

KCC Alert



Kentucky Conservation Committee, P.O. Box 1152, Frankfort, KY 40602

502-875-0909

Garbage Bill Moves to Senate

HB 174, Greg Stumbo's solid waste bill narrowly passed the House on a vote of 49 to 47 and is now in the Senate.

HB174 imposes a ½ cent fee on disposable drink containers and a \$1/ton landfill tipping fee to pay for the cleanup of illegal dumps, the cleanup of roadside litter, the closure of old landfills, the implementation of Kentucky's Environmental Education Master Plan, and the acquisition of park land and natural areas.

It also provides incentives to counties for curbside collection programs and cleanup of illegal dumps. Counties are allowed to collect fees for curbside collection on their property tax bills. Solid waste coordinators are given enforcement authority for litter laws.

The bill's fate in the Senate is uncertain. It could be heard in committee Feb. 28. See "To Do" list.

Anti-VET Bills Emerge from Senate

The Senate has approved two bills targeting Vehicle Emission Tests

SB102 directs local air quality control districts to meet air quality standards without using Vehicle Emissions Testing (VET) once they have achieved compliance.

The bill is an unwarranted intrusion into the ability of the District and the community to determine for itself the most efficient and effective means of attaining and maintaining air quality improvements.

Eliminating the VET program will require larger emissions cuts from other sources.

SB169 is narrower. It reduces the frequency at which government vehicles must have emissions tests from every year to every other year. It sets a bad example greatly extends the period an under performing

KCC To Do List:

- ❑ Ask your state Senator to support HB174, Greg Stumbo's bill to clean up garbage. (see "Garbage..." pg 1)
- ❑ Ask members of the House to support HB540 (see Power Plants.. pg1)
- ❑ Ask members of the House to oppose HB367, (see Ag Water Quality Plans...pg 2).
- ❑ Ask members of the House to oppose HB496 (the License to Pollute).
- ❑ Ask your State Representative to oppose SB102 and SB169, attempts to circumvent Vehicle Emissions Testing. (see Anti-VET pg 1)
- ❑ Come spend a day with Wade and Dick. Call the KCC number to arrange.

Power Plants: A Terrible Site?

HB540, a bill to regulate the impacts of siting new power plants is set for a House vote as early as Monday, Feb. 25.

The siting of an electricity generating facility presents potentially significant adverse environmental consequences to air and water quality and may interfere with other land uses or economic development. Therefore these plants are of legitimate concern for the public, including those in the "host" neighborhood, community, city, county, state and region.

The impacts vary with the size of the plant, level of technological controls, fuel composition, and other facility-specific issues. There are, however, common issues that must be addressed "up front": air pollution, waste disposal, water use and water discharge, groundwater contamination, transportation, and land use compatibility.

Kentucky has adequate generating capacity, transmission lines, and processes for planning to meet its future power needs. For regulated utilities, the Public Service Commission (PSC) requires proof of the need for the facility, evidence that it is the least cost alternative, and a recommendation of "environmental compatibility" by the Natural Resources & Environmental Protection Cabinet. The cabinet's review tends to be a "rubber stamp" of facilities if they meet permit limits under air, waste and water laws.

The PSC does not regulate merchant power plants, which sell their power out of state. To protect the public interest, the long term environmental and community consequences must be reviewed and mitigated to the extent possible. A good siting bill would require the review of all impacts and assure that appropriate conditions are imposed, even where the state has no current limit, such as noise, lighting, transportation conflicts, and groundwater protection. HB540 is an initial attempt to provide some of these protections, but it has a few deficiencies.

As worded, HB540 could exclude plants that have begun any land disturbance (e.g. a ceremonial shovel turning) even if they do not have all permits. All plants not completed should be required to assess siting impacts and implement reasonable mitigation measures.

The bill imposes arbitrarily chosen fixed setbacks that bear no relation to the extent of the impacts. Each facility must adequately mitigate its noise, lighting, dust, emissions, and other environmental impacts at the boundary of the plant property.

The siting review process should be limited to unregulated "merchant" units. What is needed for regulated units is not a second review process, but instead meaningful standards for what constitutes "environmental compatibility." For counties with planning and zoning, assurance is needed that merchant plant siting is subject to planning and zoning approvals.

