

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 19, 2002 in Room 231-N of the Capitol.

All members were present except: Representative Jeff Peterson - excused

Committee staff present: Emalene Correll, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Mary Torrence, Revisor of Statute's Office
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Bill Bider, Director, Bureau of Waste Management, KS Department of Health and Environment, 1000 SW Jackson, Ste 320, Topeka, KS 66612-1366
Leslie Kaufman, Associate Director, Public Policy Division, Kansas Farm Bureau, 2627 KFB Plaza, Manhattan, KS 66503-8508
M. S. Mitchell, Chairman, Kansas Building Industry Association, 2206 SW 29th Terr., Topeka, KS 66611
Kerri Ebert, Executive Secretary, KS Dairy Association, 4210 Wamtehu Drive, Wamego, KS 66547
Sharon Falk, Manager, Big Bend Groundwater Management District #5, PO Box 7, Stafford, KS 67578
Pat Lehman, Groundwater Management District #4, PO Box 3510, Lawrence, KS 66046
Gary Blackburn, Director, Bureau Environmental Remediation, KS Department Health and Environment, 1000 SW Jackson, Ste 410, Topeka, KS 66612
Guen Easley, Assistant Attorney General, Memorial Hall, Topeka, KS 66612

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She announced that the Environment Sub-Committee on **HB2703** - Concerning Classes of construction and demolition landfills, has a meeting scheduled for 7:00 a.m., Wednesday, February 20, in room 423-S. Sub-Committee members are; Rep. Joann Freeborn, Chairperson; Rep. Don Myers; Rep. Bill Light; Rep. Laura McClure; and Rep. Dan Thimesch.

Rep. Becky Hutchins announced that the Environment Sub-Committee on **SB264** - Concerning the equus beds GMD #2; relating to the powers, duties and operation of the district, has a meeting scheduled on adjournment of the House Agriculture Committee, Wednesday, February 20, in room 423-S.

The Chairperson opened **HB2686** for discussion and possible action.

HB2686: Solid waste tonnage fees; lower fee for industrial waste disposed of at landfill operated by the generator of the waste.

Raney Gilliland, Kansas Legislative Research Department, reviewed the proposed substitute bill.

Bill Bider, Director, Bureau of Waste Management, KDHE, reviewed changes relevant to the bill. (See attachment 1)

Rep. Vaughn Flora made a motion to adopt the proposed substitute bill. Rep. Dan Johnson seconded the motion. Motion carried.

Rep. Vaughn Flora reviewed an amendment submitted to the committee by Kansas Cement Council, (A) "Not

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less than \$1,000 nor more than \$1,500 for any such disposal area which is a monofill for disposal of cement kiln dust from the manufacture of portland and masonry cement.” Bill Bider responded to the amendment submitted by the Cement Council.

Rep. Vaughn Flora made a motion to adopt the amendment by the Kansas Cement Council. Rep. Bruce Larkin seconded the motion. Motion failed.

Rep. Don Myers made a motion to adopt the technical and clarifying language on page 8 of the substitute bill. Rep. Becky Hutchins seconded the motion. Motion carried.

Rep. Vaughn Flora made a motion to pass the substitute bill as amended. Rep. Don Myers seconded the motion. Motion carried. Rep. Bill Light will carry the bill on the House Floor.

The Chairperson welcomed Guen Easley, Assistant Attorney General, to the committee. She addressed the committee on Attorney General Opinion No. 99-44, in reference to Waters and Watercourses–Groundwater Management Districts–District Powers; Rules and Regulations. Groundwater Management Districts (GMDs) may continue, after March 1, 2000, to adopt local standards and policies as authorized by the Kansas Groundwater Management District Act as long as the standards and policies adopted are not of general application and do not have the effect of law. GMDs may also continue to develop local standards for submission to the Chief Engineer in accordance with New Section 12 of 1999 House Substitute for Senate Bill No. 287. For this reason the legislation does not conflict with the authority of GMDs to adopt and enforce local standards and policies pursuant to KSA 82a-1028(n). The legislation requires consolidation into rule and regulation those standards and policies of general application which have the effect of law, and it voids those standards and policies not in compliance with this requirement.

The Chairperson opened the hearing on **HB2710**.

HB2710: Certain standards, policies and orders of groundwater management districts declared void.

