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COMMITTEE ON NATURAL RESOURCES
January 20, 2006
LB 776, 872, 871

The Committee on Natural Resources met a 1:30 p.m. on Friday, January 20, 2006, in Room 1210 of the State Capitol, Lincoln, Nebraska for the purpose of conducting a public hearing regarding the confirmation of gubernatorial appointments and on LB 776, LB 872, LB 871. Senator present: Ed Schrock, Chairperson; Elaine Stuhr, Vice Chairperson; Carol Hudkins; Gail Kopplin; Vickie McDonald; and Adrian Smith. Senators absent: Bob Kremer and LeRoy Louden.

SENATOR SCHROCK: For the record, my name is Ed Schrock. I chair the Legislature's Natural Resources Committee and I am from Holdrege, Nebraska, even though my address is Elm Creek. Elm Creek is in Jim Cudaback's district. He's in a different county. I will introduce the committee members that are here with us today. We are missing Senator Louden who is at a funeral in Texas. He normally sits over there by Senator Kopplin but Senator Kopplin is here and he is from Gretna, next to him is Senator Carol Hudkins from Malcolm. Committee counsel is wearing the black and white today and she is from Wahoo, Jody Gittins. To my immediate left, is Senator Elaine Stuhr. Senator Stuhr and her husband Boyd are celebrating their 50th anniversary. (Applause) Today. That will be last time you can clap in this hearing room. Next to Senator Stuhr, Senator Stuhr is vice chair of the committee, and I'm going to leave the room in about 45 minutes to make a phone call and at that time I'll turn the chair over her. I won't be gone long. Next to Senator Stuhr is Vickie McDonald from St. Paul, Nebraska and Senator Smith from Gering, Nebraska. On the far end is Barb Koehlmoos. Barb is the committee clerk. A few instructions: if you wish to testify on a bill we would prefer you sit towards the front of the room when that time comes. We'd like to move as fast as possible. If you want to testify, please fill out one of the green sheets first. If you can't help yourself and all of a sudden you're motivated to testify and you didn't get the green sheet signed in, you can do it later, but we'd rather have you do it first. When you come to testify, spell your name for the record and state your name and spell it and tell where you're from. If you need a glass of water for any reason, our page will help you and our page is Marcus Papenhausen. He's from Coleridge and he's a sophomore at UNL studying

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education, education major. So we are glad to have Marcus with us. So far, he's been very helpful. (Laughter) If you do not wish to testify but would like to have your name entered into the record or present testimony, we can do that and read it into the record. If you have handout material, Marcus will help you and with that I think we are ready to begin. We have five confirmation hearings today and I'm going to try and move things fairly smooth today, but take your time but be concise. Some of have a ways to travel and a little concerned about the weather. If it gets bad, I'll stay in Lincoln but I'd just as soon go home tonight. So we have five confirmation hearings and we'll start with Jim or James Jenkins. Jim just...both Ethanol Board people are reappointments so you have been in front of before. Just state your name and tell us a little about yourself and why you'd like to continue to serve on the Ethanol Board.

CONFIRMATION HEARING ON
JAMES JENKINS TO THE
ETHANOL BOARD

JIM JENKINS: (Exhibit 1) Okay. For the record, Jim Jenkins, I'm from Callaway, Nebraska.

SENATOR SCHROCK: And for the record spell that.

JIM JENKINS: Callaway, C-a-l-l-a-w-a-y.

SENATOR SCHROCK: Jenkins.

JIM JENKINS: Jenkins, J-e-n-k-i-n-s.

SENATOR SCHROCK: Thank you.

JIM JENKINS: You bet. And this is...I am up for reappointment to the Ethanol Board. Obviously, this is a tremendously exciting time for this industry. I am directly involved in our ranching-farming enterprise out in Custer County and am very interest in trying to make sure that the cattle industry and the corn industry work together and hand in hand in promoting the ethanol industry. I'm very excited about particularly the by-products available for the cattle industry which not only help us raise beef more efficiently but certainly provide one of the critical customer

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opportunities for the ethanol industry. So I am just honored to be nominated again by Governor Heineman and hope you will approve of that nomination.

SENATOR SCHROCK: Thank you, Jim. Are there questions?
Senator Stuhr.

SENATOR STUHR: Yes. Thank you for being here today. And since you have served on the board, what have seen as one of your biggest challenges on the Ethanol Board and what do you see in the future as a continued challenge?

JIM JENKINS: Well, I think the challenge is for us to maintain the momentum that this state has worked so hard on for the last 25 or 30 years. Clearly, as we try to continue to build plants and provide the infrastructure resources to attract those plants to the state of Nebraska, we are competing against other states, Illinois and Iowa and other major corn producing states. And so I think that we need to be very...we should not take the ethanol industry for granted. I know that a lot of people think that it's already a "slam-dunk" that it's here with the rising gas prices. Suddenly there's profitability out there. But believe me, I think we're just at the tip of the iceberg and I think it's critical that we policymakers, governmental people, and all of us working on behalf of ethanol make sure we do whatever we can to maintain that momentum.

