

Approved: 3-9-93
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on February 26, 1993 in Room 423-S of the Capitol.

All members were present:

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Don Hayward, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Whitney Damron, Pete McGill & Associates
Written testimony, Jack Graves, Panhandle Eastern Pipe Line Company
Lois Moushey, Kansas City, Kansas
Nadar Abed, Kansas City, Kansas
Tim Sostarich, Kansas City, Kansas
William Craven, Kansas Sierra Club
Written testimony by Craig Volland, Spectrum Technologists, Kansas City, MO

Others attending: See attached list

SB-167 - relating to natural gas; concerning abandonment of natural gas storage facilities

The chairman called the attention of the committee to the balloon of SB-167 noting the Kansas Corporation Commission has requested some changes, also that staff would need some latitude in drafting the final amendments since the balloon had not been drawn by the Revisors Office. Senator Vancrum moved to amend SB-167 in a manner similar to Attachment 1. Senator Emert seconded the motion and the motion carried.

Senate Hardenburger made the motion to pass out SB-167 favorable as amended. Senator Emert seconded the motion and the motion carried.

Written testimony was presented by Jack Graves, representing Panhandle Eastern Pipe Line Company, stating their approval of the proposed amendments to SB-167 and SB-168. Attachment 2

Whitney Damron, Pete McGill & Associates, presented a balloon of SB-168 noting this would make clear the migrating gas which went on to adjoining property would be the responsibility of the gas storage operator, also would be responsible for compensation for use of or damage to the surface or sub-surface of such adjoining property. Lines 32 and 33 were deleted as well as subsection (d). Attachment 3

Senator Vancrum moved to amend SB-168 as presented in the balloon, Attachment 2. Senator Lawrence seconded the motion and the motion carried.

There was discussion as to whether this bill would change present Kansas law. It was noted that under certain existing conditions title continued on, however, the gas storage operator was responsible for damage to adjoining property inflicted in proving ownership of the gas.

Senator Vancrum moved to pass SB-168 favorable for passage as amended. Senator Emert seconded the motion and the motion carried.

SB-195 - relating to air quality; prohibiting the issuance of permits for certain medical services waste incinerators

Senator Wisdom told the committee that SB-195 would prohibit the Kansas Department of Health and Environment from issuing a permit for the construction and operation of an incinerator as further stated in the bill due to the issue of the incinerator causing problems for downtown Kansas City, Kansas and inhabitants in that area. Senator Wisdom told the committee there was an amendment that would allow those incinerators presently in operation to continue to operate.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 423-S Statehouse, at 8:00 a.m. on February 26, 1993.

The committee was made aware of the fact that presently there is litigation concerning this issue, therefore those in opposition to this bill felt they could not appear.

Lois Moushey, Kansas City, Kansas, appeared before the committee to give testimony concerning SB-195. Ms. Moushey noted their group had been unable to determine the possible origins of waste which would be incinerated in this facility but it appeared it would not be either Kansas or Missouri. Another concern expressed was that the state of Kansas apparently has no policy concerning incineration and legislation should be put in place to protect other cities in the state as well as their own. The opinion was expressed that KDHE would probably approve this incinerator. The city and county, after originally granting permission have filed a lawsuit against the company.

Mrs. Moushey pointed out there were two other incinerators within several miles and no studies have been made to determine the heavy metals and dioxin in the air at the present time. When considering the fact that there are no dump stack regulations in place, the proximity to Interstate 70 and the lack of air studies, this incinerator is not in the best interests of the state of Kansas, much less those citizens who live in close proximity.

Nather Abad, Kansas City, Kansas, appeared before the committee to give testimony concerning SB-195. Mr. Abad told committee members the location is a major problem with the project as it is to be located on the floor of a valley which means the dump stack is only one hundred feet or so above the hill where a housing development is located. This would allow emissions from the dump stack which could contain up to seventy percent of waste lead and mercury to be ejected at window level. Mr. Abad noted that a new EPA study about medical waste incinerators say they should be classified as hazardous waste incinerators and that their area already had one regional waste incinerator. This new project would make two within a two mile area. It was further noted that everything presented to local governments was based on computer models and the EPA disputed such results since what really goes into the burning chamber cannot be clearly determined. Concern was expressed that even though city and county governments first gave permission but now are fighting to change that decision, the residents were afraid KDHE will approve the incinerator based on existing regulations.

