

MINUTES
JOINT INTERIM COMMITTEE ON ENERGY
Berryville Community Center, 601 Dr. Spurlin Circle
Berryville, Arkansas
Thursday, May 3, 2018

The Joint Interim Committee on Energy met at 6:00 p.m. Thursday, May 3, 2018, at Berryville Community Center in Berryville, Arkansas.

Committee members present: Senators Bryan King, Co-Chair; Representatives Bob Ballinger, and Kim Hendren.

Alternate members present: Representative Ron McNair.

Also attending: Senator Trent Garner.

*Prior to calling the meeting to order, Senator King introduced **Noreen Watson, Carroll County, District 7, Justice of the Peace**, to summarize events-to-date regarding the Arkansas Department of Environmental Quality (ADEQ), Northwest Economic Development District, Ozark Mountain Solid Waste District, time frames, special language, court case, and management of funds. Her questions to ADEQ concern key time frames in which certain things happened and if ADEQ was interacting with either the economic district or the solid waste district, which were involved in the landfill during 2005 to 2009. During that time, she noted loose management of money and the bond was used up, so when Ozark Mountain Solid Waste District took over, there were limited funds and problems. Between 2005 and 2008 the economic district sent four different engineering studies to ADEQ, and all four were rejected. The studies were to fix landfill problems.*

- 1. During 2005-2008, why were all of the engineering studies rejected? Early intervention would have cost less, because the studies alone cost almost \$1 million dollars.*
- 2. During the same time period there were several violations. ADEQ's mission states fair and effective enforcement against violators. ADEQ policy is that violators are fined \$100/day for the first 30 days then \$1,000/day thereafter until the violations are resolved. Violations went on for a number of years, but records of fines associated with the violations could not be found. When were fines imposed, and what was their effect?*
- 3. In 2012, the landfill was shut down not closed, that is to say, it was not covered, meanwhile rain poured in on open garbage, causing greater problems of leachate and other environmental concerns.*
- 4. ADEQ's mission statement is to accelerate permitting processes and environmental clean-up, but the time frame lasted from 2012 until 2017 when remediation began. Is this accelerated clean-up?*
- 5. ADEQ has a website that follows communication of the companies that put together bid requirements for clean-up and the companies sent their final stats in January 2016. The bid process did not start until December. In one year's time, could ADEQ's accelerated clean-up have made a difference?*
- 6. Many of the newspaper articles between 2013 and 2016 indicated costs of clean up would be \$3 million, then \$5 million, then \$11 million and today the price is \$17 million. Have ADEQ delays changed how much taxpayers are having to pay for this clean-up?*
- 7. A study is required for solutions as we move forward. Will this committee ask for an independent study/inquiry into this landfill issue? Who do you want to do it?*

Senator King called the meeting to order.

CONSIDERATION TO APPROVE JANUARY 30, 2018 MINUTES

[EXHIBIT C]

Representative Hendren made a motion to approve the January 30, 2018, meeting minutes. The motion was seconded by Representative McNair, and the motion carried.

LANDFILL ISSUE

Mr. Michael Grappe', Director, Special Projects, ADEQ, noted many of the landfill issues occurred before the current ADEQ's administration. The four previously rejected engineering studies have been looked at again,

and the findings are incomplete. The search for clarity continues through volumes of correspondence existing in different places. It is unclear who played what part, and a lot of the ADEQ and solid waste district players are gone. There are currently 18 solid waste districts, which are comprised of county judges and mayors or their proxies. Further investigation is needed on this.

Mr. Grappe´ said he has not found documentation where fines were paid. He will verify this in writing through Senator King's office. ADEQ was not involved in any purchase except in the transfer of license from the old owner to the new owner. ADEQ had no authority to make decisions nor could it officially weigh in on the decision-making process and noted the solid waste district and the previous ADEQ administration did not work well together. He will continue to look through documentation as to why the landfill was not shut down earlier.

Mr. Grappe´ stated the district made the decision to stop taking garbage in November 2012 and to go into bankruptcy proceedings, because it no longer had money to operate the landfill. This resulted in ADEQ, in February 2013, to file suit in Baxter County to assume control of the landfill and begin treating and managing the landfill by taking care of the leachate, overflow issues, and wind direct problems. It was so ordered by the court to do this, and the clean-up will be completed summer 2018.

ADEQ is a regulatory agency and it receives money from fees associated with permit issues, from the federal government through the Clean Air Act, and Clean Water Act, and has a Post Closure Fund. This fund receives \$1.00 from a \$2.50 charge per ton of garbage put in any landfill. The other \$1.50 goes to the solid waste districts to manage their recycling/other program(s).

Prior to the 2015 legislative session, \$25 million was the fund's cap and \$15 million was the base. When \$25 million was reached, ADEQ would quit collecting \$1.00 for the Post Closure Fund, and that money was redirected to the solid waste districts so the districts received the full \$2.50 per ton. Typically, the \$1.00 went to their electronic waste fund. When the Closure Fund reached its \$15 million base, the \$1.00 would then go to the Post Closure Fund until it reached \$25 million again.