SENATOR STUHR: I just wanted to say thank you for your past service and hope that will continue.

JIM JENKINS: Okay. Thank you.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: You mentioned suddenly profitable. Was it not profitable prior to the high petroleum prices or?

JIM JENKINS: Well, I'm...I've never owned or been a part of ethanol plant personally, but I know that like many new industries the ethanol industry relied on government support, taxpayer support as it emerged into a full fledged industry. Clearly, when you move gas prices from \$1 to \$2 or even \$3, ethanol becomes much more profitable. But even with that said, it's still a very new and risky industry and

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so, you know, I'm certainly an advocate and I know that this is a point of discussion. But I think we need to compete with other states by continuing to provide incentives at least, you know, over the near future.

SENATOR SCHROCK: Other questions? Jim what slot do you fill on that board or do they have different slots on there?

JIM JENKINS: I'm on the corn...I'm representing the corn.

SENATOR SCHROCK: Representing corn. Okay. And you do produce corn?

JIM JENKINS: Yeah, well we have a...as I told you last time, I'm more oriented on the cattle side. We use a lot of corn and we use corn as a part of our crop rotation system on our diversified cropping rotation.

SENATOR SCHROCK: And I have been able to partake of your restaurant there in Kearney. You have other places where you have restaurants, too. Is it one in Lincoln and one in Kearney?

JIM JENKINS: One in Lincoln, Kearney, Council Bluffs, Iowa. So.

SENATOR SCHROCK: Okay. You do a nice job of that.

JIM JENKINS: Well thank you.

SENATOR SCHROCK: We appreciate your service. No other questions, why thank you for being with us.

JIM JENKINS: Thank you.

SENATOR SCHROCK: Next person is David Hallberg.

CONFIRMATION HEARING ON
DAVID E. HALLBERG TO THE
ETHANOL BOARD

DAVID HALLBERG: (Exhibit 2) Thank you, Mr. Chairman. My name is David Hallberg, H-a-l-l-b-e-r-g. I was first appointed to the Ethanol Board in 1998. I appreciate the

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opportunity to hopefully continue to serve and I occupy the business slot on the board. Thirty years ago I'd just come back from the Middle East and left from there to go to grad school in Washington, D.C., Johns Hopkins School of Advanced International Studies and then worked on the hill in the Senate and the House side during the initial or the first oil interruptions. After which, I started the Renewable Fuels Association in 1981 and headed that up for the first five years. Currently, I'm president/CEO of a company by the name of E3 BioFuels. We are in the seventh month of construction of a \$70 million integrated complex at the Mead feedlot. It's a new patented technology where the slatted-floor feedlot there we built an ethanol plant without...we are building an ethanol plant without protein drying, feeding the wet cake in a ration to the 27,000 head of cattle on-site, capturing the manure from the slatted-floor feedlot, and taking that over to an anaerobic digestion system where we generate biogas to eliminate all of the natural gas typically required for an ethanol facility. That is the waste equivalent of a city of 350,000 people. We will also separate the nutrients, the aqueous ammonia and phosphorous. We think it's a technology that has great application to the state of Nebraska in the future and we hope to do more. And it's just been a real honor for me to be able to live in Nebraska and serve as part of the board.

SENATOR SCHROCK: Thank you, David. Are there questions? If the Natural Resources Committee had an interim study hearing scheduled next summer and decided to visit your facility, would you have anything to show us say the first part of...last part of August, first part of September?

DAVID HALLBERG: Yes, sir. We hope to commence operations in July and should be at full production by that time, so we would love to have you there.

SENATOR SCHROCK: Okay. I think that's something we would enjoy and find very informative, even though four of us are lame ducks and won't be coming back next year, but.

DAVID HALLBERG: That's too bad, but I guess that's the way it is. We'd be happy to have you.

SENATOR SCHROCK: You think we should have term limits for

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the ethanol board members? (Laughter)

DAVID HALLBERG: I'll plead the fifth on that.

SENATOR SCHROCK: All right. Thank you, Dave. Other questions? Thank you. We appreciate what you do and I find your project very interesting and should be good for the state of Nebraska.

DAVID HALLBERG: Thank you.

SENATOR SCHROCK: Next we have the Environmental Quality Council. We'll start with Lawrence Bradley.