Tim Sostarich, Kansas City, Kansas, appeared before the committee to give testimony concerning SB-195. Mr. Sostarich stated his opposition to the "track record" of the company, AIH. He would still oppose the incinerator even if the location were changed. The organization has not followed verbal promises with similar action. The opinion was expressed by the conferee that AIH could not be trusted. It was noted that lack of staffing of the Wyandotte County Health Department was a concern as well as the fact that EPA regulations are often weak and very broad. He further noted there was a huge discrepancy between a state of the art incinerator that was originally promised and the guidelines as yet unwritten.

William Craven, Kansas Sierra Club, appeared as a proponent for SB-195 noting medical waste is fourteen to thirty percent plastic which, when incinerated creates the controversy surrounding dioxins which include chlorine. He also maintained that large, regional medical waste incinerators are essentially the same thing as hazardous waste incinerators but are not regulated as such. Attachment 4. Mr. Craven also presented Attachment 5 which contained comments on the proposed AIH incinerator and were presented at a 1992 hearing by Craig Volland, Spectrum Technologists, Kansas City, Missouri.

The chairman told members he would have SB-195 re-referred.

The meeting adjourned at 9 a.m.

The next meeting is tentatively scheduled for March 9, 1993.

GUEST LIST

SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

DATE February 25, 1993(PLEASE PRINT)
NAME AND ADDRESS

Pete Mchill

Whitney Dameron

John Peterson

Julio J. Heur

STEVE KEARNEY

Lois Mousley

Patrick Shurley

Bill Haven

ORGANIZATION

Pete Mchill & Associates

Williams Nat Gas

Browning Ferris Industries

Hein, Ebert & Rosen

WASTE MANAGEMENT OF KS.

Concerned Citizens KCKS.

McQuinn - Williams

Sierra Club

SENATE BILL No. 167

By Committee on Energy and Natural Resources

2-3

8 AN ACT relating to natural gas; concerning abandonment of natural
9 gas storage facilities.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. (a) When the owner of an underground natural gas
13 storage facility has permanently abandoned the storage facility and
14 that facility was certificated by the state corporation commission
15 pursuant to K.S.A. 55-1201 *et seq.*, the owner shall file with the
16 commission a notice of abandonment. If any such storage facility was
17 certificated pursuant to federal authority, the owner shall file a copy
18 of any federal abandonment authority with the commission. Unless
19 such notice of abandonment authority has been filed with the com-
20 mission, there shall be a presumption that the storage facility and
21 all rights associated with it remain as certificated. In either case the
22 owner shall file an instrument with the register of deeds office in
23 the appropriate county or counties, stating that such storage has
24 ceased and, except in cases in which the owner of the storage facility
25 has purchased the fee, that the ownership of all property acquired
26 by the owner, both mineral and surface, has reverted to those who
27 owned the property at the time of the acquisition or their heirs,
28 successors or assigns.

29 ~~(b) The state corporation commission is hereby authorized to~~
30 ~~adopt rules and regulations necessary to implement the provisions~~
31 ~~of this act.~~

32 Sec. 2. This act shall take effect and be in force from and after
33 its publication in the statute book.

Section 1. (a) The owner of an underground
natural gas storage facility shall provide to the
state corporation commission a plat map identi-
fying the location of such facility and a description
of the geological formation or formations to be used
for storage.

subsection (a) will become subsection (b)

delete subsection (b)

new subsection (c) The commission may conduct an
administrative hearing pursuant to the Kansas
administrative procedures act upon application for
abandonment of an underground natural gas storage
facility if such facility was certificated by
the commission.

