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**Senate Committee on Commerce
Opponent Testimony on HB 2340**

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Kansas Department of Health and Environment**

KDHE has serious 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 and intent of this legislation are as follows:

1. Precedent

This bill sets damaging precedent for other responsible parties in the state to allow them to pass a bill that relieves them of their liability to clean up their property. Kansas policy on contaminated sites has always been that the polluter (or an entity that has taken responsibility for the contamination) should clean up their site. This bill will allow a company to walk away from their commitment to the state and not follow through on their responsibility. The developer of SFAAP has entered into an agreement with the state promising to clean facility up to residential standards. This bill relieves them of that responsibility for the pesticide contamination.

2. Unfulfilled Commitments

Efforts to enact this legislation fly in the face of 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 (attachment 1), 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.

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 (attachment 2). 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. The pesticides were poured through holes in the foundations when the buildings were in place. Some have been addressed according to the presumptive remedy, but the majority have not.

Fourth, KDHE has approved the Human Health Risk Assessment for nonresidential use (attachment 3). In KDHE's approval letter we stated pesticides would not require cleanup if the property is used for nonresidential purposes. In

the same letter KDHE did stated pesticides would be required to be cleaned up as previously agreed to by SRL. One note is in this same response, KDHE summarized SRL intent of have residential properties on this facility in the future.

3. 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.

4. 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 environmental persistence and extreme adverse health effects. All four are neurotoxins and probable carcinogens. Aldrin and dieldrin are neurotoxins that can cause seizures, convulsions or death. Chlordane is known to affect the nervous system and liver.

The developer has argued the pesticides were applied by the army per the labeled instructions and therefore are not subject to KDHE's requirements. This is incorrect; the Environmental Protection Agencies policy for historically placed pesticides is they can remain in place if the building is still being used. The buildings at Sunflower are being torn down or no longer exist therefore the pesticides are no longer providing termite control. 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 hundreds of times above drinking water standards. Human exposure at these levels is harmful to adults and extremely harmful to children even in small doses because of their small size in residential areas. KDHE has serious concerns about these pesticides affecting residents, seep into surface waters; and migrate off-site through groundwater.

5. Unfair Practices

The developer at SFAAP, Sunflower Redevelopment, LLC (SRL), has frequently argued that it is being treated unfairly in comparison to other industrial and commercial sites. This is incorrect; KDHE has treated the developer with the same scrutiny and requirements as any other hazardous waste permit owner, especially where the facility is proposed to be redeveloped for residential use and known to be heavily contaminated. KDHE is treating the SFAAP the same as other federal facilities with a Resource Conservation and Recovery Act (RCRA) permit. KDHE is concerned that with the amended HB 2340 because it pushes the cleanup of toxic pesticides to an owner in future when the current developer has promised the state to clean them up and has received funding for perform that action. Also, no institutional control is required to notify future landowners of the unremediated pesticides.

6. 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 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.

To date, KDHE has made huge lifts to facilitate development for industrial and commercial use to the maximum extent possible. KDHE continues to stand ready to facilitate further non-residential development with the appropriate safeguards in place for 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. SRL made specific and important commitments to the State of Kansas. KDHE asks that this Committee ensure SRL lives up to those commitments and protects human health and future landowners. We ask that this HB 2340 not be approved by this committee.