CONFIRMATION HEARING ON
LAWRENCE W. BRADLEY TO THE
ENVIRONMENTAL QUALITY COUNCIL

LAWRENCE BRADLEY: (Exhibit 3) Hello. My name is Lawrence Bradley, L-a-w-r-e-n-c-e B-r-a-d-l-e-y, and I'm here to be confirmed for the first time to the Environmental Quality Council and I will represent the minority populations. This came through Senator Preister's bill, LB 351, and it was to replace the public-at-large seat and convert it to a minority population seat. However, I do want to state for the record I would represent anyone in the state of Nebraska, all people. A little bit about myself. My wife, Sylvia, is there and my children Bianca and Xavier. They attended this hearing. I teach environmental geology at the University of Nebraska at Omaha, also Native American Studies. I have two biology degrees, 50 credit hours geology so almost double major biology/geology and I'm working on a Ph.D. in geography at the University of Nebraska-Lincoln. My mother was a...grew up in Talmage, Nebraska. She was Irish-Danish. My stepfather who raised me since I was two is a full-blood Oglala Lakota. He is in the audience today, Lester Kills Crow grew up in Chadron. I personally was raised on the fringes of black neighborhoods of Omaha and Lincoln. And so I, pretty much in my mind and hopefully the board's mind, this committee, feel that I represent many people diversified across the state of Nebraska. I am a veteran of the United States, United States Army honorable discharge.

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SENATOR SCHROCK: Thank you, Lawrence. Are there questions? Well, Lawrence are you familiar with the duties of the Environmental Quality Council? Have you been briefed on that?

LAWRENCE BRADLEY: Yes, sir.

SENATOR SCHROCK: Okay.

LAWRENCE BRADLEY: I've served on two meetings so far.

SENATOR SCHROCK: Oh, you have. Okay. One of the things that you'll find the makeup of the committee, may be not interesting but, five of us are involved in ranching or farming in some way or another, either. And there is some concern about the fact that our state is becoming somewhat unfriendly to the livestock industry. And so I would just hope that you would keep that in the upper thoughts of your mind. Obviously, we want a clean environment and that's what you're there for is to help us do that.

LAWRENCE BRADLEY: Yes, sir.

SENATOR SCHROCK: But there is also some concern that we need have a livestock friendly environment also. And so, I hope that you will keep that in mind. Now the Environmental Quality does many other things also. And of course, you are very much aware of the lead problem in Omaha and maybe grew up close to some of those in that area where...

LAWRENCE BRADLEY: Yes, sir.

SENATOR SCHROCK: ...lead has been a problem from the ASARCO plant. And, you know, I would hope that you would keep that in the minds of the other council members as those issues are dealt with, so.

LAWRENCE BRADLEY: Yes, sir. Well if I could start out with the livestock industry, I'm carnivorous myself and a meat eater (Laughter) and love beef, Nebraska beef. I love the Christmas ham and everything. But I do know in some areas of Nebraska, it can be, you know, very...we have an issue of concern that there's 38 hog confinements in a certain county. And, you know, we wonder why some of our young people leave the brain drain from our state. And you know,

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that's part of the environmental degradation that we're facing Nebraska and especially for our water supply. I know there is a balance between, you know, making ends meets and the economy. The lead issue in Omaha, I've been somewhat vocal on that. But I do find a problem if there was a concern with the Environmental Quality Council if a member is trying to get things out to the media. That's somewhat a concern through the newspapers and the television because one of the things we need to talk to the minority populations of the state of Nebraska, they need to know that my position exists so I can in fact help them and hear their voice and report it back to the people.

SENATOR SCHROCK: Well there's no doubt that considering the location of the ASARCO plant, lead contamination, that's had a negative effect on the minority population in Omaha and I think you appear to be ideally suited to, you know, keep that issue in the forefront of the minds of the people on the council, so.

LAWRENCE BRADLEY: Yes, sir.

SENATOR SCHROCK: I appreciate that. I think that's...I'm glad you're willing to serve and sometimes we get too many grey haired people serving. So it's nice to someone of your age and someone of your background willing to do this, and so. Senator Preister was the one that brought this issue to the forefront and so we thought last year it'd be a good idea to do this and so I'm pleased that you're willing to do this and willing to serve.

LAWRENCE BRADLEY: Thank you.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: There's been a little bit of press on environmental issues as it certainly relates to livestock and I bet our policies should maybe be a little more risk based, maybe a case-by-case basis instead of a flat prohibition in certain areas that if someone can prove that they're safe enough that they would be able to expand a livestock operation perhaps. Do you have an opinion on those types of policies?

LAWRENCE BRADLEY: Certainly if it's within the

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environmental bounds that it would not hurt the environment itself, people should be able to expand their operation. But if you get too many in an area, you have to be careful and for probably...for instance say a 50 year flood or an F4 or F5 tornado that can come through. I mean there's just...what comes to my mind when Hurricane Andrew hit North Carolina and that's where we saw in this nation where a lot of hog plants and hog farms were really taking place. And environmentalist warned people about if a hurricane will come through and it will cause degradation to the water supply and it certainly did. And I just worry about something of that nature, a 50 year flood if it was to hit. If the studies are done right, you know, and just not let people...some people are grandfathered in and, you know, that's just the way it is. That's the law. But you certainly...

SENATOR SMITH: So perhaps on a case-by-case basis.

LAWRENCE BRADLEY: Case-by-case, yes, sir.

