

**PUBLIC SERVICE COMMISSION OVERSIGHT
OF SOLID WASTE LANDFILL FEES**

RESEARCH MEMORANDUM NO. 454

LEGISLATIVE RESEARCH COMMISSION

December, 1991



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TO: Vic Hellard, Jr., Director
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FROM: Senator Fred Bradley, Co-Chair
Representative Herbie Deskins, Jr., Co-Chair
Interim Joint Committee on Agriculture and
Natural Resources

SUBJECT: Report

DATE: December 16, 1991

The attached report on solid waste landfill fees was prepared by the Subcommittee on Environment of the full committee. We wish to acknowledge the members of the subcommittee and its chairperson, who conducted the study.

Representative Mark Brown, Chair

Representative Woody Allen
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Please file this report as a public document in the manner you determine to be most appropriate.

Attachment

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DR/kk

**Report of the
Interim Joint Committee on Agriculture and Natural Resources
on the
Public Service Commission
Oversight of Solid Waste Landfill Fees**

The 1991 special session of the General Assembly enacted Senate Concurrent Resolution 53, directing the Interim Joint Committee on Agriculture and Natural Resources to study the question of whether the Public Service Commission should oversee fees charged and other financial aspects of solid waste management operations. The responsibility for conducting the study was delegated to the Subcommittee on Environment.

FINDING: Senate Bill 2 of the 1991 special session of the General Assembly is a major legislative enactment to manage solid waste in a comprehensive manner. The law as written will be implemented over time and in phases, all of which taken together will determine the ultimate success of this legislative effort. Therefore, the committee finds, without comparing the management approach of Senate Bill 2 with an approach of managing the waste industry as a public utility, that more time must elapse before the success or failure of Senate Bill 2 will be revealed.

FINDING: New Jersey has the longest experience of any state with regulating solid waste facilities as public utilities but has recently begun to consider loosening the rate controls on solid waste collection. The committee finds that these changing

circumstances in New Jersey make comparisons between the New Jersey and Kentucky solid waste industries difficult.

FINDING: West Virginia enacted legislation in July, 1989, to require the West Virginia Public Service Commission to regulate the fees of solid waste landfills. The committee finds that the experience of West Virginia in regulating solid waste landfills as public utilities is not sufficiently developed to provide information which the committee could use to reach any conclusions on this topic.

FINDING: Connecticut, Florida, and Indiana each considered legislation in the early months of 1991 to control fees at solid waste landfills. However, none of the proposals received a favorable vote from the committees to which they had been referred. The committee therefore finds that the actions of these states serve as a warning to proceed cautiously on this subject.

FINDING: The usual demand for committee time to study issues in an interim, combined with the additional responsibilities placed on the committee because of the 1991 special session, has resulted in many worthy subjects competing for a reduced amount of committee time. Consequently, the committee finds that with the time allotted to this study sufficient data could not be gathered to make a recommendation on this issue.

DISCUSSION

Testimony Before the Subcommittee on Environment, July 31, 1991

A representative of solid waste haulers expressed the opinion that Kentucky has healthy competition within the solid waste hauling

industry that would be negatively affected by oversight and control by a public service regulatory agency.

In a discussion between the members and representatives of a private solid waste landfill owner, the observation was made that compliance with the various sections of Senate Bill 2 has led to an increase in data collection and storage by both landfill operators and the regulatory agency. There was general agreement that if the waste management industry were to be placed under the control of the Kentucky Public Service Commission there would be additional paperwork generated.

One implication of this discussion by the subcommittee is that there must be careful weighing of the benefits, such as a cleaner environment and greater safety for citizens, which may be expected to result from the increasingly costly accumulation of data.

Another point brought out at this meeting related to placing waste management costs into a perspective that is understandable and realistic. For example, based on estimated figures provided to the subcommittee, the increase in landfilling fees and hauling costs which may be anticipated as a result of some aspects of Senate Bill 2 is \$2.29 per ton. However, it must be noted that this estimate could not include costs which may be associated with a full-time inspector at a landfill or complying with upcoming conflict resolution procedures.

It was emphasized to the subcommittee that \$2.29 per ton would translate to a total increase in costs to the taxpayers in the state of an estimated \$11.5 million.

However, members of the subcommittee attempted to relate the

\$2.29 increase to the concerns of an individual. Looked at from the vantage point of a household of four persons, which is estimated to generate three tons of solid waste per year, the increase would be \$6.87 per year, or .57 cents per month.

Another caveat must be offered at this point. The subcommittee could not obtain reliable estimates of the per household increase in garbage collection costs that may result from the more complex administrative regulations on the design, construction, and operation of a solid waste landfill.

A final point emphasized at this meeting by a member was that the legislature will scrutinize very closely any unwarranted increase in solid waste management costs that are passed on to consumers before those costs are incurred by businesses.

**Testimony Before the House of Representatives Committee on
Natural Resources and Environment, January 31, 1991**

Representatives of the Kentucky Public Service Commission (PSC) testified before the House Committee on Natural Resources and Environment during the 1991 special session. In explaining that the PSC oversees the rates charged by over 500 small and large utilities across the state, it was pointed out that currently the commission has 115 staff people. This is fewer than the 125 authorized positions. If the PSC were to regulate between 50 and 75 solid waste landfills, approximately eleven more staff would need to be hired and the commission budget increased by \$490,000.

Throughout the discussion by committee members the concern was expressed that the proposed legislation (subsequently enacted as

Senate Bill 2) might reduce competition among landfills and result in higher costs to consumers. The observation was made that in New Jersey, the state with the longest history of rate control on landfill services, there isn't sufficient capacity to dispose by landfilling all of New Jersey's waste, and consequently much of it is exported to other states. Also, other approaches to controlling landfill costs were mentioned, such as encouraging small businesses to open landfills, regulating private landfills only, or creating a new agency to oversee the solid waste industry.

