

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairperson Carolyn McGinn at 8:30 a.m. on January 19, 2006, in Room 423-S of the Capitol.

Members absent:

Tim Huelskamp

Committee staff present:

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

Conferees appearing before the committee:

Wayne Penrod, Sr. Manager, Environment & Production Planning, Sunflower Electric Power Corporation, Hays
Bill Bider, Director, Bureau of Waste Management, KDHE
Charles Benjamin, Attorney at Law, Topeka Chapter of Sierra Club

Others attending:

See attached list.

The meeting was called to order at 8:33 a.m. by Chairperson McGinn. Chairperson McGinn asked Committee members and staff to introduce themselves. Senator Ralph Ostmeyer introduced his intern, Angela Schertz.

Chairperson McGinn asked for bill introductions.

Brent Haden, Kansas Livestock Assn., asked for a bill regarding dam safety in public and private dams, and hazard classification of dams when they have third-party development downstream. Senator McGinn asked if there were any questions. Senator Teichman moved to introduce the bill, seconded by Senator Ostmeyer. The motion carried.

Chris Tymeson, Chief Legal Counsel for the Kansas Department of Wildlife and Parks, requested introduction of a bill updating the current boating laws dealing with marine theft. Senator Ostmeyer moved to introduce the bill, seconded by Senator Teichman. The motion carried.

Bill Bider, KDHE, on behalf of the Secretary of KDHE, requested introduction of a bill that would establish new landfill siting restrictions to protect water resources. Senator Teichman moved to introduce the bill, seconded by Senator Francisco. The motion carried.

Chairperson McGinn asked the Committee to hear SB 362, solid waste, industrial facilities, permits. She recognized Wayne Penrod, Sr. Manager, Environment & Production Planning, Sunflower Electric Power Corporation in Hays, who testified in favor of SB 362 (Attachment 1). This bill which would define 'industrial facility' to clarify the nature of an entity that generates industrial waste; would provide authority for the Secretary of KDHE to accept applications for a solid waste facility from either a landowner or a landfill operator; and would provide for the continuation of the exemption from \$1 per ton tipping fees for privately-owned landfills. He referenced an amendment that he had discussed with Bill Bider of KDHE, and asked for questions.

Bill Bider, Director, Bureau of Waste Management, KDHE, testified before the Committee (Attachment 2). He noted that he had visited with Sunflower about their proposal and that overall KDHE had a neutral position on the bill. However, if the Legislature decided to pass the bill KDHE felt amendments were needed. He provided the Committee with background of existing law, which provides that the landfill permit applicant must own the land where the landfill is located if there is any long-term monitoring or care at that site. In order for a landfill owner to be exempt from the \$1 per ton state tonnage fee, the law says that it has to be an on-site landfill owned and operated by the company that generates waste. If the power plant expands into more owners of more generating units, then there will be more owners using the same landfill, so it is not really on-site with respect to property ownership. KDHE has one concern: when the generator of the waste

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or the permit holder does not own the land where the landfill is sited, the long-term concerns for financial responsibility or care and oversight of the facility when the landowner is not the permit holder. The only amendment KDHE feels is appropriate is to strengthen the financial assurance requirement when the permit holder does not own the land.

The balloon document (Attachment 3) splits off a section of law into two parts: if the entity owns the land, they have all the options available under law; if they do not own the land, they would have to use one of the more secure financial assurance methods so that if something went wrong and the facility does not take care of it the Department would have access to that financial assurance.

Senator Lee asked what the \$1 per ton fee was for and if the money helps fund KDHE inspection of this landfill. Mr. Bider explained the breakdown of how the money is used under the statutes, including partial inspections of landfills with permit fees paying for the rest. Senator Lee then asked if the owners of the landfill were primarily out of state owners, to which Mr. Penrod responded that it would be Colorado owners.

Senator Lee asked if the change in law would have any effect on any other situation involving out of state owners. Mr. Bider replied that the exemption of the tonnage fees in the law would apply if the Legislature does not change the law.

Senator Ostmeyer asked what type and how much waste is produced per year. Mr. Bider explained that it was a fairly inert material, mainly fly ash. Original permits did not include liners for the landfills, but they don't have to put daily cover on these types of landfills.

Senator McGinn asked that with this expansion they were under all new rules and not grandfathered in with regard to landfill liner criteria. Mr. Bider replied that the department is re-evaluating what is appropriate for this type of waste in the expanded area.

Senator Taddiken asked if companies can use all or any of the methods in securing financial assurance. Mr. Bider stated that they can use any of those methods. Senator Taddiken questioned if we were taking things away but not adding, and Mr. Bider stated that we were taking two things away only under this scenario where they don't own the land.

Senator McGinn introduced Charles Benjamin who testified against **SB 362** on behalf of the Topeka Chapter of Sierra Club (Attachment 4). Mr. Benjamin stated the Sierra Club's concerns regarding expansion of coal-fired generating plants in Southwest Kansas. In essence, they oppose burning Wyoming coal when we have wind power we could use, contaminating and depleting the water table, polluting air throughout the state, and sending electricity out of state (Colorado). He stated that utilities typically bury fly ash, the mercury-laden byproduct of burning coal, in landfills. He urged the Legislature to proceed with caution in changing current law regarding landfill ownership and liability.

Senator Lee asked how he felt about KDHE's amendments, to which Mr. Benjamin responded that he hadn't seen them but the key is long-term financial assurances.

Senator Ostmeyer asked about tests being done on mercury and the percentage of capture. Mr. Penrod discussed Sunflower's results in capturing 80% of mercury. Senator Ostmeyer asked if this was Sunflower's test or KDHE's test, and Mr. Penrod responded it was Sunflower's test. Senator Ostmeyer asked if the state double-checks their test results, and Mr. Bider stated that another agency would check those results and he could not say.

Senator Lee asked if the LLC would not have responsibility, and Mr. Bider stated the LLC would have no responsibility in the permit or to post financial assurance.

Chairperson McGinn recognized Mr. Penrod who stated that Sunflower is owned by six distribution electric cooperatives in Western Kansas, and those six cooperatives also own the landfill limited liability company. As they go forward, they may have to share the ownership because the owners of the power plant want to provide some assurance to their lenders that they can use that landfill.

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Senator Lee asked where the captured mercury goes, and Mr. Penrod stated it goes into the landfill locally as opposed to going into the air. She asked what precautions were being taken for that mercury, and Mr. Penrod stated it is chemically bound in the ash itself and it does not leach out into the landfill.

Senator McGinn stated the bill would not be worked today and that the committee members would like to have time to absorb the facts and probably take it up next week. She stated that Senator Schmidt had a bill regarding waiving fees for hunting and fishing for veterans, and she would like to introduce it in committee. Senator Taddiken made a motion, seconded by Senator Ostmeyer, to introduce the bill. The motion passed.

Senator McGinn distributed a handout to members regarding the Dry Cleaner Environmental Response Act (Attachment 5) and asked committee members to read it at a later time.

Senator McGinn stated that the Committee would meet next week, January 26 and 27.

With no further action to come before the Committee, the meeting adjourned at 9:20 a.m.