SENATOR SMITH: Thank you.

SENATOR SCHROCK: Other questions? Senator Stuhr.

SENATOR STUHR: Just a comment. I, too, want to say congratulations and I'm looking over your resume. You have an extensive background in environmental issues and I applaud your efforts and your continuous studies in this area and wish you much success and thank you for taking the time to serve.

LAWRENCE BRADLEY: Thank you, Senator. Thank you.

SENATOR SCHROCK: It just occurred to me, I think Mr. Hallberg has left. But if this committee would tour his facility next summer, it would be fun to have the Environmental Quality Council accompany us, so. I don't know if that's a possibility or not but we'll talk it over. Thank you, Lawrence. Appreciate you're willing to serve.

LAWRENCE BRADLEY: Thank you.

SENATOR SCHROCK: Next person I have is Joseph, and I'm not sure I'm going to say this, is it Seata (phonetic)?

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JOSEPH CITTA: Sitta (phonetic).

SENATOR SCHROCK: Citta, okay, well, I was close.

JOSEPH CITTA: Thank you, Senator.

SENATOR SCHROCK: And no reflection on your gray hair, Joseph.

CONFIRMATION HEARING ON
JOSEPH CITTA, JR. TO THE
ENVIRONMENTAL QUALITY COUNCIL

JOSEPH CITTA: (Exhibit 4) Okay, well, I was a little worried about that. Good afternoon, Senators. My name is Joe Citta, spelled J-o-e C-i-t-t-a. If I can, I'll give you a little bit about my background. I was born and raised in Bellevue, Nebraska. I did graduate from Hastings College. I've lived now in Columbus about 30 years. I am a 30 year employee of Nebraska Public Power District. I do have a small farm located in...just west of Duncan, Nebraska along the Platte River. At Nebraska Public Power District, I presently manage the environmental department which is a staff of almost 20 environmental professionals in which we see all aspects of the environment. Basically with Nebraska Public Power District being a statewide organization, we encounter air, water, waste issues, endangered species. We handle all the various environmental regulations so because of that, I'm well versed in the entire rule-making process and the technical aspects associated with environmental regulations, impacts, risks associated. Additionally, I happen to be the...I'm the national chair for the American Public Power Association's Environmental Task Force. I also serve in an elected position as a board of director in the Lower Loup NRD. So, a little bit about myself and any questions, I'd sure be glad to address them.

SENATOR SCHROCK: Questions for Joseph? And you are a, I didn't catch it, you're a reappointment or a new appointment?

JOSEPH CITTA: I'm a new appointment. I'm representing the power industry.

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SENATOR SCHROCK: New appointment, okay. And you're with NPPD?

JOSEPH CITTA: Yes, sir.

SENATOR SCHROCK: And you live at Columbus?

JOSEPH CITTA: Yes, sir.

SENATOR SCHROCK: Okay. Well that is where NPPD headquarters is.

JOSEPH CITTA: Um-hum.

SENATOR SCHROCK: Who's spot are you taking, do you know?

JOSEPH CITTA: Bill Podraza.

SENATOR SCHROCK: Okay. All right.

JOSEPH CITTA: Hard shoes to fill.

SENATOR SCHROCK: Well, I don't know about that. I knew Bill when he was at Lexington. I think he was city manager of Lexington at one time.

JOSEPH CITTA: Yep. Top notch individual, yes.

SENATOR SCHROCK: All right. Well, Joseph if there's no questions why, you get off the hook easy I guess.

JOSEPH CITTA: I guess so. Thank you. I really look forward to the appointment and I thank you very much.

SENATOR SCHROCK: Well, we appreciate your willing to serve, Joe.

JOSEPH CITTA: Certainly.

SENATOR SCHROCK: Next one will be Ronald Zeger (phonetic).

RONALD ZEIGER: Ziger (phonetic).

SENATOR SCHROCK: Zeiger. All right. I need help from time

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to time, Ron.

CONFIRMATION HEARING ON
RONALD ZEIGER TO THE
ENVIRONMENTAL QUALITY COUNCIL

RONALD ZEIGER: (Exhibit 5) I'm Ron Zeiger, R-o-n Z-e-i-g-e-r. I'm lucky to have hair.

SENATOR SCHROCK: How's that?

RONALD ZEIGER: I'm lucky to have hair. (Laughter)

SENATOR SCHROCK: Oh, okay.

RONALD ZEIGER: I don't care if it's gray.

SENATOR SCHROCK: Well, if that was a qualification, the senator sitting beside you would be in bad shape. (Laughter)

RONALD ZEIGER: I live in Syracuse, Nebraska. I was appointed to the municipality opening on the Environmental Council. I'm a grading contractor there in Syracuse. We do a lot of work all over southeast Nebraska. I guess all over Nebraska. We've worked clear out to Ogallala as far east as Des Moines. I own farm ground. I served eight years on the Syracuse City Council, six years as the council president. Currently, I'm the Syracuse Economic Development Corporation. We get funded by the Otoe County and the city of Syracuse. I understand that, you know, we've got to balance...this farm economy is kind of fragile and the whole economy, I guess, for Nebraska is pretty good but the farm economy is kind of fragile and we don't want to do nothing that to harm the economy.