Perhaps the major conclusion to be drawn from the discussion is that, although there is uniform concern that Kentucky consumers must be protected against unjustified costs that may arise from events in the solid waste industry, there is no uniform agreement on how that protection should be given.

Summary of Information Requested by Subcommittee on Environment:

The Experiences of New Jersey and West Virginia

New Jersey and West Virginia are the only states that could be identified as regulating the financial aspects of solid waste management facilities because of the public utility attributes of these types of facilities.

New Jersey

In 1970, New Jersey enacted a law which states in part, "The Board of Public Utility Commissioners shall ... make appropriate rules ... for the regulation of rates and public utility aspects of the solid waste collection industry and the solid waste disposal industry." (N.J.S.A. 48-13A-4.) Much has taken place in the solid

waste industry both in New Jersey and in the nation since 1970.

In New Jersey a task force recently formed by the Governor recommended changes to the state's management of solid waste; however, it seems clear New Jersey remains committed to rate controls on solid waste landfills and resource recovery facilities. On the other hand, recent proposed legislation would begin a process of relaxing the rate structure imposed on solid waste transporters.

New Jersey also has come to rely heavily on resource recovery as a solid waste management tool. An example is the opening of a 2200-ton-per-day facility serving Essex County. This county of about 900,000 people had relied on exportation of 100 percent of its solid waste as a disposal option. Now all of the county's solid waste goes to the local incinerator.

Recycling is another aspect of New Jersey's solid waste management policy that is gaining importance. Two years ago the state had reached a mandatory 25 percent solid waste recycling goal. One recommendation from the Governor's task force report, which has been accepted by the Governor, is that the recycling goal be raised to 60 percent.

Policymakers in New Jersey appear to have determined that after twenty years of rate controls on garbage haulers, some flexibility in those rates might stimulate competition and ultimately be good for the consumer. Yet, as the regionalization of capital intensive facilities grows, rate controls remain necessary to adequately protect the public from the resulting monopolies.

To relate this experience of New Jersey to the solid waste industry in Kentucky in a meaningful way would be a difficult task.

West Virginia

Effective April 8, 1989, the jurisdiction of the West Virginia Public Service Commission was extended to include solid waste facilities. The commission was directed to "establish, prescribe and enforce rates and fees charged by commercial solid waste facilities." (W. Va. Code Sec. 24-2-1.) In addition, West Virginia Code Section 24A-2-4a requires the commission to approve the rates of any common carrier transporting solid waste in West Virginia.

Information gathered about the solid waste industry in West Virginia includes the following.

Three years ago the average per ton tipping fee for disposal of solid waste at a landfill was \$8. Today the average is \$20 per ton.

Two years ago the average fee paid by a household for garbage collection was \$7 per month. Today the average is \$10 per month.

The West Virginia Public Service Commission has drawn only one conclusion at this time about the financial aspects of solid waste management: for every \$1 per ton increase in the tipping fee the monthly bill for household garbage collection can be expected to rise by 12 cents.

The point must be made that this information, however useful for a general comparison with these costs in Kentucky, cannot in any way be used to indicate the effect that rate controls have had on the solid waste industry in West Virginia. There are several reasons for this which are not included in the sketchy information itself.

First, like many states, West Virginia is in the process of upgrading the design, construction, and operational standards for solid waste facilities. This development has resulted in the closing

or expected closing of facilities, not unlike what has been taking place in Kentucky. For example, two years ago West Virginia had 45 landfills. By November of 1992 the expectation is that there will be no more than 15 or 20 landfills.

Second, West Virginia now requires that "it shall be unlawful for any person to establish, construct, install or operate a commercial solid waste landfill or transfer station at a site not authorized by the siting plan." (W. Va. Code Sec. 20-9-12a.) The siting plan is to be drafted by each county or regional solid waste authority and shall identify zones within each county where siting of solid waste facilities is authorized or prohibited. The effect of this variation of "local control" of landfill siting is as yet indeterminable.

Third, West Virginia's mountainous topography has been creating additional transportation-related costs, such as greater use of transfer stations and use of smaller collection trucks, which feed larger trucks, which ultimately transport the waste to either a transfer station or landfill.

Legislative Proposals in Other States

On February 21, 1991, H 6953 was introduced in the Connecticut legislature. The bill, which was referred to the Joint Committee on Energy and Public Utilities, proposed to grant to the Connecticut Department of Public Utility Control jurisdiction over the rates and fees charged by municipal solid waste facilities and woodburning facilities. The bill did not come to a vote in the committee.

On January 14, 1991, S 410 was introduced in the Indiana

legislature. The bill, which was referred to the Senate Committee on Environmental and Consumer Affairs, would have provided that the fees charged by landfills and incinerators are subject to approval of the Indiana utility regulatory commission and require the commission to adopt rules by December 31, 1991, establishing a procedure for reviewing and approving the fees charged by landfills and incinerators. The bill did not come to a vote in the committee.

On March 5, 1991, H 1345 was introduced in the Florida legislature. The bill, which was referred to the House Committees on Regulated Services and Technology, Finance and Taxation, and Appropriations, proposed to provide for the regulation of solid waste collection and disposal utilities by the Florida Public Service Commission.

The bill originated in the Florida Attorney General's office and 1991 was the second year a sponsor had introduced the bill. However, the bill did not receive a hearing in any of the three committees to which it was referred.

No studies were conducted in any of these states prior to the filing of these proposals.



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