

SUNFLOWER REDEVELOPMENT, LLC

Memorandum

TO: Senate Committee on Commerce
FROM: John Petersen
SUBJECT: Testimony in Support of HB 2340
DATE: March 11, 2025

KDHE EFFORTS TO REGULATE PESTICIDES AT THE FORMER SUNFLOWER ARMY AMMUNITION PLANT ARE WITHOUT STATUTORY OR REGULATORY AUTHORITY AND UNDERMINE THE TIMELY REDEVELOPMENT OF THE FACILITY

Mr. Chairman and Members of the Committee:

I appear today in my capacity as a member in Sunflower Redevelopment, LLC ("SRL"), the owner of the former Sunflower Army Ammunition Plant (now known as Astra Enterprise Park), located in De Soto, Kansas. I appreciate the opportunity to speak in favor of House Bill 2340 now before the Committee.

The purpose of this legislation is singularly focused and designed to prevent regulatory mandates by the Kansas Department of Health and Environment ("KDHE") that are arbitrary and capricious in nature, have no statutory basis under Kansas law and, in fact, directly contravene federal legislation that is controlling.

HB 2340 is singularly focused in its application because the regulatory actions of KDHE are in and of themselves singularly focused on Astra Enterprises Park despite the fact that the chemicals the Department seeks to address were used throughout Kansas.

To understand the purpose and the need for this legislation it is important to understand the factual context within which the issue to be addressed arose. To that end I provide the following:

In 2005, now 20 years ago, SRL purchased the Sunflower Plant from the United States Army subject to agreements and commitments with and to the Army, the State of Kansas, the EPA, and Johnson County, Kansas. A fundamental premise of this transaction was our commitment to facilitate remediation of contaminants left on the property by the Army and use our best efforts to redevelop the facility into a world class economic development opportunity. Of equal importance however, and what allowed us to make such a bold commitment, was the understanding and agreement that our responsibilities would be grounded within duly enacted legislative and regulatory parameters at both the federal and state levels.

I am proud to stand before you on behalf of our ownership group and report that over the past 20 years we have stayed true to our commitments. By following all duly enacted federal and state laws, working with all regulatory authorities in a cooperative manner and partnering with local governmental entities we have witnessed hundreds of millions of dollars being spent on remediation and site development. The Panasonic Plant now about to open reflects the success we all have accomplished.

But there is more to be done by us to fully capitalize on the significant investment of time, energy, and money all of the parties involved at Sunflower have made to date. Much of the work remaining falls solely on the shoulders of SRL in the form of demolishing approximately 540 buildings and structures, including remediation of asbestos and lead-based paint contained within the structures. As you would expect, this portion of our remediation and redevelopment program is a very expensive proposition with current budgets reflecting expenditures over 80 million dollars.

These remediation costs are more expensive than we originally budgeted, of course. That is an inherent result in a major development and one that could be anticipated with a project of this magnitude and the elongated timeframes necessary with a brownfield site like Sunflower. But we committed to do the work and we will. That said, we committed to do the work in accordance with all duly enacted legislative and regulatory standards. We did not commit to, nor should we be required to, comply with policy positions that have no statutory or regulatory basis and are being advanced in a singular fashion affecting only Sunflower. Thus the focus and purpose for HB 2340.

Development at Astra Park has been frustrated by KDHE's arbitrary and capricious regulation of historic pesticides in soil and groundwater at the property. Those pesticides are Aldrin, Dieldrin, Chlordane and Heptachlor which were applied in their ordinary manner to control termites by the Army during its ownership and usage of the property commencing in 1942. The subject pesticides were last used by the army at sunflower in 1988. No pesticides have been used on the property by SRL since it took ownership of Sunflower from the Army in 2005.

Congress and the EPA have specifically exempted these commercial products, lawful at the time they were used, from regulation under both RCRA and CERCLA. The federal government has spoken clearly and succinctly in regard to the issue before us. When used in their ordinary manner to control pests, these pesticides are neither a hazardous waste nor a solid waste requiring regulation or remediation.

The Army applied these pesticides in the ordinary manner to hundreds of wooden buildings within Sunflower. Although the Army is taking responsibility for the remediation of all controlled and regulated contaminants as required by law, it has consistently refused KDHE's edicts to remove pesticide remnants based on the exemption allowed under federal law. The Army is addressing pesticides at Sunflower at locations where pesticides were "spilled" such as at locations used to store and /or mix the products for later use across its 9,000-acre facility.

Thwarted by the Army in regard to areas where pesticides were used in their ordinary manner, KDHE has mandated that SRL remove any trace of these pesticides from soil around buildings when demolished and perform extensive testing across the facility to determine if pesticides are present in groundwater even though there is a prohibition against the use of the groundwater at Sunflower.

There is no Kansas statute or regulation that provides KDHE the authority to assert its mandate in regard to pesticides used in their ordinary manner.

Despite this lack of legal authority, KDHE has refused to provide SRL clearance for development unless this mandate is adhered to.

Utilization of these pesticides is not unique to Sunflower. The exact same products were used throughout Kansas to control termites. One of the most common uses of chlordane was on corn fields, yet, Sunflower, and two other federal facilities, are the only locations they have asserted such a baseless mandate. In fact, Clearview City, a former government housing project for Sunflower employees sold to a third party prior to the sale of Sunflower to SRL, situated directly across the street from Panasonic, has buildings with identical circumstances regarding pesticides. This property is currently being redeveloped by the third-party owner for residential use with no restriction being asserted by KDHE regarding pesticides.

Northeast Johnson County, Kansas provides another glaring example of KDHE's arbitrary approach to pesticides used in their ordinary manner. Over the last decade hundreds of homes in the northeast part of the county have been razed and new homes built on the same lots with no requirement for testing or remediation. The homes demolished were very likely treated with the same pesticides used by the Army at Sunflower.

If KDHE's concerns are warranted, then why is there not uniform enforcement throughout the state? Why have they never sought legislative authority to exceed EPA standards?

Adhering to KDHE's mandate at Sunflower has an estimated cost of over \$25 million dollars and presents a significant deterrent to the continued redevelopment of the former Army facility.

Affirmative legislation in the form of HB 2340 is needed to prevent KDHE from governing without statutory or regulatory authority. Affirmative legislation is needed to direct KDHE to regulate pesticides applied in their ordinary manner at Sunflower consistent with federal law and EPA standards. Affirmative legislation is needed to prevent KDHE from regulating the redevelopment of Sunflower in an arbitrary and capricious manner different from other development projects throughout Kansas.

KDHE's efforts to regulate by policy unauthorized by statute or regulation is significantly inhibiting efforts to capture the benefits of the Panasonic investment through continued economic development. Increased costs are always an inhibitor to the successful execution of a development plan but in the case of Sunflower, the Department's position is also impacting the opportunity for Kansas to take advantage of federal tax credits offered in exchange for the commitment of private capital under the Inflation Reduction Act. Discussions with several prospects are premised on the availability to them of these federal tax credits which Sunflower, except for the position of KDHE regarding pesticides, is uniquely positioned to offer.

Thank you for the opportunity to speak in support of HB 2340. We respectfully urge passage of this legislation.