To improve public involvement, the Siting Review Board should be enlarged to

Key Committee Assignments

Senate Agriculture and Natural Resources

Ernie Harris, **Chair** (R), Vernie McGaha, **Vice Chair** (R), Paul Herron Jr (D), Daniel Kelly (R), Robert Leeper (R), Virgil Moore (R), Joey Pendleton (D), Ernesto Scorsone (D), Tim Shaughnessy (D), Elizabeth Tori (R), Ed Worley (D)

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House Natural Resources and Environment

James Gooch, **Chair** (D), Woody Allen, **Vice Chair** (R), Phillip Childers, **Vice Chair** (D), Keith Hall, **Vice Chair** (D), Rocky Adkins (D), Ira Branham (D), Scott Brinkman (R), Hubert Collins (D), Howard Cornett (R), Don Pasley (D), Tanya Pullin (D), Marie Rader (R), Jim Stewart (R), Johnnie Turner (R), Robin L. Webb (D), Brent Yonts (D)

KCC thanks **Plan Graphics**, Frankfort, KY for *KCC Alert* production assistance.

Bill Attempts to Hide Agricultural Water Quality Plans

Starting in 2001, all farmers were required to file an agricultural water quality plan for their operations with the Natural Resources Cabinet. Environmental watchdogs subsequently filed a freedom of information act request to see some of the plans, the idea being to see if the program was producing the intended result.

In response, Rep. Gooch has filed HB367 to make the plans unavailable to public scrutiny. Large factory farms constitute a major public health hazard because can produce as much waste as a medium sized city. Citizens have a right to know if these operations are complying with the pollution control laws.

Companion Bills Establish Pine Mountain Trail State Park

SB158 and HB556 would create the state's longest and narrowest state Park. If enacted, a roughly 1000ft corridor along the crest of Pine Mountain from Breaks/Interstate Park to Cumberland Gap would be designated as a future state park with a hiking trail for non-motorized use only. Access points and appropriate spur trails would also be established.

Not yet heard in committee the bills have made some landowners nervous enough to begin logging some of these areas before the state buys the land.

Power Plants...from pg1.

include a seat for the Environmental Quality Commission designee, a designee from the Attorney General's office, and an appointee designated from a list prepared by non-profit organizations involved in environmental protection and land use planning.

The bill should also eliminate provisions favoring or exempting certain types of facilities in order to make the process equally applicable.

Approval standards and information are the heart of the process. Siting should be contingent on mitigating environmental and community impacts to prevent adverse effects on the public health, safety and the environment; demonstrating that co-location at an existing facility is infeasible; that all federal, state and local laws will be followed; that the applicant possesses the necessary allowances for emissions of oxides of nitrogen and sulfur; that the applicant possesses the financial, technical and managerial capacity to construct and operate the facility.

Analysis with the help of Tom FitzGerald

Strong Smart Growth Bill Dies in Committee

HB465, requiring land use planning in all counties was defeated in committee. Jim Wayne, the bills sponsor, was hoping for a floor debate, but the committee declined.

Contacting Your Legislators

Who are my legislators? You can look up your legislators on the web at www.lrc.state.ky.us/whoswho/whoswho.htm or you can call your local county clerk. All they need is your address.

How do I communicate with them? There are several ways to communicate.

The legislative message line will get you an operator who will write down a message for you, no questions asked. Use the number listed under Legislative Message line in our phone number box. Call 8:00 AM to 11:00 pm.

You can send a fax, the number is listed here. A fax can be sent to multiple legislators, you must list all names individually.

Many legislators have email. They can be found from the web address listed above. Some legislators respond, some do not.

Regular mail can be sent to The Capitol Annex, Frankfort, KY 40601.

What do I say? Your message can be as simple as "Please support bill xyz." You don't have to be an expert. Personal experiences that relate can be effective.

