

## MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on February 3, 2006, in Room 423-S of the Capitol.

All members were present.

## Committee staff present:

Raney Gilliland, Kansas Legislative Research Department  
Lisa Montgomery, Revisor of Statutes Office  
Emalene Correll, Kansas Legislative Research Department  
Judy Holliday, Committee Secretary

## Conferees appearing before the committee:

Bill Bider, Director, Bureau of Waste Management, Kansas Department of Health & Environment  
Randall Allen, Executive Director, Kansas Association of Counties  
Patrick Cassidy, Director of Environmental Services, Kansas City Board of Public Utilities  
Andrew Schlapp, Director, Government Relations, Sedgwick County  
Charles Benjamin, J.D., Sierra Club  
Shawn Herrick, Kansas Landfill Association  
Doug Sommers, C&D Recyclers, Wichita

## Others attending:

See attached list.

Chairperson McGinn called on Bill Bider to present his testimony on **S.B. 467, new landfill siting restrictions for solid waste (Attachment 1)**. Mr. Bider expressed citizens' concerns about water contamination, and that water is the most valuable resource we have. He reference a map of landfills contaminated by groundwater and stated that 50 of those landfills, or roughly one-third of all Kansas landfills. He told the Committee that KDHE and interested parties combined efforts to improve current law to protect water resources in the state and noted that current law is inadequate. One provision says a landfill should not be placed within a half-mile of a navigable stream used for interstate commerce. There are only two navigable streams in Kansas, the Kansas River and the Missouri River. The other provision that meets that criteria states that a landfill cannot be placed within one-mile of an intake point for a surface water supply, but that leaves many other areas and water resources unprotected by state law. He referenced parts of his written testimony which states that it is not good public policy to place landfills in areas near valuable water resources such as aquifers and other bodies of water and wells.

Mr. Bider stated that some areas are open to landfills without risks to water resources. The bill applies to new and existing landfills, and would have no impact on existing capacity. It will allow expansion but not allow landfills to be built closer to wells or water sources.

This bill helps zoning officials decide on site selection before KDHE permits the landfill, gives the public more assurances, and saves time in the permitting process because the area in question has already met some of the needed requirements.

Mr. Bider noted that there was a report out that the permit recently issued for a facility in Harper County would not be issued with these restrictions, but he stated that it would be issued because it passes the test for where the restrictions need to be. He noted the Department has made seven drafts of this bill and is submitting amendments today. The amendments address power generation facilities that have both a lake and a landfill near their facility that is a low-risk facility overall, and could be accommodated in this bill and still protect water quality. He stated that overall this bill is a sign of good stewardship for protecting long-term water resources and good protection for future development. He asked the Committee to challenge opponents to this bill by asking why this bill is not good public policy.

Chairperson McGinn asked how many contaminated landfills there are under Subtitle D? Mr. Bider responded two, at most, and this is being reviewed. Chairperson McGinn restated that there are contaminated landfills but we do not know if there are any leaks under Subtitle D, and Mr. Bider responded that at this time it is not confirmed.

## CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on February 3, 2006, in Room 423-S of the Capitol.

Senator Taddiken asked if a county purchased 160 acres of land for a landfill site, obtains a permit to develop the first cell and a city drills a well for the city water supply within five miles of the landfill, does that limit further expansion of that 160 acres? Mr. Bider responded that the 160 acres that is permitted is grandfathered in, but if they wanted to expand outside the 160 acres then it would limit the expansion if the expansion is for an area closer to the well.

Senator Teichman questioned whether Harper County would have encountered its problems if this bill had been in effect, and Mr. Bider responded that it would not have affected its permit at all and it would have passed all the tests.

Chairperson McGinn recognized Charles Benjamin who testified on behalf of the Sierra Club as a proponent of **SB 467** (Attachment 2). Mr. Benjamin referenced the 1991 bill passed by the Legislature prohibiting a landfill near a public access navigable stream, which would be the Kansas and Missouri Rivers. The historical definition of navigable stream was changed to include the Arkansas River near Wichita. Mr. Benjamin stated that Subtitle D caused "state-of-the-art" landfills which are run by huge corporations locate in small counties, and because these corporations pay a fee to the counties, the counties equate landfills with a source of revenue.

Mr. Benjamin expressed concern that the proposed changes protect public water but not private water wells and that there are no protections for the individual landowners who may have a contaminated landfill adjacent to their property. The bill says there should be no landfills within 5-miles upstream of an aquifer, but he proposes to double that distance because pollution travels very rapidly. He mentioned the exemptions and he is concerned about the standards that allow the exceptions. He congratulated KDHE for bringing this bill, but cautioned the Committee about weakening the bill and recommended strengthening the bill to protect our children and grandchildren.

Randall Allen, Kansas Association of Counties, testified as a proponent of **SB 467** (Attachment 3). He told the Committee he had been in discussions with and is working with KDHE. He stated the bill emphasized water protections, provides reliable information to counties regarding land use, and maintains a balance between KHDE and the counties.

Andy Schlapp, Director of Government Relations for Sedgwick County, testified in opposition to **SB 467** (Attachment 4). He stated that Sedgwick County believes the process of siting landfills is too cumbersome, time-consuming and frustrating, currently taking up to seven years to site a landfill. The County believes that the State should set minimum standards for a landfill, but the cities and counties should have more local control over the decisions that affect their communities.

Chairperson McGinn recognized Shawn Herrick, Kansas Landfill Association, who testified in opposition to **SB 467** (Attachment 5). Her organization's opposition is based on economic, technical and principle. There are private landowners and three types of permit holders in their membership: construction and demolition, municipal solid waste, and industrial landfills. Members of the group feel the strict siting criteria is not justified with better practices and training and improved performance in landfill operation, which her members feel is a positive trend that will continue. The cost involved in increasing the number of landfills and in permitting the landfills will be increased. The regulations already in place provides the Department the controls needed and this bill is redundant.