SENATOR SCHROCK: Now you don't have to be to patronizing to farmers when you're in that seat, but that's okay, we like to hear that.

RONALD ZEIGER: Well, I own farm ground. I know it. I understand what you're saying and I also believe you got to be a good steward to your environment, so. I sure would be happy to answer any question anybody's got.

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SENATOR SCHROCK: Thank you, Ron. Yes, Senator Stuhr.

SENATOR STUHR: Oh, yes. Just a quick question. I see you attended Northwest Missouri State University.

JOSEPH ZEIGER: Yes I did.

SENATOR STUHR: Was there...I know that a number of our Nebraska students do attend that university. What drew you to that particular school?

JOSEPH ZEIGER: Well, I was...well I actually went there twice. I started way back in the late 60's as a wrestler. I got recruited down there and I forgot to go to class, you know, for a semester (Laughter) and so I found myself in Vietnam the next year. Then when I went back, I finally went to class. That was about the only place I could get back into I think. (Laughter) It's a good school though.

SENATOR STUHR: Well, thank you for your willingness to serve.

SENATOR SCHROCK: Senator Hudkins.

SENATOR HUDKINS: Mr. Zeiger I see that you were a candidate for the Nebraska Legislature in 2004. Obviously, you were less than successful but would you consider doing it again?

RONALD ZEIGER: Oh, yeah. I would probably do it again. I was a couple hundred votes short. But Lavon Heidemann and I are good friends and it wasn't a personal issue so. I guess as far as I'm concerned he's doing okay. But we'll see how the future goes.

SENATOR HUDKINS: Thank you.

RONALD ZEIGER: I'm not making any long plans.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: I guess I'll ask you the same question on risk-based situations. Would you support a risk-based policy or a blanket prohibition in certain areas if they...if an operation could prove that they are safe should

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they be able to operate within those areas?

RONALD ZEIGER: Sure. I think if, you know, the operation certainly has got to be designed to be safe and I think maybe you have to take one operation at a time, you know, because there's no two exactly the same. And if you've got the capacity for the storage and it meets all the requirements that the state sets out, then I think they should be able to go forward.

SENATOR SMITH: Okay, thank you.

SENATOR SCHROCK: Other questions? Thank you for your willingness to serve, Ron.

RONALD ZEIGER: Thank you.

SENATOR SCHROCK: And I hope you enjoy Joseph Citta and Lawrence Bradley. So you'll get to see some of each other. And I would extend this to you. If any one of the three of you have any questions about environmental issues, I would grant you the resources of my staff or any other member up here. I'm sure you would be welcome to contact, so.

JOSEPH CITTA: Thank you, Senator.

SENATOR SCHROCK: All right. With that, that will close the hearing on Ron Zeiger. And we open it...we are going to change order today. Let's see a show of hands of how many are from South Sioux City here today. Well, it wasn't, all right...we're going to change the order so you can get a little quicker start home. Actually.

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SENATOR ENGEL: (Exhibits 6-17) Hello. My name is Pat Engel, that's spelled P-a-t E-n-g-e-l and for your information that's how you spell angel in German. (Laughter) Chairman Schrock and members of the Natural Resources Committee. It is a pleasure to come before you today and present LB 776. There are some handouts. I believe you are getting them now. LB 776 is a bill that will benefit many people in northeast Nebraska and has the potential to benefit citizens across the state in the

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future. It is resourceful and it will benefit the environment while spurring economic development. I would like to enter into the record letters of support from the South Sioux City Area Chamber of Commerce, Keep Nebraska Beautiful, Siouxland Interstate Metropolitan Planning Council, Dakota City, Dakota County Board of Commissioners, Keep Northeast Nebraska Beautiful and Loess Hills Resource Conservation and Development Council and others. Now here's what the bill does. LB 776 changes current law that says landfills are not allowed to accept yard waste between the months of April through November. Yard waste in landfills creates additional methane gas which is harmful to the environment. This bill would allow landfills to accept yard waste at any time with the approval of the Department of Environmental Quality for the sole purpose of creating methane gas that will be used as fuel. The statute change simply gives landfills the options of adding yard waste to create even more methane gas if they wish to use the gas as fuel. An ethanol plant is currently being built near Jackson, Nebraska which is approximately one mile from the Jackson landfill and methane gas will be produced and collected at this landfill and used as a clean burning fuel at the ethanol plant. I believe you have a map there with you and it shows the proximity of the landfill to the ethanol plant. It's approximately a mile as far as from the one source to the other. As you can see, the plan will benefit many people and be environmentally friendly as well. The landfill will have the opportunity to make better use of the methane gas that is already produced at the landfill and profit from its recovery. The ethanol plant will reduce the amount of fossil fuels it must use to produce the ethanol, replacing these limited resources with a renewable, clean burning fuel and the public will benefit from reduced methane gas emissions in the air. And area residents will also benefit from the elimination of a separate garbage pickup for yard waste. At the present time, they have to be picked up separately. As you know, I have drafted an amendment that would clarify the language in the original bill. I believe you have that. And the amendment is simply trying to clarify what we attempted to do with the original bill. And in particular, the amended version clarifies that the Nebraska Department of Environmental Quality must approve the use before the yard waste collection may occur and that the use is subject to the department's oversight. And the second amendment I have for you today expands on

