to include:
 - Information that existed before the initiation and independent of the audit;
 - Information prepared after the completion and independent of the audit;
 - Information, not otherwise privileged, that is developed or maintained in the course of regularly conducted business activity or regular practice;
- Clarify that in most instances there is still the authority of the regulatory agency to require technical or remedial action or to seek injunctive relief;
- Specify that the immunity provided by the law from administrative or civil penalties does not apply where:
 - Cases of continuous or repeated violations of environmental law have occurred;
 - Violations result in a substantial economic benefit to the violator; and
 - Conditions of a voluntary disclosure are not met but a good faith effort was made to voluntarily disclose and resolve a violation, in which case regulatory authorities may consider the nature and extent of the effort made in deciding the appropriate enforcement response and consider reduction of penalties;

- Clarify that the immunity does not abrogate the responsibility of a person to report or correct violations, conduct remediation, or respond to third-party actions; and
- Repeal a section of the law dealing with the procurement of reports in criminal investigations.

Finally, the bill would stipulate that nothing in this law would prohibit the Division of Post Audit from having access during an audit approved by the Legislative Post Audit Committee to all environmental audit report document in the custody of a governmental agency provided the documents are returned to the custody of the governmental agency.

Background

This bill was requested by a spokesperson from the Kansas Department of Health and Environment (KDHE). At the hearing on the bill a spokesperson from the agency explained that the bill was prompted by concerns that the Kansas law and similar laws in other states were too permissive and allowed businesses guilty of criminal violation to escape accountability. These concerns were raised by official with the U.S. Environmental Protection Agency (EPA). Testimony indicated that all states had addressed the concerns raised by EPA except Illinois and Kansas. Testimony indicated that Illinois had repealed its law in August of 2005 and Kansas is in the process of amending its law to meet EPA's concerns. Testimony indicated that KDHE was not aware of any Kansas businesses that had escaped criminal prosecution for environmental violations through the use of the law. The Committee also heard from a representative of Region VII of EPA. This conferee stated the existing Kansas environmental privilege law does not meet the minimum requirements necessary for EPA delegation of federal programs to the state or for EPA to approve state environmental programs. The conferee indicated that the bill remedies this problem. He also stated that with the existing law, EPA is unable to delegate or approve new environmental programs in the State of Kansas. There were no opponents to the bill. The Legislative Post Auditor appeared before the Committee to request an amendment to the bill so that the agency could have access to certain reports during an audit.

The Senate Committee on Natural Resources amended the bill to clarify that the Division of Legislative Post audit would have access

to environmental reports during an audit and to ensure that the records accessed by Legislative Post Audit would be returned to the custodial agency upon completion of any audit.

The fiscal note on the bill indicates that passage is not expected to have any fiscal impact.

March 7, 2006

Testimony before
Kansas House Environment Committee

SB 453: Amendments to Environmental Audit Privilege/Immunity Statute

Presented by James B. Gulliford
Regional Administrator, Region VII
United States Environmental Protection Agency

Good morning, Chairperson Freeborn and Members of the House Environment Committee. I am pleased to be here this morning on behalf the United States Environmental Protection Agency to offer EPA's views as to Senate Bill 453, which would amend Kansas' existing environmental audit privilege/immunity law.

Kansas' existing statute, enacted in 1995, creates a statutory privilege for environmental audit reports and information and provides broad immunity from enforcement for environmental violations. The current Kansas statute impedes EPA's ability to delegate or approve state programs and presents an additional burden to Kansas businesses disclosing violations.

Since 1993, twenty six states across the country, in addition to Kansas, have enacted some type of audit legislation. All 26 of those states have addressed the issues EPA had with their state statutes, so that the existence of a state audit law does not present an impediment to the delegation or approval of environmental programs in those states. Kansas is now the only state in the country in which the specific provisions of its state audit law fail to meet the minimum requirements necessary for EPA delegation and approval of environmental programs.

Because of the issues EPA has with Kansas' existing law, Kansas' businesses have an additional burden in disclosing violations. Currently the businesses would have to disclose the violations to both the state agency, typically the Kansas Department of Health and Environment, and also to EPA in order to receive assurance from both the state and federal governments that the disclosure process resolves both state and federal concerns as to the violation. In states that have audit/immunity programs meeting the minimum federal requirements, EPA generally defers to the state resolution of disclosed violations. EPA is unable to routinely defer resolution of self-disclosures to the state under the existing statute. However, with the amendments set forth in Senate Bill 453, Kansas law would meet the federal minimum requirements and allow EPA to generally defer resolution of self-disclosed violations to the state.

Federal environmental statutes establish minimum standards that states must meet for delegation of federal programs to the state and for federal approval of state environmental programs. These include standards for adequate enforcement, public participation and access to information. These requirements reflect the high value federal laws place on public openness in the administration and enforcement of environmental requirements.