Legislative Information On the Internet

The Bill summaries, status, the full text of all filed bills, the legislative calendar, the orders of the day, legislators' email addresses, and more (updated daily) are available on the Legislative Research Commission's Web Site. <http://www.lrc.state.ky.us/home.htm>

Important Legislative Phone Numbers

Legislator Message Line: 1-800-372-7181

To talk to a legislator: 1-502-564-8100

Bill Status Line: 1-800-776-9158

Committee Calendar Line: 1-800-633-9650

Governor Paul Patton: 502-564-2611

Secretary James Bickford: 502-564-3350

Legislator Fax line: 502-564-6543

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2002 KCC Lobbyists

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Bill Summaries and KCC Position

Bill No	Position	Sponsor	Summary	Status
HJR24	Monitor	Moberly	Create a subcommittee to study the production of ethanol.	Sen. Ag & Natural Resources
HCR109	Monitor	Barrows	Encourage KY Heritage Com. to log rock fences that merit preserving	Senate AG & Nat, Resources
HCR161	Support	Pasley, Comer	Est. off-road Vehicle Task Force to study use on public & private land	House Transportation
HB28	Strong Support	L.Clark	Require counties cleanup all open dumps or implement mandatory curbside waste collection system by January 2004,	House Natural Resources and Environment
HB40	Support	Tapp, Arnold	Require federally mandated sulfur reductions be accomplished by blending at least 2% biodiesel; study biodiesel during 2005 interim	Senate
HB46	Monitor	Marcotte	Exempt cars 4 model years and younger from VET testing	House Transportation
HB48	Support	Riggs	Require hearings on local indebtedness & set criteria for denial of bond issue, replace appeal to State Debt Comm. w/ appeals to Circuit Crt	Senate Judiciary
HB64	Support	Damron	Adopt Interstate Wildlife Violator Compact: reciprocal agreements to enforce hunting violations and revoking hunting privileges	House Elections, Const Amend. & Intergov.
HB75	Oppose	Belcher	Remove sewage plants owned by fiscal courts from PSC control	House Tourism Dev & Energy
HB118	Support	Marcotte	Persons applying for a permit to mine any mineral except coal to obtain an ordinance from county fiscal court that states that county road conditions will not be degraded by the increased truck traffic	House Natural Resources and Environment
HB137	Oppose	Gooch	Amend constitution to exempt unmined minerals from property tax.	House Elections and Const.
HB174	Strong Support	Stumbo, et al	½ cent fee on beverage containers plus \$1/ton tipping fee to fund dump cleanup, dump closures, Env. Ed. Master Plan, roadside cleanup, anti-litter program, cnty solid waste coordinators. Cnties must have universal collection or all dumps closed to get \$.	Senate Ag & Natural Resources
HB214	Support	Riggs	Expands energy efficiency requirements to leased buildings. Creates revolving loan fund to pay for efficiency improvements. Allows state to enter into guaranteed energy saving contracts (see SB61)	House State Government
HB 244	Strong Support	Wilkey	Extends sunset of the hazardous waste assessment fund used for superfund cleanup and pollution prevention assistance to 2004. Should have sunset provision removed.	Senate Approp & Revenue
HB275	Oppose	Gooch	Reallocates 5% to 8% of the all NOx credits to new power plants in 2004, with 5% thereafter. 10% set aside for "efficient energy" sources.	House Natural Resources and Environment
HB317	Monitor	Kerr	Exclude farm trucks from vehicle emission control programs	Posted House Local Gov.
HB319	Support	Arnold et. al.	Require state agencies give KY-grown & labeled food 5% preference.	House 2 nd Reading
HB323	Strong Support	Stumbo	Amend Constitution to allow a referendum on container deposits.	House Elections, etc.
HB355	Strong Support	Wayne	Voluntary public funding for General Assembly candidates	House Elections, etc
HB367	Strong Oppose	Gooch, et.al.	Documents filed under the Ag. Water Quality Act to be confidential	House Posted for passage 2/14
HB405	Oppose	Turner, et. al.	Construction related coal mining under 5000 tons where coal or proceeds are donated to nonprofit orgs exempted from permitting.	Posted House Appropriation & Revenue
HB408	Strong Oppose	Gooch	Rellocate NOx credits from early reductions to sources unable to meet compliance deadlines	Recommitted to House Nat Res & Env.
HB422	Strong Support	Pasely, et.al.	Extend waste tire fee to July 2006 and allow a tire amnesty program	Senate Approp & Revenue
HB460	Monitor	Bratcher	Allow monetary claims for victims of airport noise	Posted House Judiciary
HB465	Strong Support	Wayne, et. al.	Require local Gov develop land use plans, define areas for future growth, prohibit the extension of sewer/water lines outside them	Failed in House Local Gov.
HB496	Strong Oppose	Gooch	Calls for preliminary notice of alleged environmental violations and 45 days for said violation to be remedied	Posted House Nat Res & Env.
HB507	Under Review	Moberly, et. al.	State Budget (see SB144)	
HB536	Monitor	Rader, Colter	Extends waste tire fee until July 31, 2006 (see HB422)	House Nat Res & Env.
HB540	Support	Draud	Est. KY State Board to regulate the siting of merchant power plants and transmission facilities. Needs strengthening.	House Posted for Passage 2/25
HB542	Monitor	Yonts	Income tax credits for the value-added hardwood products industry	House 2 nd reading, to Rules
HB556	Support	Hall	Establish the Pine Mountain Trail State Park (See SB158)	House Tourism & Energy
HB575	Monitor	Brinkman	Require plastic containers to be labeled to assist in recycling	Posted House Nat Res & Env
HB586	Support	Wilkey	Require reporting of personal contributions to campaigns	House 2 nd reading
HB598	Support	Riggs, et al	Transfer regulation of the siting of cell phone towers from the PSC to any county with zoning and planning	Posted House Local Government
HB600	Strong Support	Barrows	State government to follow Smart Growth principles, help local gov w/planning, tax incentives for redevelopment and presser- vation. Oversight committee should include non-state officials	House Approp & Revenue