Leslie Kaufman, Kansas Farm Bureau, was welcomed. She testified in support of the bill and believes this bill seeks to close a loophole in the existing law and fully implement what they believe to be the original intent of existing requirements that GMDs submit their policies and guidelines for promulgation. It is their belief that the intent of that provision was to ensure that GMDs implemented their procedures fairly, that the regulated community was assured of the requirements/restrictions placed on them by the GMD and that the policy making process for GMDs was open and provided for public input, particularly by stakeholders. (See attachment 2)

Mitch Mitchell, Kansas Building Industry Association, was welcomed. He testified in support of the bill and believes this bill simply reiterates what they believe to already be law pursuant to **SB287** in 1999 - that if policies of groundwater management districts that are of general application within the district and have the effect of law are not contained in rules and regulations, they are void. This question was posed to the Attorney General, whose answer in AG Opinion 99-44 states, “(**SB287**) requires consolidation into rule and regulation those standards and policies of general application which have the effect of law and it voids those standards and policies not in compliance with this requirement.” (See attachment 3)

Kerri Ebert, Kansas Dairy Association, was welcomed. She testified in support of the bill and believes the question this bill addresses has arisen where groundwater management districts have submitted their policies to the Chief Engineer in compliance with **SB287** from 1999. What happens when those policies are submitted but not promulgated by the Chief Engineer? The Dairy Association believes the answer is clear from the legislative intent in **SB287** and also from the Supreme Court Ruling in the case of *Bruns v Kansas State Board of Technical Professions*, that those policies that are of general application and have the force and effect of law must be in statute or regulation, not just internal policies that have not been formally adopted pursuant to KSA Chapter 77, Article 4, regarding procedure for rules and regulations. (See attachment 4) Discussion followed.

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Sharon Falk, Groundwater Management District #5, was welcomed to the committee. She testified in opposition to the bill and believes this bill was created to clarify the language in KSA 82a-1903, which relates to standards and policies of the GMDs. She is not sure this bill accomplishes any such clarification and believes the suggested language could even be interpreted as being redundant. Changes may be necessary in order to clarify the various interpretations, however, she believes a systematic approach should be developed to include the objectives of each governmental agency affected by these statutes, both local and state. (See attachment 5)

Pat Lehman, representing Groundwater Management District #1, #2, and #4, was welcomed. He testified in opposition to the bill. The groundwater management districts see the most important issue involved in the debate of this bill as being this: How can the state, in conjunction with the GMDs, most efficiently and effectively monitor and enforce all regulations and policies, all of which are either already state law or must be consistent with state law? They believe the citizens of Kansas deserve such a system. They also recognize that the current system is a little more sophisticated than usual and is a mixture of: (a) State generated regulations that apply within the GMDs; (b) GMD generated policies that are within the authority of KDHE or KCC, and which both the appropriate state agency and the GMD want monitored and or enforced by the state agency; (c) GMD generated policies that are within the authority of KDHE or KCC, and which both the appropriate state agency and the GMD want monitored and or enforced by the GMD; (s) GMD generated regulations that are within the authority of DWR, and which both DWR and the GMD want monitored and enforced by DWR; and (e) GMD generated regulations/policies that are within the authority of DWR, and which both DWR and the GMD want monitored and enforced by the GMD. (See attachment 6) Discussion followed.

The Chairperson closed the hearing on **HB2710** and opened hearing on **HB2830**.

HB2830: Environmental use controls; prohibition or restriction of activities on or use of property where contamination has occurred.

Gary Blackburn, Director, Bureau Environmental Remediation, KDHE, was welcomed to the committee. He testified in support of the bill. The Kansas Department of Health and Environment works with responsible parties to address hundreds of contaminated properties throughout the state each year. Ideally, cleanup of these properties would return them to a condition allowing unrestricted use, such as use for residential development. In many instances, however, the time required to cleanup these properties may be years and the cost is often prohibitive. Many property owners simply can not afford the costs it would take to restore a property to pristine conditions. The proposal to establish Environmental Use Controls provides property owners and developers with a method of selecting less costly and time consuming cleanup solutions by establishing limits for the future property use. If a land development is intended for commercial or industrial use, a less restrictive cleanup standard may be used where future residential use is not intended. Under the proposed legislation, the property owner may apply for an Environmental Use Control as part of a site remediation plan. If approved, the property owner would complete the cleanup and place the agreed upon use restrictions on the property. Although it is very difficult to determine the number of property owners who may apply to participate in this program, the legislation is being supported without a request for additional staff. The contaminated sites that would participate in this program are likely to be those already being addressed through programs which are administered by the agency. This legislation provides an additional method of resolving the environmental risks these sites pose. (See attachment 7) Discussion followed.

Rick Bean, Chief, Remedial Section, Bureau Environmental Remediation, KDHE, was in attendance to answer questions concerning the proposed bill.

The Chairperson closed the hearing on **HB2830** and announced that final action may be taken on the bill in the next committee meeting.

The meeting adjourned at 5:40 p.m. The next meeting is scheduled for Thursday, February 21, 2002.