Joe Dick, Government Affairs Officer for Kansas City Board of Public Utilities, testified in opposition to **SB 467** (Attachment 6). He told the Committee that KCBPU operates three landfills, and opposes the bill because of the affect it will have on drinking water treatment facilities, present and future power plant disposal operations, and the enormous expense to the taxpayers.

Doug Sommer, General Manager of C&D Recyclers in Wichita, testified in opposition to **SB 467** (Attachment 7). His company is a demolition waste recycler in business since 1981. He discussed the impact of this bill on Sedgwick, Reno, Harvey, McPherson and Rice counties, and major population centers along the Arkansas River. He stated his company has plans for expansion, but passage of this bill will place those plans in doubt since they are located in the Alluvium and are within one-mile of the Arkansas River. Mr.

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Sommers testified that the increased cost of permits will be passed on to residents of the state in the form of higher tipping fees; will increase vehicle emissions around major population centers since landfills will need to be located farther away from water resources and the emissions will be critical in areas of the state struggling to comply with air quality standards; and additional truck traffic will increase wear and tear on the roads, and will have an adverse affect on highway safety.

Chairperson McGinn questioned Bill Bider about the exclusion on the KDHE map of the Ogallala, and asked if it was because of the distance to groundwater. Mr. Bider responded that it was not included because it would cover the major portion of many western Kansas counties where there are fewer wells and some are at a depth of 300' in some cases. Chairperson McGinn stated that the people in Western Kansas were getting their drinking water from the Ogallala, and Mr. Bider explained that a lot of the wells in the Ogallala are not defined as in an alluvial aquifer.

Senator Bruce asked how the standards and restrictions were developed, what scientific method was used, and what do other states do. Mr. Bider stated there was a major meeting where everyone was asked to put ideas on the table, and the one-mile appropriate separation distance proposal came from an engineer for Waste Management in Kansas. Some of the other criteria were debated and discussed, but the Department came up with what was reasonable. Senator Bruce questioned the numbers as being arbitrary, and Mr. Bider explained that the water resources even though small were worth protecting. Senator Bruce stated that, in his opinion, numbers were pulled out of thin air, that 48 landfills were contaminated with perhaps only two meeting current regulations,, and he failed to see a scientific need for the bill. Senator Bruce asked what methodology is done by other states, and Mr. Bider stated that most states have some restrictions, but Kansas is the only state with such limited restrictions on protecting water resources. He said the Department could provide a summary of the research to the Committee.

Senator Lee asked how the bill interacted with the classification of streams involving water contamination, and Mr. Bider responded that a de facto limit was set at one cubic foot per second. Senator Lee commented that if a stream required classification for protection, that there should be a connection with the landfill law. Mr. Bider explained that they looked at various proposals and decided it puts a wide buffer around a lot of areas. Senator Lee commented that for farming operations, the requirements are much stricter for putting feedlots and other operations in place than this bill's requirements. Senator Lee asked if she could see information from KCBPU on how they handle mercury that comes from their coal waste in percentage of capture, and how that would affect the landfill that the are proposing.

Senator Huelskamp questioned if the Secretary of KDHE would have the authority to put these restrictive laws into effect, and Mr. Bider commented that current specifies restrictions on water resources and the bill would only expand on that law if the Legislature makes its intent known as to what water resources are to be protected.

With no further comments to come before the Committee, Chairperson McGinn adjourned the meeting at 9:30 a.m.

# SENATE NATURAL RESOURCES COMMITTEE

Guest Roster

2/3/06

Name	Representing
Ron Seeber	Heinlaw Firm
Mark Schreiber	Westar Energy
Tom Hammerschmidt	KDHE
Bill Bider	"
Susan King	"
Joe Diek	KC BPU
Doug Sommers	C&D RECYCLERS
Gary Champain	CTRI
Shawn Herrick	Ks Landfill Assn.
Chad Nicolay	KLA
Dennis A. Degner	KDHE
Bill Eastman	Westar
John C. Sattenberg	Deffenbaugh Ind
Dave Hoffhaus	KEC
Judy Shaw	Waste Management Inc
Randall Miles	Ks. Assoc. of Counties
Whitney Dancos	Empire District Electric Co
Charles Benjamin	Ks Sierra Club
John Peterson	Waste Connection



# K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on Senate Bill 467**  
presented to  
**Senate Natural Resources Committee**  
by  
William L. Bider  
Director, Bureau of Waste Management  
February 3, 2006

KDHE appreciates this opportunity to provide testimony on Senate Bill 467 which our department introduced to establish new landfill siting restrictions. New landfill siting or the expansion of an existing landfill usually generates significant controversy because neighbors and downstream property owners often fear that a landfill will impact property values and cause various environmental and aesthetic impacts. State law specifies a procedure for approving of landfill sites including a required local zoning action followed by the state permit review process. Public input at both levels of review often point out concerns related to the potential for the landfill to impact water resources.

The public is rightly concerned about protecting water resources because they are becoming increasingly valuable as consumption increases and supplies are depleted. In addition, landfills have historically caused groundwater contamination. A map is attached showing that 50 municipal solid waste landfills have impacted groundwater in Kansas. Most of these impacts occurred at landfills designed and used when regulations were more lenient; however, there is still some potential to impact water quality even with the more protective regulations that must be followed today.