HB606	Support	Callahan, et.al.	Tax credit for expenses paid to rehabilitate a certified historic structure.	House Approp & Revenue
HB618	Oppose	Clark, et al	Counties must study/identify means of compliance without using vehicle emissions testing.	House Approp & Revenue
HB646	Oppose	Smith, et.al.	Excess coal severance and processing taxes to fund grants to coal counties for water and sewer lines and sewage treatment facilities.	House Appropriation and Revenue
HB654	Support	Denham, et.al.	Create an office of Agritourism to encourage visitors to working farms	House 2 st reading
HB694	Support	Stewart	Allow county solid waste coordinators to enforce litter laws	House Local Government
HB708	Monitor	Thomas, Bruce	Ban MTBE by January 1, 2005; require reformulated gas to replace MTBE with ethanol by that date	House Nat Resources & Env.
HB714	Oppose	Bowling, et.al.	Limit the Kentucky River Authority's authority to assess water use fees	Posted House State Gov.
HB738	Strong Support	Gooch	Eliminate exemption of power plants from water withdrawal permitting	
HB739	Monitor	Rasche	Exempt joint sewer agencies from a uniform rate requirement when local conditions warrant for a period not exceeding ten years	
SCR17	Support	Guthrie	Create task force to study managing water supply on a watershed basis.	House Posted for Passage
SCR92	Under Review	Kerr, et al	Create a task force to study the Lexington/Big Sandy Rail Trail	Senate Econ. Devel, Tour etc
SB13	Support	Jackson	Pilot project with State Parks to buy KY-grown & labeled ag products	Reported favorably, to Rules
SB21	Oppose	Adams	10-year tax credit on 10% of capital costs for new companies that mine or process coal	Senate Ag. and Nat Resources
SB34	Monitor	Harris	Anti-litter education program & tax check off to fund it	Recommitted Sen Apro & R
SB61	Support	Sanders	Expands energy efficiency requirements to leased buildings. Creates revolving loan fund to pay for efficiency improvements. Allows state to enter into guaranteed energy saving contracts (see HB214)	House 2 nd Reading
SB72	Strong Support	Westwood	Tax credits for certain rehabilitation/restoration projects	Recommitted Senate A&R
SB102	Strong Oppose	Seum	Requires meeting ozone standards without vehicle emissions tests.	House
SB144		Sanders	State Budget (see HB507)	
SB158	Support	Jones, et al	Establish Pine Mountain Trail State Park (see HB556)	Senate Approp & Revenue
SB169	Monitor	Roeding, etc	Gov. registered vehicles to be VET tested biennially rather than yearly.	House
SB193	Strong Oppose	Sanders	Raids the Petroleum Storage Tank Environmental Assessment fund & study cleanup standards.	Senate Appropriations and Revenue
SB237	Support	Leeper	Include strategic planning and the ranking of capital projects for public transit and create a new Public Transit Advisory Commission;	

Internet Access of the Alert

Sierra Club graciously posts the Alert on their web site, go to <http://kentucky.sierraclub.org/alert/billsummary.htm>

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HB540 is a legislative response to a proliferation of power plants being proposed in Kentucky. Although some of the plants are proposed by Kentucky base suppliers (LG&E and E. KY Power each are proposing 2 plants), the bulk of them are proposed as merchant plants and by out-of-state suppliers. The siting of these plants is a matter of legitimate public concern as they represent potentially significant public health and environmental impacts, as well as tradeoffs between local economic growth and the export of Kentucky resources for the economic benefit of other states. Kentucky's current electric generating capacity is sufficient to meet the state needs for the near future.