Senate Energy & Nat'l Resc
February 26, 1963
Attachment 1

LAW OFFICES OF
GLAVES, IRBY AND RHOADS
600 BOARD OF TRADE CENTER
120 SOUTH MARKET
WICHITA, KANSAS 67202

JACK GLAVES
CURTIS M. IRBY
THOMAS M. RHOADS

TELEPHONE: (316) 262-5181
FAX: (316) 264-6860

February 25, 1993

Senator Don Sallee
Chairman, Senate Energy and
Natural Resources Committee
Room 128 South
Capitol Building
Topeka, Kansas 66612

RE: Senate Bills 167 and 168

Dear Senator Sallee:

I represent Panhandle Eastern Pipe Line Company that owns and operates a gas storage field in Meade County, Kansas, through its subsidiary Pan Gas Storage. The Borchers North Field has total capacity of 61.4 Bcf with certificated working storage of 26.3 Bcf.

I was present at the hearing on the above referenced bills this past Tuesday, reviewed the statements submitted by Williams Natural Gas, and heard the discussion and comments of Bill Bryson, Director of the KCC Conservation Division. I have also reviewed the proposed amendments to these Bills which, I believe, reflects the concern expressed by Mr. Bryson, and am authorized to state that Panhandle Eastern Pipe Line Company supports both Senate Bills 167 and 168. We believe that the proposals are appropriate and will serve a useful public purpose and will be beneficial to the existing Kansas gas storage facility operators, and we do not view them as detrimental to the interest of oil and gas producers or royalty owners.

We encourage adoption of both Bills with the amendments proposed. Thank you very much.

Respectfully submitted,

GLAVES, IRBY AND RHOADS



Jack Glaves

JG:ska
cc: Russell E. Bishop

Senate Energy & Natural Resources
February 26, 1993
Attachment 2

SENATE BILL No. 168

By Committee on Energy and Natural Resources

2-3

8 AN ACT relating to natural gas; concerning rights of an injector of
9 natural gas into an underground storage facility.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. (a) All natural gas which has previously been reduced
13 to possession, and which is subsequently injected into underground
14 storage fields, sands, reservoirs and facilities, whether such storage
15 rights were acquired by eminent domain or otherwise, shall at all
16 times be the property of the injector, such injector's heirs, successors
17 or assigns.

18 (b) In no event shall such gas be subject to the right of the owner
19 of the surface of such lands or of any mineral interest therein, under
20 which such gas storage fields, sands, reservoirs and facilities lie, or
21 of any person, other than the injector, such injector's heirs, suc-
22 cessors and assigns, to produce, take, reduce to possession, either
23 by means of the law of capture or otherwise, waste, or otherwise
24 interfere with or exercise any control over such gas.

25 (c) With regard to natural gas that has migrated to adjoining
26 property or to a stratum, or portion thereof, which has not been
27 condemned as allowed by law or otherwise purchased:

28 (1) The injector, such injector's heirs, successors and assigns shall
29 not lose title to such gas if such injector, such injector's heirs,
30 successors or assigns can prove by a preponderance of the evidence
31 that such gas was originally injected into the underground storage,
32 ~~whether such injection occurred before or after enactment of this~~
33 ~~section.~~

34 (2) The injector, such injector's heirs, successors and assigns, shall
35 have the right to conduct such tests, at such injector's sole risk and
36 expense including, but not limited to, the value of any lost production
37 of other than the injector's gas, as may be reasonable to determine
38 ownership of such gas.

39 (3) The owner of the stratum shall be entitled to such compen-
40 sation as is provided by law.

41 (4) The injector, such injector's heirs, successors and assigns shall
42 have the right to compel compliance with this section and subsections
43 by injunction or other appropriate relief by application to a court of

, whether owned by the injector or stored under contract.

or possession

(.) after "storage" on line 31; delete lines 32 and 33.

and the owner of the surface

including compensation for use of or damage to the
surface or sub-surface

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Attachment 3

1 competent jurisdiction.