Current state law provides minimal restrictions related to landfill siting; thus, it offers few assurances to the public that a landfill will be sited in an environmentally preferred area. Current law only prohibits new landfills in two areas:

- (1) Within one-half mile of a navigable stream used for interstate commerce
- (2) Within one mile of an intake point for any public surface water supply

But, there are many other valuable water resources that need an appropriate level of protection. SB 467 would replace current law with a new list of restrictions developed to protect a more complete list of water resources. No new landfills would be allowed in the following areas unless designed to protective standards established in new regulations or unless the

DIVISION OF ENVIRONMENT  
Bureau of Waste Management  
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 320, TOPEKA, KS 66612-1366  
Voice 785-296-1600 Fax 785-296-8909 <http://www.kdhe.state.ks.us/waste>

*Senate Natural Resources*  
*2-3-06*

*ATTACHMENT 1*

applicant demonstrates that no impacts would be expected based upon waste characteristics, hydrogeologic factors, or engineering controls:

**No landfills above:**

- Equus Beds
- Alluvial aquifers, if a public water supply well is within 5 miles in downgradient direction

**No landfills within one mile of:**

- Streams with annual median flow greater than 10 cfs
- Public water supply wells
- Surface water intake points for public water supply systems
- Lakes with a surface area of 100 acres or more
- Wildlife refuges defined in KSA 65-171d and selected preserves

A map of Kansas is attached showing all of the proposed restricted areas. In total, these areas comprise 21 percent of the state. Restricted areas overlap to some extent, so the total restricted area statewide is less than the sum of all individual areas.

Since introducing the bill, KDHE has worked with Westar to develop an amendment that would allow landfills to be permitted near certain large lakes when only used to receive low risk industrial waste. The attached balloon makes this amendment. It would allow landfills to be permitted within one-mile of lakes created to satisfy industrial water supply needs if the landfills are only used for the disposal of coal combustion wastes, foundry sand, or other inert waste as defined in rules and regulations adopted by the secretary.

SB 467 proposes several grandfathering provisions to allow existing facilities to expand within restricted areas. **It is also noteworthy that every existing landfill would be allowed to completely use all permitted capacity without restriction.** No existing facility would be required to close prematurely. Expansions inside of restricted areas would be conditional as listed below:

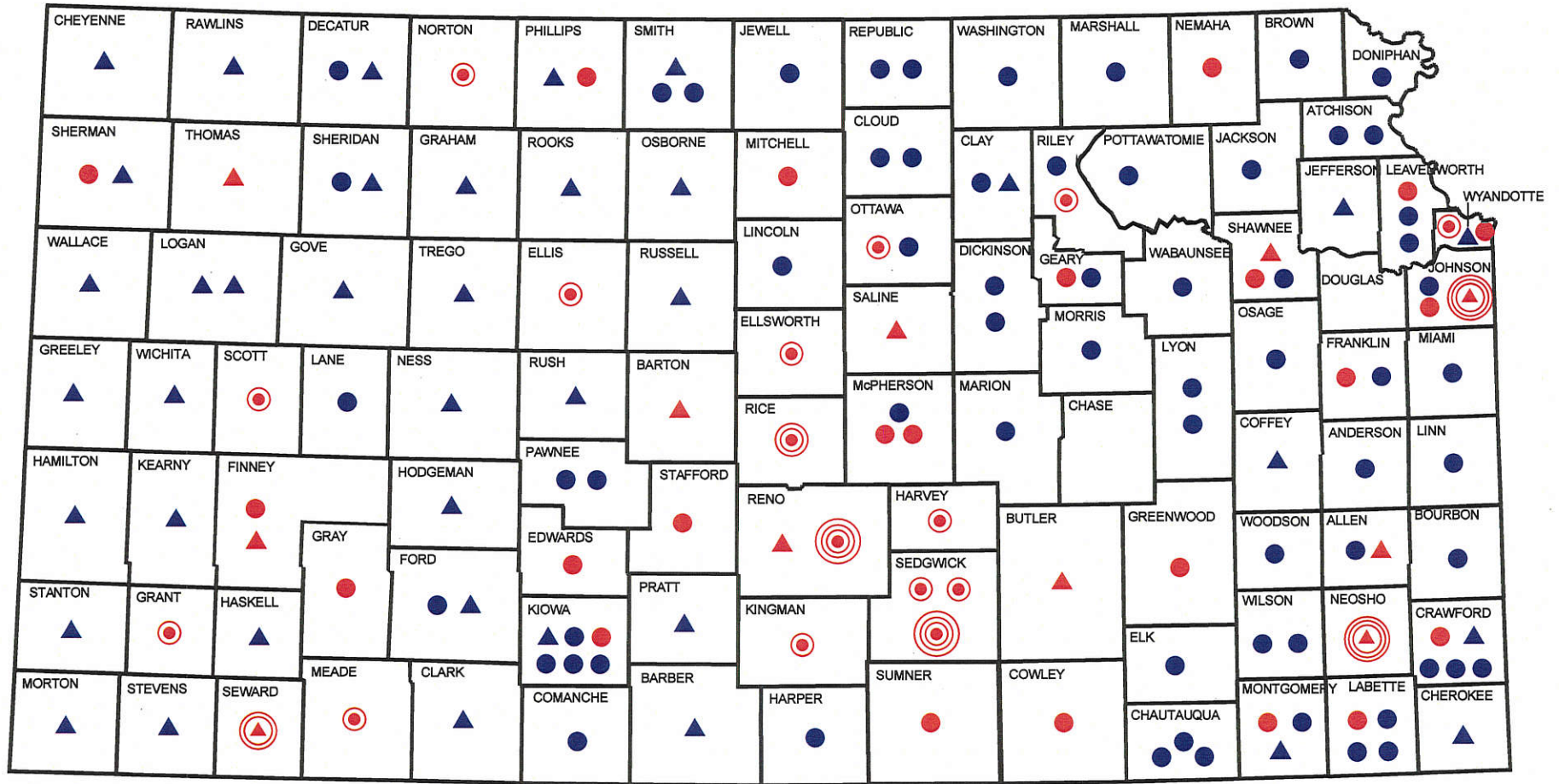
- Landfills could move no closer to protected resources when the one-mile limit applies
- The time for groundwater to travel from the landfill to a downgradient well in an alluvial aquifer or the Equus Beds must take five years or longer
- The landfill owner also owns and uses a protected public water supply well that is only used by the owner
- The expansion is an increase in capacity within the currently permitted footprint
- The expansion is constructed according to higher standards established in regulations











In summary, this change to the law is needed because current law inadequately protects all valuable water resources from the potential impacts of a nearby landfill. The changes would provide an appropriate level of assurance that future landfill development will not present unacceptable risks to water resources and selected wildlife preserves simply based upon proximity. The new restrictions should guide applicants in the selection of new landfill sites and

give the public more confidence that new landfills or landfill expansions will not impact these valuable natural resources. It will also help local zoning officials in their decisions to issue special use permits and KDHE in the state permit application review process.