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that language to allow the landfill to collect unseparated yard waste so residents can benefit from one pickup and that's a big part of this. This will result in significant savings for area residents and I have worked closely with DEQ on the language for this bill and the department has no objection to this change. And you'll be hearing from them later. Capturing landfill gas and using it for fuel is an idea that has taken off nationally. At the federal level there are several incentives and programs for capturing this gas. I have distributed to each of you information from EPA's Landfill Methane Outreach Program and that's this one with kind of a blue border on it and so forth, says EPA on the front of it that will better explain what's happening nationally and give you some basic scientific facts about recovering this gas. According to the EPA, landfills account for one third of all methane sources in the United States. Combustion of landfill gas significantly reduces emissions of methane and nonmethane gases which includes compounds that contribute to ozone formation and hazardous air pollutants that affect human health. Use of landfill gas is an effective way to reduce overall greenhouse gas emissions from landfills, create energy, reduce the use of fossil fuels, and besides that, it saves money. The landfill will be able to produce and sell fuel to the ethanol plant for approximately 25 percent less than natural gas for the equivalent BTUs. I'd like to refer to the third...we've already done that. The third page of the EPA handout again and it says right in there that if you want to look at it...

SENATOR SCHROCK: Have you heard of the word "information overload?" (Laughter)

SENATOR ENGEL: Well Ed, I've sat next to you for so long in this Legislature it just kind of rubs off. (Laughter) Or Mr. Chairman, I'm sorry.

SENATOR SCHROCK: All right no problem.

SENATOR ENGEL: It is a reliable source of energy because it is generated 24 hours a day, seven days a week. And by using landfill gas to produce energy, landfills can significantly reduce their emissions of methane and avoid the need to generate energy from these fossil fuels, thus reducing emissions of carbon dioxide, sulfur dioxide, and

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that is a big problem in your hog lots and everywhere else, nitrogen oxides, and other pollutants from this combustion. So with that, Mr. Chairman, I'd be glad to answer any questions you might have and I will have others, testifiers, following me to give you more information and answer any further questions you might have. Will there be any questions?

SENATOR SCHROCK: Are there questions for Senator Engel?

SENATOR ENGEL: Thank you very much.

SENATOR SCHROCK: Senator Engel, at what stage of planning or construction is the the Siouxland ethanol plant.

SENATOR ENGEL: It's already started. The dirt work, I believe, is all done and I think someone is coming from behind me can tell you exactly where they're at, at this stage but it is well on its way. It was started this year, so I think they can probably give you more accurate information than I could but it's up and coming. And they did not use any EPIC funds. There weren't any EPIC funds available.

SENATOR SCHROCK: Where is this from Dakota City or South Sioux City or.

SENATOR ENGEL: Well from South Sioux City it's approximately nine, ten miles west of South Sioux City on Highway 20.

SENATOR SCHROCK: Okay.

SENATOR ENGEL: And South Sioux City is four miles north of Dakota City and about 152 miles from here if you take the interstate.

SENATOR SCHROCK: All right. I assume it's a very progressive community?

SENATOR ENGEL: Very.

SENATOR SCHROCK: All right. Thank you, Senator Engel. Are there other questions?

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SENATOR ENGEL: Thank you very much.

SENATOR SCHROCK: Next proponent. (Exhibit 18) We have a letter from the Nebraska Ethanol Board supporting your project. So everybody is getting on board it looks like. Signed by Todd Sneller.

LEONARD GILL: Good afternoon, Senators. My name is Leonard Gill from Jackson, Nebraska. I don't talk as much as Senator Engel, so...

SENATOR SCHROCK: Leonard, would you spell your name for us.

LEONARD GILL: My last name is spelled G-i-l-l and I'm a lifelong resident of Dakota County, Nebraska, Jackson, Nebraska. I operate the L.P. Gill landfill up there at Jackson, Nebraska. Our purpose here today is to visit...have been visiting with the Department of Environmental Control regarding the mixing of the grass with the garbage. The whole purpose of this is to help create more methane gas at the landfill. The idea for that, of course, is to...the ethanol plant is being located right adjacent to our landfill, it's about a mile away. And what we intend to do is put down wells and capture the methane and push it down under pressure to the ethanol plant so that they can supplement the natural gas with methane gas. We hope to be able to produce the methane gas and deliver it to their plant for a minimum of 25 percent cheaper than...in comparable BTUs than what the natural gas will cost. I'm really here today, I guess, to answer your specific questions. We have another member from...some more members from Dakota County, but they're not really involved in our operation other than they are here in support, the mayor and so forth. And if you have any specific questions, I'd be glad to try to answer them here today.