The current Kansas law contains several provisions that do not meet the minimum federal requirements for delegation or approval of environmental programs. Specifically, the current Kansas law:

- allows a violator to invoke privilege even in instances of criminal misconduct, seriously hampering State's/EPA's ability to investigate criminal wrongdoing;
- gives a violator immunity from penalties for criminal negligence;
- gives a violator immunity from penalties even when the violator has gained a significant economic benefit as a result of not complying with the law, which also may have given the violator an advantage over its competitors; and
- gives a violator immunity from penalties even when the violation has created an imminent and substantial endangerment to human health or the environment.

With the existing Kansas audit law, the State of Kansas does not meet these minimum requirements necessary for EPA delegation of federal programs to the state or for EPA to approve state environmental programs.

For example, EPA has been unable to approve a series of applications submitted by KDHE in 2004 seeking State primacy for implementation of nine rules under the Safe Drinking Water Act. The applications submitted by KDHE have been reviewed by EPA and the only impediment to approving state primacy of these rules is the existing state audit law. SB 453 remedies this problem, and its passage would enable EPA to proceed with approval of these state primacy rules.

The Kansas Department of Health and Environment, as well as the Kansas Department of Agriculture and the Kansas Corporation Commission, all have existing delegated or approved environmental programs that were approved by EPA prior to the passage of the current Kansas audit law. In addition to impeding EPA's ability to delegate or approve new state programs, the current Kansas audit law leaves the existing programs currently being implemented by these state agencies vulnerable to lawsuits by citizens' groups seeking a court order requiring EPA to take back the programs for implementation at the federal level.

The revisions proposed in SB 453, as drafted, would resolve the issues that EPA has identified with the existing state law. With the passage of SB 453, the Kansas audit statute would no longer be an impediment for the continued implementation by Kansas of federal environmental programs in the State or for the delegation or approval of new environmental programs in Kansas.

Again, I appreciate the opportunity to testify here today. Thank you for your time and attention. If you have any questions, I would be glad to try to address them.

Att.

March 7, 2006

SB 453: Amendments to Environmental Audit Privilege/Immunity Statute

Current statute:

- **Enacted in 1995 – part of a national model legislation initiative**
- **Statute has several provisions which create a significant impediment to the State's ability to ensure compliance with environmental laws and regulations**
- **Examples of issues with existing law:**
 - **statute allows privilege to be invoked even in instances of criminal misconduct, seriously hampering State's/EPA's ability to investigate criminal wrongdoing**
 - **statute gives immunity from penalties for criminal negligence**
 - **statute gives immunity from penalties even when the violator has gained a significant economic benefit as a result of not complying with the law**
 - **statute gives immunity from penalties even when the violator has created an imminent and substantial endangerment to human health or the environment**

Effect of current Kansas statute:

- **All states must meet minimum standards when assuming responsibility for implementing federal environmental programs, including standards for adequate enforcement, public participation and access to information**
- **These requirements reflect the high value federal laws place on public openness in the implementation and enforcement of environmental regulations**

- **State of Kansas does not meet the minimum requirements needed for EPA approval of State programs**
- **As a result, EPA can no longer authorize Kansas to implement new environmental laws in the State**
- **Specifically, EPA has been unable to approve a series of primacy applications under the SDWA submitted by Kansas in 2004 because of the existing state audit law; if KDHE were to request authority to implement the RCRA corrective action regulations in Kansas or seek new authority for other programs, EPA would be unable to approve such requests with the with the existing state audit law**
- **In addition, the State is vulnerable to citizen suits seeking the withdrawal of existing authorized state programs and seeking that these programs be implemented by EPA in the State of Kansas**

National picture:

- **27 states have enacted some type of environmental audit privilege and/or immunity law since 1993**
- **Kansas is the only state in the country in which the specific provisions of the state law fail to meet the minimum requirements necessary for EPA approval of state programs; in the other 26 states, the issues have been resolved through statutory amendments, AG's opinions, MOUs with the state, or sunset of the law**
- **At federal level, EPA has a published Agency policy, last amended in 2000, which allows for penalty mitigation for environmental violations voluntarily and promptly disclosed and expeditiously remedied (separate policy for small business, with 100 or fewer employees, giving essentially the same relief)**
- **Last year alone (FY2005), EPA received over 600 self-disclosures from companies disclosing potential violations at nearly 1500 facilities across the country**

- **Region 7 resolved voluntary disclosures with 23 different companies last year, addressing violations at 54 facilities across the Region and mitigating penalties of more than \$2.4 million (\$2,442,000)**
- **Over the last 5 years, 22 companies have self-disclosed violations at 26 Kansas facilities to Region 7 using the EPA audit policy**

Effect of revisions:

- **With the revisions as proposed in SB 453, the impediments to implementing federal environmental programs in the state would be resolved**
- **In that event, the Kansas environmental audit statute would no longer be an impediment to the state for meeting minimum federal authorization/delegation requirements, such as currently exists with the pending SDWA primacy applications**

Conclusion:

- **SB 453, as drafted, resolves the concerns that EPA has with current Kansas law**