We would happy to answer any questions that the committee may have about this bill.

# Groundwater Monitoring at Municipal Solid Waste Landfills

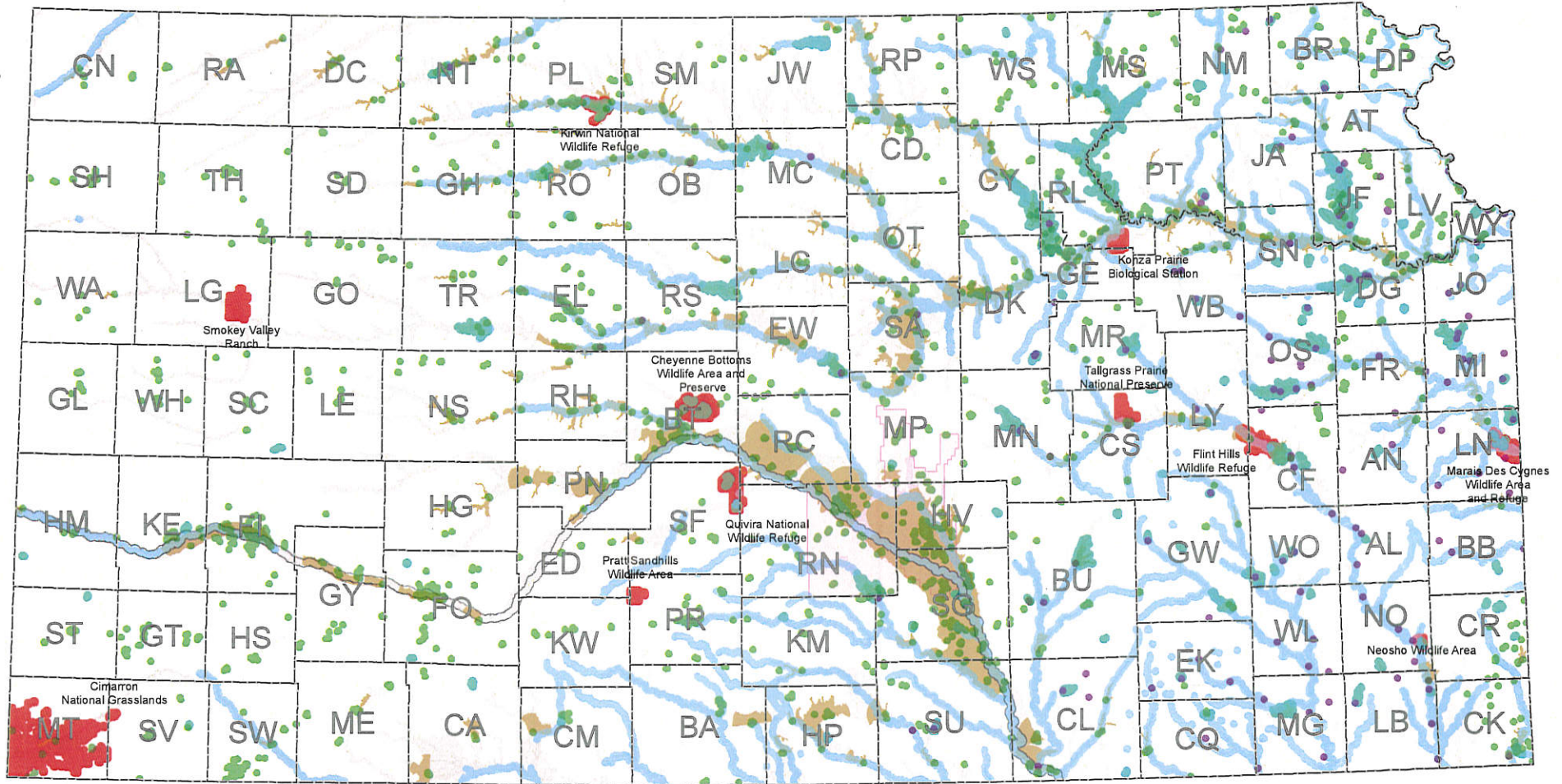


- |   |   |
|---|---|
|  OPEN - No Contamination               |  CLOSED - No Contamination               |
|  OPEN - Contamination Onsite           |  CLOSED - Contamination Onsite           |
|  OPEN - Contamination Offsite >100 ft  |  CLOSED - Contamination Offsite >100 ft  |
|  OPEN - Contamination Offsite >300 ft  |  CLOSED - Contamination Offsite >300 ft  |
|  OPEN - Contamination Offsite >1200 ft |  CLOSED - Contamination Offsite >1200 ft |



# Modified KSA 65-3407 Proposed Restriction Zones

1-5



## Restriction Zones

- KSA 10cfs Streams - 1 mi. Buffer
- Public Water Supply (PWS) Wells - 1 mi. radius
- Alluvial Aquifer within 5 mi of downstream PWS well
- Ks. Lakes > 100ac - 1mi. Buffer
- Equus Beds GMD #2
- Selected Preserves - 1 mi. radius
- Arkansas River - 1mi. Buffer
- Public Water Supply Intakes - 1 mi. radius

## Reference

Alluvial Aquifer (non-restricted; > 5 mi from downstream well)

Criteria	Square Miles	Percent of State
Streams	10650	12.9
Alluvial	4225	5.1
Wells	3568	4.3
Lake	2014	2.4
Equus Beds GMD #2	1381	1.7
Selected Preserves	908	1.1
Ark River	805	1.0
Intakes	404	0.5
<b>Total of All Criteria</b>	<b>17621</b>	<b>21.4</b>

## Data Sources:

- Kansas Biological Survey
- Kansas Department of Agriculture
- Kansas Department of Health and Environment
- Kansas Geological Survey
- U.S. Geological Survey

Prepared by:  
KDHE

FOR PLANNING PURPOSES ONLY DECEMBER 2005

1-5

KDHE Proposed Balloon  
Senate Natural Resources Committee  
February 3, 2006

SB 467

5

1 property or the existing permittee.