SENATOR SCHROCK: Thank you, Leonard. Are there questions? I might ask you what size of an ethanol facility is this going to be?

LEONARD GILL: It's starting out as a 50 million gallons a year, and they have voted here recently to double the size of it in the near future, up to 100 million gallons.

SENATOR SCHROCK: What percent of your fuel needs do you

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think you'll generate from this methane?

LEONARD GILL: To begin with at a 50 million gallon a year plant, we think we can probably produce 15 to 20 percent of their needs. And there again, on that 15 to 20 percent of their total needs, we should be able to supply them our portion of it for a minimum of 25 percent cheaper than natural gas.

SENATOR SCHROCK: As you get to composting more yard waste with the garbage, do you think that gas, that methane production will increase then?

LEONARD GILL: That's correct, that's the whole reason for doing it.

SENATOR SCHROCK: Most of us on the committee have been to Omaha and seen the site where they're generating electricity from methane gas from the Omaha landfill. And I think they've got three or four Caterpillar engines up there, and they're generating quite a bit of energy from that.

LEONARD GILL: We have...we've also looked into that. Nebraska Public Power came out and did a feasibility study in case...we're going to put in this recovery system, we wanted to have a backup system in case something happened to the...whatever might happen I don't foresee anything happening to the ethanol industry. But we had to have a backup plan in order to invest this much money and the infrastructure to capture the gas. So we've had the study prepared and completed. And it is feasible at our site to also put in Caterpillar generators to generate electricity in place of just burning the energy down at the ethanol plant.

SENATOR SCHROCK: Who uses the landfill? What communities use it?

LEONARD GILL: We use...we bring in garbage from as far away as Neligh, Nebraska; we're right up in the northeast corner. We have Tekamah, West Point, Wisner, basically all the communities in northeast Nebraska, two counties in Iowa since we're right there on the corner. We also receive garbage from as far away as Alcester, South Dakota, it's in South Dakota. So we're sitting right there in the tristate

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area and we receive about 200,000 ton a year, a good share of that comes from Sioux City, Iowa.

SENATOR SCHROCK: So you get most of Sioux City's waste then.

LEONARD GILL: A good share of it. We have the collection contract in Sioux City, Iowa. We also operate collection contracts around the cities and around the different counties and so forth. We have the curbside pickup service for Sioux City, Iowa and South Sioux City and most of the surrounding towns around there. I should say we furnish the trucks that that go out and pick up the garbage.

SENATOR SCHROCK: Okay. Other questions? Thank you for being with us, Leonard.

LEONARD GILL: Thank you.

SENATOR SCHROCK: Appreciate you being here.

WILLIAM McLARTY: (Exhibit 19) My name is William McLarty, W-i-l-l-i-a-m, and last name is spelled M-c-L-a-r-t-y. I am the mayor of the city of South Sioux City and for the record I would like to enter this statement from...on behalf of the city. On behalf of the city of South Sioux City, I wish to state my support and that of the city council for LB 776. This bill will allow the introduction of grass clippings in the garbage and will result in increased production of methane. The landfill operation will still require the approval of the process by the Nebraska Department of Environmental Quality. This methane will be utilized by the ethanol plant that is under construction and is located near the landfill site. This is truly a win-win situation for the state's economy for the environment and it's recycling at its best. We appreciate Senator Engel's sponsorship of this bill and would encourage the committee to support this bill.

SENATOR SCHROCK: Thank you, Mayor. Are there questions? How well do you know your senator, maybe I should ask?

WILLIAM McLARTY: I know that I speak shorter than he does. (Laughter)

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SENATOR SCHROCK: Okay. I have sat beside him on the floor for nine years now so. You ask him about our apple experiment when you have time. Okay?

WILLIAM McLARTY: I'm also his neighbor. I live just across the street from him and sometimes he doesn't get sidewalk scooped so I have to take care of that for him. (Laughter)

SENATOR SCHROCK: Were you in on ground work for planning the ethanol plant?

WILLIAM McLARTY: No sir. I have no connection with that at all. I've been advised of it in its progress but I'm not involved in any part of that.

SENATOR SCHROCK: Do you know who the contractor is going to be?

WILLIAM McLARTY: No sir. Like I say I have no contact with that.

SENATOR SCHROCK: Okay.

WILLIAM McLARTY: Leonard Gill could answer that questions for you.

LEONARD GILL: Fagan.

SENATOR SCHROCK: Okay. All right. I just heard him, okay. All right. If there are no other questions, thank you for being with us.