In 2015, the solid waste districts had the law changed, and the \$1.00 no longer went to the Post Closure Fund, but to their electronic waste fund, and the other \$1.50 continued to go to their recycling/designated programs.

Mr. Grappe´ stated the Post Closure Trust Fund was used until the fund fell to \$16 million. With no way to refund the trust, he helped draft 2017 legislation for ADEQ asking to have the law changed back so ADEQ could again accumulate Post Closure Trust Fund money. The solid waste districts agreed to sunset the program in 2021.

Ms. Watson noted from 2013 to 2016 nothing happened. Mr. Grappe´ stated in 2013 ADEQ did not have authority to do anything, because NABORS was an active landfill that was walked away from. Legislation was passed to give ADEQ permission to use the Post Closure Fund for something other than a post-closed landfill. He clarified that to be declared closed, a landfill must have completed all capping, have all the leachate wells and the gas monitoring system in place. This takes three to five years to accomplish, then a landfill can be considered closed and post-closure may begin.

He noted that through 2015 time elapsed before the bid process took place under the previous administration. Mr. Grappe´ stated that the first bids were put aside because they were each over \$20 million. The bids were then re-assessed and came to approximately \$15 million, but by that time, the leachate problem caused the price to increase.

Representative Hendren said this meeting is needed as he is now learning this landfill information. He asked who recommended the Bank of the Ozarks and bond holders loan \$12.3 million (which is now having to be repaid by the taxpayers.) Ms. Watson stated The Northwest Arkansas Economic District Board of Directors made the recommendation.

Representative Hendren read a letter from the Speaker of the House, Jeremy Gillam, to the House Energy Committee members discouraging them from attending this meeting citing non-germane issue and unusual meeting time. Representative Hendren expressed his displeasure with the Speaker's letter.

The NABORS landfill civil action court case was filed in Pulaski County. Its April 2017 judgment declared taxpayers would be responsible for the debt through an \$18.00 court-ordered annual fee on residents and businesses in the Ozark Mountain Solid Waste District, to pay for post-closure costs for the NABORS landfill.

Senator King noted Act 274 of 2014, ADEQ's appropriation act contained special language **[Handout #1]** relating to the landfill Post-Closure Trust Fund, which allows ADEQ to file civil action against the Regional Solid Waste District and all entities composing the District, to recover funds expended from the landfill Post Closure Fund to achieve final closure of a landfill operated by the District, if the District files for bankruptcy and is unable to meet its debt obligations or is insolvent:

“...unless satisfactory re-payment agreements are reached and agreed upon by the department and the district and the bond holders. This section is in effect only from July 1, 2014, through June 30, 2017.”

He said decision makers responsible for the 2014 legislation were asked to attend tonight's meeting, but they respectively declined or did not respond. He summarized the issue:

- Language was inserted into the legislation specifically regarding repayment of bondholders.
- ADEQ while monitoring this situation, allowed it by letting it become part of its appropriations bill, Act 274, Section 45.
- ADEQ filed a civil action suit in Baxter County to assume control of the North Arkansas Board of Regional Sanitation (NABORS) landfill in the city of Mountain Home.

Representative Ballinger asked Mr. Grappe' if without the special language, would ADEQ have had the authority to clean up this landfill. **[Handout #2]**

Mr. Grappe' stated ADEQ did not have the authority to clean up the landfill without special language. The landfill is now environmentally sound, it is capped with leachate control, top soil put over it with an artificial cap, wind screens, 20 leachate wells/sample wells, and a passive methane gas well all installed.

Senator Garner asked Mr. Grappe' how much is left in the trust fund, and if there were to be another landfill emergency will the necessary funds be there to make it environmentally sound. Mr. Grappe' noted there is \$6 million in the fund, and it could not take care of an emergency today.

Justice of the Peace, Fred Woehl, asked about the thousands of tires next to the NABORS landfill and if it would also present a cost in the future. Mr. Grappe' identified it as Danco Tires, and noted it is a separate issue. The tires are being buried, the issue is being taken care of at ADEQ's cost using the fund, about \$3 million, and the cost will not come back to the district. Mr. Grappe' said he would verify through Senator King's office if Danco Tires was in the settlement agreement.

Representative Hendren suggested the State Agencies Committee and Joint Energy Committee meet to discuss the landfill situation further, and people whose names were mentioned in tonight's meeting be requested to come and answer questions.

Senator King noted legislative audit has time and resources to gather information for this matter. He's been told because an appeal was not filed within 30-days of the court decision, there must be an extraordinary event to bring the case back before a judge.

Representative Ballinger noted the need to work together on legislation to correct this and suggested:

- Change the law to allow the waste management district to file bankruptcy.
- Change language to reflect service fee law and fee collection structure.
- Work with ADEQ to have them forgive part or all of the obligation.

Representative McNair noted that Attorney General Rutledge is looking at this situation.

OTHER BUSINESS

With no further business, the meeting adjourned at 7:55 p.m.

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