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

6 (l) (1) *Except as provided in subsection (l)(3), no permit to construct*  
7 *or operate a solid waste disposal area shall be issued on or after the*  
8 *effective date of this act July 1, 2006, if such area is located within ½*  
9 *mile of a navigable stream used for interstate commerce or within one*  
10 *mile of an intake point for any public surface water supply system:*

11 (A) *The sections of land overlying the Equus Beds, as defined by rules*  
12 *and regulations adopted by the secretary;*

13 (B) *an alluvial aquifer, as defined by rules and regulations adopted*  
14 *by the secretary, if the solid waste disposal area is less than five miles in*  
15 *the upstream direction from any well in the same alluvial aquifer that is*  
16 *used for a public water supply system;*

17 (C) *one mile of the following protected water resources or wildlife*  
18 *refuges:*

19 (i) *An intake point for any public surface water supply system;*

20 (ii) *a lake with a surface area greater than 100 acres;*

21 (iii) *a well used for a public water supply system;*

22 (iv) *a stream segment with an estimated median flow at the down-*  
23 *stream end of greater than 10 cubic feet per second, using the most-recent*  
24 *ten years of record as published by the U.S. Geologic Survey;*

25 (v) *a wildlife refuge, as defined in K.S.A. 65-171d, and the Tallgrass*  
26 *Prairie National Preserve, the Cimarron National Grassland, the Konza*  
27 *Prairie Biological Station, the Pratt Sandhills Wildlife Area and the Smoky*  
28 *Valley Ranch; or*

29 (vi) *the Arkansas River.*

30 (2) ~~Any permit, issued before the effective date of this act, to con-~~  
31 ~~struct or operate a solid waste disposal area is hereby declared void if~~  
32 ~~such area is not yet in operation and is located within ½ mile of a navi-~~  
33 ~~gable stream used for interstate commerce or within one mile of an intake~~  
34 ~~point for any public surface water supply system. For the purposes of~~  
35 ~~subsection (l)(3), except as specified in subsection (l)(3)(G), the expansion~~  
36 ~~of a permitted solid waste disposal area shall mean an increase in the land~~  
37 ~~area authorized for waste disposal pursuant to a permit issued by the~~  
38 ~~secretary prior to July 1, 2006, by extending disposal operations onto~~  
39 ~~contiguous property.~~

40 (3) The provisions of this subsection shall not be construed to  
41 prohibit:

42 (A) Issuance of a permit for ~~lateral the expansion onto land contigu-~~  
43 ~~ous to~~ of a permitted solid waste disposal area ~~in operation on the effective~~

unless the lake was created by the owner of an industrial facility to provide the water needs for the operations of that facility and the waste disposed of in the solid waste disposal area consists only of coal combustion wastes, foundry sand, or other inert wastes as defined in rules and regulations adopted by the secretary
--

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**Testimony in Support of S.B. 467**

An act concerning solid waste; relating to siting restrictions.

Before the Kansas Senate Natural Resource Committee

**On Behalf of the Kansas Chapter of Sierra Club**

February 3, 2006

Madam Chair, members of the Committee, thank you for the opportunity to testify in support of S.B. 467 on behalf of the Sierra Club the oldest and largest grass roots environmental organization in the world with over 750,000 members including over 4,000 in Kansas.

**The Cornejo landfill issue**

This bill comes to you as a result of litigation involving the interpretation of current law at K.S.A. 65-3407(1)(1) that prohibits any "solid waste disposal area...within 1/2 mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system." This language was adopted by the Kansas legislature in 1991 and affects all "solid waste disposal areas" in Kansas constructed after July 1, 1991.

In 1998 KDHE granted a five year permit to Cornejo and Sons, Inc. to operate a construction and demolition (C&D) landfill on land owned by the City of Wichita along the Arkansas River at the intersection of K-15 and 31<sup>st</sup> Street South. That KDHE permit ran parallel with a five year conditional use zoning permit granted by the City of Wichita.

The Cornejo C&D landfill is located on the banks of the Arkansas River. The Arkansas River, along with the Kansas and Missouri Rivers, are the three "historically navigable" rivers in Kansas recognized by the Kansas courts. When adopting the regulations to implement K.S.A. 65-3407(1)(1) KDHE adopted the definition of "navigable streams" used by the U.S. Army Corps of Engineers (USACE). The USACE considers the Kansas and Missouri Rivers "actually navigable" but they consider the entire Arkansas River in Kansas "non-navigable". Therefore, based on the USACE definition of navigable, KDHE granted the C&D landfill permit to Cornejo.

In 2003 Cornejo and Sons, Inc. applied to KDHE for an extension of their existing C&D landfill permit, or a new permit, to last for five years. An attorney at KDHE advised the department that they had adopted the wrong interpretation of "navigable stream used in interstate commerce" and that the department should have adopted the "historically navigable" definition recognized by Kansas courts – that the Arkansas River was a

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“navigable stream used for interstate commerce.” KDHE turned down Cornejo’s request for a new permit or a permit extension based upon the “historic navigability” definition.