Since 1980 only 4 electric power plants have been constructed in Kentucky. There are currently 34 power plants in the state, with a generating capacity of 18,000 MW, ranging in size up to Paradise Steam Plant (TVA) with a capacity of 2600 MW. In the last 3 years, an additional 23 plants have been proposed that prompted the Governor to impose a moratorium on June 19, 2001 (another 6 plants have indicated an interest to build in Kentucky). The 23 plants would have a generating capacity of 11,000 MW, or a 60% increase in capacity. Twelve of the new plants will only operate during times of high-energy demand. Seven will burn coal, waste coal or garbage. All are technologically advanced, with emissions far less than current generating plants, some of which are 50-60 years old. The intended market for the proposed plants is primarily out-of-state.

Plants regulated by the Public Service Commission are required to prepare a Certificate of Environmental Compatibility (KRS278.025), the proposed merchant plants would not be required to do so. Those located in counties without comprehensive planning and zoning (96 counties) would not have any opportunity for local input into siting decisions. Environmental permits will focus on air quality, water quality and waste generated. The natural gas-fueled plants will not likely have any problem obtaining these permits (in many cases none will be required) as individual permit decisions are made. Collectively the plants may have a significant impact on environmental quality in the state that will not be reviewed by either local or state public agencies.

The plants may have a significant economic impact on the state and locally. The demand on natural gas supplies by plants in-state and in other states will impact fuel costs to the average homeowner and industries assuming that supplies stay the same. The state is under EPA requirements to reduce its NOx statewide emissions to 162,272 tons during the summer months by 2004, 36,000 tons by the utility sector. In the year 2000, the utilities emitted an estimated 110,000 tons during the summer (246,058 tons annually). Utilities are spending 100's of millions of dollars to reduce NOx emissions (precursors to ozone and acid rain). Under existing regulations, 95% of the 36,504 tons are reserved for base power plants. HB275 reduces this to 82%. Base utilities under unable to reduce their emissions within these limits will be required to purchase credits, currently valued at \$x/ton. Estimates are that the proposed plants could emit as much as 74 tons daily (11,000 during the summer). State ratepayers would be paying to subsidize the production of electricity for out-of-state users. A statewide policy analyses is needed to make decisions on the total number of plants that should be sited in the state. Existing environmental regulations do not sufficiently address cumulative impacts.

The proposed plants will have significant environmental impacts. Projections are that the new plants, even with significant reductions from base plants, could result in exceedence of the adopted 8-hour ozone standard in the Ashland, Daviess-Henderson County areas. Toxics released into the air from the proposed plants may pose public health risks. Siting decisions for new plants may pose threats to drinking water supplies and impact water quality. Proposed plants burning waste coal may produce 1.5 times the amount of waste ash that will need to be disposed, posing threats to surface and groundwater.

HB540 is a step in the right direction but needs strengthening to assure that all plants be subject to the requirements of the bill unless it is fully permitted at all levels of government and that *bona fide* construction has been initiated. The siting requirements should be strengthened, clarified and consistent for both merchant and base plants. Public input and involvement should be provided in the site review process, and the siting board should have permanent public interest members to provide statewide consistency and perspectives—not the ad hoc approach currently proposed in the bill.

As the bill goes to the House floor, 11 amendments have been proposed, including provisions to extend the moratorium on accepting new applications for power plants until 2003 to provide time for the promulgation of siting regulations (HFA11), encourage the use of clean coal technology (HFA10), reinstate the requirement for environmental compatibility statements for power plants (HFA6), exempt plants from setback requirements that are eligible for funding under the Rural Economic Development Act (HFA5), allow the board to disapprove a site if the transmission lines degrade the environment (HFA8), and exempt municipal utilities from the provisions of the bill (HFA4 and 9). Other clarifying amendments require at least one ad hoc member be present at a siting board meeting, dictate the location of public meetings of the board, and have permit fees set by the PSC.