2 ~~(2) The state corporation commission is hereby authorized to~~
3 ~~adopt rules and regulations deemed necessary to administer and~~
4 ~~enforce the provisions of this act.~~

5 Sec. 2. This act shall take effect and be in force from and after
6 its publication in the statute book.

delete subsection (d)



SIERRA CLUB

Kansas Chapter

Medical Waste Incineration
S.B. 195

William Craven, Kansas Sierra Club
Senate Energy and Natural Resources Committee
Feb. 26, 1993

Thank you, Mr. Chairman, for providing an opportunity for the Kansas Sierra Club to testify in favor of this bill. If my memory is correct, this may be the first bill this session heard in this committee that we support, and it is fitting that this bill deals with the very important issue of medical waste incineration.

I am not going to spend a lot of time talking about the politics of this situation in Wyandotte County. That is not my area of expertise. I do want to point out that the real problem with this facility is its proposed location. The top of the stack is about even with some houses within one-third of a mile of the top of the stack. The proposed facility is in a valley, and the smokestack is approximately even with the residences located at the top of the bluff.

I want to provide some information about why neighborhoods oppose incinerators and why neighborhoods have the right instincts on that question, even if in the early stages of their fight against incinerators, they sometimes lack scientific sophistication. Incidentally, it doesn't take long for neighborhoods quickly to learn about the scientific reasons which tend to disfavor incinerators.

However, the first thing I want to do is explain what medical wastes are. Medical wastes are everything from body parts to radioactive wastes, and include bandages, blood, chemicals, medications, and a lot of plastics. Plastics are a special concern because of the dangerous pollutants which are released when they are burned. Unfortunately, in hospitals these days, plastics are used instead of reusable substances like glass, metal, and porcelain which used to be re-used after they were sterilized in an autoclave, which is a high-tech pressure cooker. Hospitals seem to prefer disposables, because they claim they are safer and help control labor costs, but the tradeoff is mountains of disposables and higher disposal costs. Plastics result in a huge amount of toxic waste.

To give you a point of comparison, medical waste is 14-30 percent plastic while household waste is 3-7 percent plastic. The huge amount of plastic and styrene which is incinerated creates the controversy surrounding dioxins. Another component of dioxin is chlorine. Regular garbage has about .1 percent chlorine in it, while medical waste has about 2.5 percent, sometimes as high as 4-5 percent chlorine.

Large, regional medical waste incinerators are essentially the same thing as hazardous waste incinerators. The big difference is that they are not regulated as such. These incinerators are not regulated by the EPA, and are instead

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Attachment 4

regulated by out-of-date rules and regulations of KDHE. I say out of date, because KDHE regulations are aimed at particulates which are no bigger than .2 grains per dry standard cubic foot. The latest technology can control particulate size to .015 grains per dry standard cubic foot.

What is proposed in Kansas City is a very large medical waste incinerator which would burn 24 tons of waste each day. By comparison, the smaller incinerators at a typical hospital burn about 400-600 pounds per hour. It is interesting that as of several months ago, this facility had no clients. No hospital in the Kansas City metropolitan area had agreed to use this facility. There are no restrictions on importing medical wastes from other areas.

You should also know that according to a recent U.S. Environmental Protection Agency release, that all of the hazardous waste incinerators in the country potentially fail to meet the agency's requirements for near-total destruction of hazardous wastes, especially dioxins. EPA requires 99.99 percent destruction of all hazardous wastes and 99.9999 percent destruction of especially harmful wastes such as PCB's and dioxins. Those numbers may seem high to you, until you recall that dioxins are among the most harmful chemicals known to man. If the incinerator does function at that level, what that means is that statistically, one cancer death per million people will be created. More precisely, that is one cancer death per million people per contaminant.

Medical waste incinerators produce more dioxin per pound than hazardous waste incinerators, yet they are not viewed as hazardous waste incinerators because they are typically small. This one is not so small.

Having said that incinerators don't perform at levels required by the EPA, it is important to point out that the proposed incinerator in Kansas City does have some pretty good air pollution equipment.