Cornejo challenged KDHE’s decision in Sedgwick County District Court. Sierra Club and the K-15 Neighborhood Association, Inc. intervened in that court case. I represented both parties. Sierra Club intervened for two reasons: 1) concern about the impacts of the landfill on the morphology of the Arkansas River – a concern identified by the Kansas Department of Wildlife and Parks and the Kansas Biological Survey, and 2) a concern that public access to the Arkansas River could potentially be challenged if the historical definition of the “navigability” of the Arkansas River was removed. The K-15 Neighborhood Association intervened in the case because this poor, working class neighborhood, located the north and east of the Cornejo C&D landfill was experiencing dust, noise, and other nuisances that they claim were generated by the landfill.

In the fall of 2004 a Sedgwick County District Court judge ruled that KDHE had acted “arbitrarily and capriciously” by first granting to Cornejo a permit to operate a “solid waste disposal area” within ½ of the Arkansas River in 1998 and then denying Cornejo’s request for a new permit in 2003 based upon a different definition of “navigable stream used for interstate commerce” without first adopting new Kansas administrative regulations reflecting the “historical navigability” definition of the Arkansas River.

KDHE decided not to appeal the Sedgwick County District Court decision to the Kansas Court of Appeals and entered into a settlement agreement with Cornejo that allows them to operate their C&D landfill for another five years but that prohibits Cornejo from applying for any further extensions of their permit. Sierra Club and the K-15 Neighborhood Association decided not to enter into the settlement agreement but decided to withdraw their appeal to the Kansas Court of Appeals.

At this point KDHE pulled together a group of stakeholders to make changes to K.S.A. 65-3407(1)(1). I want to take this opportunity to commend Bill Bider for his efforts to try to bring all the stakeholders together to try to find common ground on landfill siting.

### **“State of the art” landfills**

I was first elected to the Harvey County Commission in 1980 and served from 1981 to 1997. During that time the most vexing problem the Commission dealt with was what to do about a “sanitary landfill” constructed in the early 1970s in Harvey County. The sanitary landfill laws were passed by the Kansas legislature to deal with the hundreds of city “dumps”, usually located along rivers and streams. Leachate, a toxic brew of water and whatever chemicals are dumped in the landfill, was regularly leaking into those same rivers and streams. Sanitary landfills, to be owned and operated by the county, were to replace city dumps. These “sanitary landfill” laws and regulations were designed to create “state of the art” landfills. One of the first problems presented to me by our county administrator in 1981 was what to do about the fact that leachate was regularly leaking out of this “state of the art” Harvey County sanitary landfill and killing cows downstream. As it turns out the landfill had been sited and approved by KDHE too close to a stream. There were no liner or leachate collection requirements on landfills. Our

solution was to buy a lot of dead cows with taxpayer money and send our landfill employees to classes to learn how to operate the landfill more effectively.

During the 1980s and 1990s I watched the Wichita City Council, the Sedgwick County Commission and KDHE struggled with what to do about the leaking Brooks Landfill located on the banks of the Arkansas River. That landfill too was supposedly “state of the art” at the time it was sited and approved by KDHE. It was located along the alluvial aquifer of the Arkansas River and there were no requirements for liners or leachate collection systems even though the soil was basically pervious sand.

These kinds of problems with landfills were happening all over the U.S. and in the 1990s Congress amended the Resource Conservation and Recovery Act (RCRA) with what is known as Subtitle D. Those amendments and subsequent EPA regulations required liners, leachate collection systems and daily cover in municipal solid waste landfills. KDHE began a process of phasing out county “sanitary landfills” and Harvey County, for example, was put into a regional solid waste disposal region. We were supposed to close our “sanitary landfill” and send our trash to Reno County. We chose instead to institute a solid waste recycling system and worked with the City of Newton to mandate curb side recycling.

One of the impacts of Subtitle D is that now municipal solid waste landfills are run by large national corporate entities like Waste Connections and Waste Management who contract out with local units of government to either manage the landfill sites or use local Subtitle D sites to dump waste from afar. For example, Waste Management now dumps Wichita trash in the Rolling Hills landfill along U.S. 75 between Topeka and Holton. Waste Connections has just constructed a landfill in Harper County to dump Wichita’s trash. I am personally familiar with the Harper County situation since I represented those opposed to the landfill during the county’s zoning process. That “Plumb Thicket” site, which I have been on, had been used as a pasture and, according to the locals who are familiar with the site, is filled with natural springs.

I have also represented homeowners in the City of Shawnee, west of I-435, who were opposed to the expansion of the Johnson County landfill. Leachate from the early portions of that landfill, built in the 1950s and 1960s, began leaking into the Kansas River. The company has since been required by KDHE to install a “French drain” system to contain that leakage. The expansions of that landfill in the 1990s have included liners and leachate collection systems that hopefully will prevent any further pollution to the Kansas River. We’ll see.

From these experiences I have derived the lesson that “state of the art” landfill is largely meaningless. Granted there are better technologies now and greater protections to prevent leachate contamination to surrounding groundwater and surface water than there were 35 years ago when the Harvey County “sanitary landfill” was sited. We also generally know much more about how contamination migrates from landfills to surrounding surface and groundwater than we did 35 years ago. Nevertheless, it is important to remember that if we make mistakes about the siting of landfills it is not us

who will pay the price. Instead, it is our children and grandchildren 10, 20, 30 or more years from now that will have to deal with the results. So I think when developing landfill siting restrictions it is best to be cautious and skeptical of claims by the landfill industry that their landfills “are state of the art” and that nothing bad is ever going to happen. We have heard that story before.

