

**House Committee on Commerce, Labor and Economic Development
Opponent Testimony on HB 2340**

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KDHE has serious and sincere concerns about House Bill 2340 related to the prohibition of any investigation or cleanup of contamination at former Army-owned sites in Johnson County. The only known site fitting these parameters is the Sunflower Army Ammunition Plant Site (SFAAP) in De Soto, which is known to have toxic levels of pesticides in both soil and groundwater. KDHE's concerns related to the effect of this legislation are as follows:

1. Overbroad Drafting

KDHE notes that HB 2340's current language would restrict KDHE's and any other state agency's authority to order investigation, removal, or remediation of any contaminant at SFAAP, not just pesticides. KDHE believes this is a drafting error and the legislation was intended to only prohibit addressing pesticides but warns this could dramatically affect all cleanup efforts at SFAAP. Importantly, KDHE could not oversee or require the U.S. Army's cleanup of all contaminants and/or pesticides nor establish protective measures limiting use of the property that poses hazards to the public. It is also unclear whether political divisions, such as De Soto, would have authority to change zoning or otherwise limit use of the property.

2. Human Health

Addressing excessive levels of pesticides is crucial for protection of human health. SFAAP has areas with very high levels of dieldrin, aldrin, heptachlor, and chlordane in soil and groundwater. These pesticides are so toxic that they were banned in the 1980s due to their long lasting impacts in the environment and extreme adverse health effects. All four are neurotoxins and probable carcinogens. Aldrin and dieldrin can cause seizures, convulsions or death. Chlordane is known to affect the nervous system and liver.

The most abundantly used pesticide, aldrin, has been found in soil at levels 50 to 800 times higher than residential cleanup standards. In the few groundwater samples obtained thus far, these pesticides have also been found at concentrations far above drinking water standards. Human exposure at these levels could be harmful to adults and extremely harmful to children even in small doses because of their small size. KDHE has concerns about these pesticides affecting on-site construction and utility workers, seeping into surface waters, and migrating off-site through groundwater.

3. Unfair and Inconsistent Standards

As drafted, HB 2340 raises concerns as to its legality under the State Constitution because of its disparate treatment under the law. KDHE oversees cleanups at 359 federal facilities, including the Kansas Army Ammunition Plant near Parsons and the Schilling Air Force Base near Salina. Each of these sites is following or has completed the investigatory and remedial path to address all known contaminants. Enactment of HB 2340 would be patently unfair to the myriad other parties who have complied with existing state and federal law.

The developer at SFAAP, Sunflower Redevelopment, LLC (SRL), has consistently been treated to the same regulatory standard as other industrial and commercial sites. Any known hazardous waste facility faces the same scrutiny and requirements, especially where it is proposed to be redeveloped for residential use and known to be heavily contaminated.

4. Federal Enforcement

HB 2340 throws KDHE's oversight primacy into question and creates a great deal of ambiguity. Oversight of SFAAP currently happens through an EPA-lead Resource Conservation and Recovery Act (RCRA) permit and a KDHE-lead Consent Order. If KDHE's Consent Order is rendered ineffective through HB 2340, those cleanup requirements would return to EPA's purview. EPA would still have authority to act under the RCRA permit or an independent enforcement order.

In addition, KDHE has been working to assume primacy on the RCRA Permit from EPA through its state-authorized program and had expected to issue that permit in late spring of this year. HB 2340 would disrupt or render such plan impossible. KDHE could not issue that permit without authority to address all federally regulated hazardous wastes. Even if KDHE could issue the RCRA permit without authority to address pesticides, the permit would remain in place in perpetuity, as it could not be closed with the dangerous levels of pesticides still in place, and all future landowners would be required to become permittees upon acquiring any part of the permitted property.

5. Unfulfilled Commitments

This legislation directly violates previous promises made and actions taken by SRL at SFAAP.

First, SRL voluntarily took responsibility for this property contingent upon several promises to the State of Kansas, including voluntarily signing the Consent Order, to obtain the Governor's concurrence on the sale (this concurrence being a requirement of federal law). SRL agreed in the Consent Order to address pesticides. SRL received \$109 million from the Army to perform such cleanup at the site. News articles at the time of transfer indicated cleanup cost was expected to be in the range of \$200 million, and KDHE expressed concerns to SRL that its settlement with Army was inadequate to cover the cleanup costs.

Second, in 2018, SRL obtained an additional \$24 million in proceeds under its environmental insurance policy to clean up pesticides, lead-based paint, and asbestos-containing materials. Upon receipt of the insurance proceeds, SRL assured KDHE that the proceeds would be held in a separate account for the purpose of addressing the subject contaminants.

Third, SRL and KDHE agreed to a presumptive remedy in 2010 for addressing the pesticides in soil. This generally requires soil to be removed down four feet with a margin around the building, with confirmation sampling to ensure only clean soil is left behind. SRL agreed to this but later decided it was too expensive. There are 549 "pesticide accounts," at SFAAP, which are existing or former building footprints under which pesticides were injected. Some have been addressed according to the presumptive remedy, but the majority have not.

6. Residential Use Without Restriction

KDHE and SRL have already devised a working path forward for both residual soil and groundwater contamination at SFAAP that would allow for commercial and industrial use of the property. Allowing unrestricted use, which would include residential use, risks significant harm to the public based on existing levels of contamination.

On contaminated soil, KDHE has agreed SRL that the pesticides can be left in place if there is a property-use restriction ensuring there is not residential development. (And if in the future pesticide-laden soil is removed, this

restriction can be lifted.) This bill would leave these dangerous levels of pesticides unrestricted, potentially allowing a daycare, home, or school to be located directly on top of the highest concentrations.

On groundwater, KDHE has repeatedly asked for investigation to determine the full extent of the groundwater contamination, which is currently unknown. This is to ensure no groundwater contamination migrates off site. KDHE anticipates a restrictive covenant ensuring no one installs a private water well.

To date, KDHE has made huge lifts to facilitate development for industrial and commercial use (such as Panasonic) to the maximum extent possible. KDHE continues to stand ready to facilitate further non-residential development, with the appropriate safeguards in place, or residential development, so long as pesticide levels are remediated to residential standards.

KDHE does not want a situation in which toxic soils remain in place, with no notice to future landowners. Future landowners could suffer negative adverse health effects and/or face an unknown amount of liability for remediating these toxic pesticides. Throughout this process, SRL has made specific and important commitments to the State of Kansas. KDHE asks that this Committee ensure SRL upholds those commitments and protects human health and future landowners.