Other problems with this proposed facility are that it has an emergency procedure to by-pass the pollution control equipment and to discharge the very toxic smoke directly into the air. The permit application seeks permission to open this vent three times a month, or 36 times a year. The report of Craig Volland, a civil engineer, which I have attached to my testimony, says "that is absurd."

For a more complete scientific breakdown, I commend Volland's report to you.

In addition to dioxins and furans, the pollutants which are released include:

- Volatile organic chemicals like trichloroethylene, a suspected carcinogen, and tetrachloroethylene, among others;
- Products of incomplete combustion like PCB's, and other polycyclic organic matter, much of which is carcinogenic; and
- Particles small enough for people to breathe deep into their lungs;
- Heavy metals such as lead, cadmium, mercury, arsenic, and nickel, which can cause serious health problems.

Two types of ash are produced by incinerators. Fly ash (which comes out the stack or is captured in pollution control equipment) is the most concentrated. But bottom ash is also laden with heavy metals. These residues are typically

landfilled with regular garbage, which creates a host of separate problems. Some estimates are that only about 25 percent by weight of what is incinerated, is actually completely combusted. Incinerators typically use a starved air system, so complete combustion does not occur.

About 15 percent of medical waste is infectious waste. This includes body parts and fluids, equipment, and bandages. It may sometimes contain AIDS and Hepatitis B, which can survive in blood for a time outside the body. When infectious wastes are mixed with other medical wastes, the whole thing becomes contaminated.

Alternatives to incineration include treatment and waste reduction, and the principle that waste should be dealt with at the source. Treatment techniques include autoclaving, chemical disinfection using formaldehyde, xylene, alcohol, or other substances which can sterilize both waste and reusable items. The overriding concern here is that hospitals will have to return to reusables if they want to reduce infectious waste volumes.

A separate issue is the ethical side of things. Why do these companies have the right to condemn those who live near an incinerator, or downwind from an incinerator to breathe whatever comes out the stack? Why do the rest of us have to worry about what the ash is doing to our landfills, and our water?

We have allowed this so-called cancer risk analysis to obscure the rule of law that companies don't have the right to harm people. Under traditional rules of law, they have the duty not to harm people. What we are living with now, when it comes to incinerators, is contrary to the view that individuals have a certain degree of personal sanctity. Individuals have the right not to breathe what companies want to incinerate.

Thank you for the opportunity to testify in favor of this important bill.

Comments on Proposed AIH Med Waste Incinerator K. C. Ks.

Delivered at May 27, 1992 Hearing

by Craig Volland, President
Spectrum Technologists
Kansas City, Mo. 64110

In general the County Health Department has done a thorough job of evaluating this application within the framework of current state law. In fact they have done a better job than most of the state level reviews I've seen. The pollution control equipment proposed for this facility is more extensive than that usually proposed for garbage and medical waste incinerators. However, it is not yet proven technology; nor does it compare to state of the art technology now being applied to hazardous waste incineration, such as at Coffeerville, Ks. With its heavy concentration of PVC and polystyrene plastics, mercury and other heavy metals medical waste should be placed in the category of hazardous waste. It has been placed in its own special category, both in Kansas and elsewhere, primarily for reasons of economics, politics, and custom.

While the applicant has agreed to spend a little more money to inject activated carbon, the applicant is not doing the nearby residents any big favors. The county health department forced the applicant to add activated carbon injection because dry sorbent injection/baghouse technology achieved inadequate capture of dioxins, mercury and chromium in recent tests supervised by the California Air Resources Board at the American Environmental Management Facility and at a similar facility in Michigan tested by the USEPA. It should also be thoroughly understood that the applicant has chosen a bad location for this incinerator. It's down in a valley and located within a half mile of residences situated approximately at the same elevation as the top of the stack. It appears that these high risk residential receptors were not specifically identified in the receptor grid system nor coordinates verified during dispersion modeling. If the applicant insists on locating on this kind of site, then they should well expect to jump through every conceivable regulatory hoop, and install pollution controls far better than anything used elsewhere. As a minimum, that's what they owe the citizens in the area.