**Proposed changes to SB 467**

Sierra Club generally supports the proposed changes to K.S.A. 65-3407(l)(1) but we do have some suggestions to strengthen S.B. 467:

- 1) The bill at (l)(1)(C)(iii) protects wells “wells used for public water system(s)” however there is no protection for private wells used by rural landowners. We think that private wells should have the same protections as public wells.
- 2) The bill at (l)(1)(B) only protects alluvial aquifers within “five miles in the upstream direction from any well in the same alluvial aquifer that is used for a public water supply system.” Given the rapidity with which contaminants can move in alluvial aquifers we feel that the bill does not go far enough to protect all alluvial aquifers. We don’t know what a safe distance is upstream from a public water supply system but at a minimum it should be 10 miles.
- 3) We are concerned that the language (l)(1)(B), page 6, lines 12-17, allows **new** “solid waste disposal areas” in the geographic areas identified in (l)(1)(A), (B) and (C) as being off limits to new landfills. The exceptions are allowed “so long as the disposal area is designed and constructed in accordance with enhanced standards specified in rules and regulations adopted by the secretary.” We have concerns about will be contained in those “enhanced standards” and that they will not be sufficiently strong to protect the sensitive groundwater areas identified in (l)(1)(A), (B) and (C). We feel that “solid waste disposal areas” should simply be banned from those geographic areas.

Thank you for your attention. I will stand for questions when appropriate.



**KANSAS**  
ASSOCIATION OF  
**COUNTIES**

**Testimony on SB 467**  
Senate Committee on Natural Resources  
Randall Allen, Executive Director  
Kansas Association of Counties  
February 3, 2005

Chairman McGinn, I am Randall Allen, Executive Director of the Kansas Association of Counties. I appreciate the opportunity to testify in support of SB 467, amending K.S.A. 65-3407. The Kansas Association of Counties has taken the position in support of this bill for three reasons.

First, the protection of our natural resources and water resources in particular are important to all of us. Counties often times must make difficult choices based upon competing interests, but one of our guiding principles is to protect our communities and resources for future generations. This bill will help us work in partnership with KDHE to make informed choices about how we can protect our water resources.

Second, counties play two separate, but very different roles with landfills. A county may be an applicant/operator or may have a regulatory role in the location and compatibility of land use. This bill provides far more specific and predictable parameters for the preliminary land use approval and criteria for expansion. In both cases, the greater certainty provides the appropriate balance between the applicant and the county. We were particularly pleased to see that over the past year KDHE worked with several counties to provide maps that clarified areas where landfill operation or expansion would be inappropriate. This type of communication and partnership is helpful and reduces the potential of incorrect information or assumptions being made.

Third, this bill maintains the appropriate roles between KDHE and counties. Both are concerned with making environmentally sound decisions in Kansas. The communication and partnership represented in this bill is an excellent start. We urge the committee to pass SB 467. Thank you for your time.

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

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*2-3-06*

*ATTACHMENT 3*



## COUNTY MANAGER'S OFFICE

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**Andrew J. Schlapp**  
Director, Government Relations

### TESTIMONY

SB 467

Senate Natural Resources Committee

February 2, 2006

Chairman McGinn and members of the committee, my name is Andy Schlapp, Director of Government Relations for Sedgwick County. Thank you for the opportunity to testify in opposition to SB 421. Sedgwick County is not opposed to protecting public health, safety, and welfare, but Sedgwick County believes the process is already too cumbersome, time consuming, and frustrating for those who need to site a landfill.

According to the EPA there were 7,683 landfills in 1986 and in 1995 there were 3,581. In Kansas there were 117 landfills in 1992 and today there are 65 landfills, 25 of them which are subtitle D landfills. There are many reasons for the decline in the number of landfills, such as the new requirements to create safer landfills that will not leak into the groundwater, and the mobilization of citizen groups that do not want a landfill in their back yard, which are two of the biggest factors. Today the average time to site a landfill is seven years. It took six years to obtain the permit for the new Harper County landfill.

Subtitle D landfills were created to keep citizens safe and to create a system that would open more land to the possibility of a landfill. SB 421 reduces the available land for a landfill and could limit the use of future technologies that would make landfills even safer.

The issue of local control is another reason we stand in opposition to the bill. We believe the State should set minimum standards for a landfill but that cities and counties should be able to create more stringent regulations that fit the needs of their community. More importantly, these decisions need to be made locally where local citizens have a greater impact on the decisions being made. They should not have to drive to Topeka to address the needs that are better understood in their local communities. Government closest to the people governs best.



# KANSAS LANDFILL ASSOCIATION, INC.

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**STATEMENT  
OF THE  
Kansas Landfill Association**

**Before the  
Senate Natural Resources Committee  
February 3, 2006**

**Presented by Shawn Herrick  
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## Kansas Landfill Association Opposition SB 467

The Kansas Landfill Association is comprised of landfill owners, operators and associate members who have solid waste interests and operations in Kansas. Membership is comprised of representatives from all three regulated (construction and demolition, industrial and municipal solid waste) waste categories in Kansas.

The Kansas Landfill Association opposes SB 467 for economic, technical and principled reasons. Economically, this legislation would make it more difficult for existing landfills to expand and new landfills to locate, placing additional regulatory and financial burdens on a community who generally operates on thin margins. We believe this legislation would, if approved, disproportionately affect rural C&D landfills, forcing a trend toward larger, more regional units. Because today's environmentally-sensitive culture already offers substantial economic disincentive for bad practices or problematic designs, the additional burden imposed by this legislation increases costs without providing the proportionate level of economic or environmental return.

From a technical perspective, the strict siting criteria proposed in SB 467, is not justified by current environmental problems observed in the field. Improved practices, better training and more readily-available information have collectively resulted in improved performance of all landfill types, and we believe this positive trend will continue. We also remain concerned the technical provisions proposed for *lakes greater than 100 acres* [65-3407 1 (1)(C)(ii)], restriction distances of *five miles in the upstream direction.....alluvial aquifer* [65-3407 1 (1)(B)] and *median flow....greater than 10 cubic-feet-per-second* [65-3407 1 (1)(C)(iv)] have been arbitrarily selected, having no regulatory history in sister states or technical foundation in problems encountered in Kansas.

From the principled perspective, SB 467 would raise the cost of solid waste handling, decrease the number of units and increase the lead time to acquire new or expanded landfill permits. We believe this legislation would provide minimal additional protection of water resources beyond existing statutes and does not provide a return commensurate with the economic impacts. Because KDHE already possesses the authority to impose engineering and operational controls on landfills that pose an environmental threat, this legislation is redundant.

By KDHE's own estimate this legislation would restrict 21% of the land area in Kansas. This seemingly small percentage incorporates the majority of operating landfills because landfills logistically locate near population centers and the majority of population centers occur in the vicinity of water resources. We believe an unintended consequence of this legislation to be an increase in air pollution and use of public roadways resulting from new landfills deciding to locate outside of population centers – a direct result of the increased distance of transport.

Finally, the scope of this legislation is expansive, transferring decision-making responsibilities rightfully due the private sector to the realm of the State. Because landfill owners and operators are responsible corporate citizens, the primary responsibility for siting, design and ultimately liability should reside in the private sector, with concurrence – not mandates - from the State. Kansas Landfill Association respectfully requests you oppose SB 467.

**TESTIMONY TO KANSAS LEGISLATURE  
KANSAS SENATE BILL NO. 467**

*Submitted by  
Joe Dick*

**My name is Patrick Cassidy. I am the Director of the Environmental Services Department for the Kansas City Board of Public Utilities. My address is 300 North 65<sup>th</sup> Street, Kansas City, Kansas, 66102.**

**Thank you so much for allowing me to provide comments regarding Senate Bill No. 467. I'm sorry I couldn't be with you here in person today.**

**The Kansas City Board of Public Utilities (KCBPU) is a municipal utility owned by the Unified Government of Wyandotte County/Kansas City, Kansas. BPU makes and distributes both electricity and drinking water in Wyandotte County and beyond. We operate three power stations and two drinking water plants that serve more than 69,000 electric customers and 57,000 water customers.**

**KCBPU also operates three, KDHE-permitted landfills in our service area -- two for the disposal of ashes from our power stations and one for the disposal of woodchips from our tree trimming operations.**

**KCBPU is committed and dedicated to protecting the environment and the health of the people in our community. We show it every day -- especially by providing safe, high-quality drinking water and dependable electricity to all our customers.**

**However, we respectfully have serious concerns regarding the landfill siting components of Senate Bill 467. We are opposed to Senate Bill 467 because it will have severe and unnecessary economic impacts on both our drinking water treatment and power production operations**

**First, regarding drinking water treatment...**

**As many of you know, there are pending regulations that will require certain size drinking water treatment plants to begin land-filling their dilute, settled products -- mainly the river sediments removed during the treatment of drinking water. These settled products, that until now have been routinely returned to the streams they came from, may need to be land-filled in sludge lagoons instead.**

**If Senate Bill 467 is passed, I believe most of the operators of drinking water**

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plants in the State will be scratching their heads because, like us, we'll all be in the same "Catch-22". That is; if a drinking water plant has a raw water intake on a stream, we will not be able to build a disposal area because we are already located too close to a raw water intake! Senate Bill 467 will be horrifically expensive to our rate payers who will bare the cost of building large, mechanical solids separators and transporting what are essentially river sediments to off-site disposal areas.

Second, regarding power production...

KCBPU has started planning for a new coal-fired power station. The plant siting studies will more than likely recommend that our new unit be located, like all coal-fired units, next to a dependable cooling water source – in our case the Missouri River. As you probably know, the intakes for our Nearman Water Treatment Plant are already located on the Missouri River near our Nearman Creek Power Station. We have operated a KDHE-permitted, coal ash mono-fill at the power station since 1981 and we have never had a water quality problem at our raw water intakes next to the river.

Senate Bill 467 will prohibit us from constructing a new ash mono-fill or even expanding the one we already operate at Nearman. Senate Bill 467 will therefore effectively prohibit us from constructing a new power station to serve our community. The costs to our rate payers will be enormous.

For these reasons we are in opposition to Senate Bill 467.

Again thanks very much. I appreciate the opportunity to provide testimony and I stand ready to answer any questions you might have at the appropriate time.

STATEMENT  
OF  
C&D RECYCLERS OF KANSAS, INC.

Before the  
**Senate Natural Resources Committee**  
February 3, 2006

Doug Sommers  
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Senator McGinn and Committee Members. Thank you for the opportunity to share my thoughts with you today. My name is Doug Sommers. I am the General Manager for C&D Recyclers of Kansas, Inc. in Sedgwick County on the northwest corner of Wichita. We are a construction / demolition materials recycling company and operate a construction / demolition landfill. Some of the items we recycle include asphalt, concrete, wood, sheetrock, metals, and cardboard. Our operation opened for business in October 2001 and was immediately recognized by the Kansas Department of Health and Environment as an example of "a model facility for recycling construction and demolition wastes." If SB 467 had been in effect at the time we went through the permitting process, we likely would not have been able to build our recycling operation.

My company is opposed to SB 467 since it will greatly increase the costs of permitting, building, expanding, and operating landfills in the State of Kansas. In many instances, SB 467 will prevent landfills from being built or expanded where they are needed. The Kansas Department of Health and Environment claims that SB 467 will only affect 21% of the state. However, this 21% includes the major population centers, along with a majority of the currently permitted landfill locations, since cities have historically been built near the water resources. SB 467 will impact most of Sedgwick, Reno, Harvey, McPherson, and Rice counties. We have plans to expand our current operation, but the passage of SB 467 into law will put those plans in doubt, since we are located in the Alluvium and within 1 mile of the Arkansas River. The increased cost to permit, build, expand, and operate the landfills will be passed on to the residents of the state in the form of higher tipping fees.

SB 467 will also increase vehicle emissions around the major population centers. These additional emissions can be critical, especially in areas of the state that struggle to comply with national air quality standards. The additional truck traffic will also increase the wear and tear on the roads and is bound to have an adverse impact on highway safety.

I urge you to oppose SB 467.