Experimental data indicates that the injection of activated carbon at the dose specified should achieve 90% removal of mercury, and some additional removal of dioxin and furans. However, we have no long term data on the performance of this process and thus it must be considered somewhat experimental. Also I'm not aware of any data on the effect of activated carbon injection on the capture of hexavalent chromium.

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February 26, 1993
Attachment 5

Baghouses have been applied on the medical waste application only in the past two or three years. Some have experienced serious problems with corrosion and bag blinding associated with high levels of hydrochloric acid gases. Accordingly the permit should require close monitoring of this facility by the county health department until its adequate performance is assured.

Some of the terms and conditions listed in the draft permit suggest a lack of confidence in this new process on the part of the applicant and Health Department:

1. The permit allows three dump stack openings per month. It apparently allows an unlimited number of such events if they last less than two hours. This is absurd. If that many occur, then the system is not working.

2. The permit allows 180 days before the first performance test. This is much too long. This gives the applicant 6 months to tinker with their equipment. If the unit is not running smoothly after 60 days then it's not going to work.

3. The permit requires only one performance test. It should require quarterly tests for first year and annually thereafter. It requires annual assessment of lime dosage but says nothing about the big question which is carbon injection. Given that carbon injection is still somewhat experimental; the permit should require optimization tests for activated carbon dosage.

4. The applicant can easily meet the maximum allowable emission rate for mercury without injecting any activated carbon because the maximum emission limit is set above the level of mercury that's common in medical waste. While one test series has shown up to 53 ppm in medical waste, the average according to my paper which I will put into evidence, is 15 ppm. The maximum emission limit in this permit is set at 33 ppm.

Attachment
#1

The problem with mercury is rarely the inhalation risk with which Ks. Air Toxics policy is concerned, rather it's the buildup in the food chain. This mercury will not only drain directly into the Kaw river when it's raining but also extend many miles away and get into impoundments in Eastern Kansas and Western Missouri. The applicant should be given only one emission limit based on 90% removal, which at a feed rate of 4 to 8 lb activated carbon/ton of waste should be regularly attainable. As presently written the draft permit gives the applicant three mercury limits to choose from.

The prohibition against mercury in the waste stream is not enforceable. This is a regional facility that will be serving many and diverse medical and veterinary facilities. Workers at the incinerator cannot open and inspect containers

8. Lead has built up in urban areas to alarming levels. Excessive lead was found in the homes of the people tested near the Economy Chrome Site. It is not at all clear as to where this lead came from. Like mercury, the maximum lead emission level proposed in the draft permit for the AIH incinerator is greater than the lead that's likely to be coming in. This is because the Ks. Air Toxics standards do not adequately account for the lead already in the environment. Baghouses of the type proposed for this facility have regularly achieved 99% removal and this degree of removal should be explicitly required in this case.

I will now note for the record some technical corrections that should be made to the draft permit.

9. The permit needs to explicitly specify that the dioxin/furan limit means total chlorinated dioxins and furans, ie. the sum of all isomers, which is common practice and consistent with EPA's new MSW incinerator regulations.

10. The temperature of 300 deg. F specified at the inlet of the baghouse is too low. Med waste facilities are incurring too many emergency events at that temperature due to bag blinding. Also corrosion in plenum of baghouse. Should raise this limit to 325 deg. Will have no effect on mercury capture efficiency because activated carbon is being injected. Hexavalent chromyl chloride does not condense at either 300 or 325 deg. F, and all other metals of concern condense at well above 325 deg. F.

11. The Model Output Summary (Table 1 of the Technical Evaluation Background Document shows operation of 14 hours per day while the draft permit says 24 hours per day. What assumption went into the dispersion model?

I will close by saying that despite the best efforts of Bruce Anderson and the County Health Department the citizens in the downtown area of Kansas City, Ks. have every reason to be concerned about this facility. Too many questions remain unanswered, both little technical questions and big questions about what kind of environment is being created for the families that have chosen to preserve this urban area by living there. This permit needs to be either tightened up considerably or denied altogether.