WILLIAM McLARTY: Thank you for your time.

SENATOR SCHROCK: Next testifier.

GARY KRUMLAND: Senator Schrock, members of the committee. My name is Gary Krumland. It's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB 776. I've also been asked by NMPP Energy to let you know that they also support the bill. We do think this is an appropriate change in policy to have this exemption for yard waste that it does create a potential for a new renewable resource or fuel. So the...through our process we have voted to support this bill. I'll just leave

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it at that.

SENATOR SCHROCK: Okay. Thank you, Gary. Are there questions? Appreciate your being with us. Next proponent.

DAVID HALDEMAN: (Exhibit 20) Good afternoon, Chairperson Schrock and members of the Natural Resource Committee. My name is for the record David Haldeman, that's spelled H-a-l-d-e-m-a-n. I have copies of my testimony being distributed right now. It'll be very brief. Basically, my testimony this afternoon is to indicate my department's support for LB 776. The concept of disposing of yard waste in a landfill for the purpose of generating and recovering methane for use as a fuel is a concept that we think is feasible. We also believe that our permit program for landfills provides sufficient regulatory oversight to ensure environmental protection. And we think the permit process that we use in reviewing and approving applications for new landfills as well as modifications of existing landfills could serve as our evaluation and approval process for a landfill that wants to accept yard waste for this purpose. There may be additional benefits to landfills other than just the recovery of methane for fuel. Depending upon the number of technical factors concerning how the landfill is operated and designed, the landfill may experience a more rapid breakdown of the wastes and leachate toxicity. The rapid decomposition of the wastes and reduction in leachate toxicity could have a bearing on the length of time it's necessary to monitor a landfill after it closes. And like I said very short. I'd be happy to try to address any questions.

SENATOR SCHROCK: Thank you, David. Are there questions? Senator Hudkins.

SENATOR HUDKINS: Mr. Haldeman, could we go to methane and landfills 101. Do these have to be covered? What kind of modifications would need to be made in an existing landfill? Does the...the methane is it lighter than air heavier than air? How do you get it from the landfill to where you need it and all that kind of stuff?

DAVID HALDEMAN: Okay. If you think of a landfill, basically, it's a containment system. We have a bottom liner system. We collect the leachate...we...the leachate's

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the liquids that come down and settle on the liner system. We collect the explosive gases that come off it. You can either aggressively collect it by creating vacuum pressure and drawing it out or it can be passively vented. Then when the landfill is closed, we have a cap that goes over the top of it. Methane gas, I believe, is something that in the case of the description of what Mr. Gill's providing is something they're intending to extract out of it in an aggressive system. So basically, what happens in a landfill is you have both organic and inorganic wastes and the organic wastes due to the activity, the "microbolic" activity, a bacteria will digest the organic waste and as that takes place methane gas is released and that's what they're attempting to recover. And the typical types of organic waste that you see in a landfill could be, you know, yard waste if this allowed but also food waste and other fiber type paper products.

SENATOR HUDKINS: Thank you.

SENATOR SCHROCK: Other questions? I understand the bill would allow them to collect yard waste but the landfills that don't want to collect yard waste still have the option to reject yard waste. If they do collect yard waste, it doesn't make it mandatory that they make...that they collect the methane gas does it?

DAVID HALDEMAN: I think it does. This is for a very...

SENATOR SCHROCK: It does. So only facilities that want to generate methane gas then.

DAVID HALDEMAN: Right.

SENATOR SCHROCK: What are the down sides of collecting this yard waste? Is it a rodent issue, is it a...what are the down sides?

DAVID HALDEMAN: I don't know that there is necessarily any down sides. You know, yard waste is a great material to compost and then use as a soil amendment and to provide nutrients for gardens and things like that. If there's a down side to it, it would be that if a community decided to allow the yard waste to go into the landfill, you may not have the compost product but on the other hand you've got

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potentially a renewable energy, another energy source.

SENATOR SCHROCK: Okay. Other questions? Thank you, David.

DAVID HALDEMAN: Yep.

SENATOR SCHROCK: Is there other proponents?

KORBY GILBERTSON: Good afternoon, Chairman Schrock, member of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Waste Connections in support of LB 776. And Waste Connections supports the use of this alternative use of the solid waste and that's all I have to say.

SENATOR SCHROCK: Thank you, Korby. Are there questions. I thought maybe you were appearing in your capacity as a lobbyist for Tyson and they wanted to put something in the landfill, too. But maybe that...

KORBY GILBERTSON: No.

SENATOR SCHROCK: ...doesn't work. Okay.

KORBY GILBERTSON: Never know what might come up with in the future, but not today.

SENATOR SCHROCK: All right. Thank you.

KORBY GILBERTSON: Thank you.

SENATOR SCHROCK: Other proponents? Opponents? Neutral testimony? Senator Engel would you like to close?

SENATOR ENGEL: I have a five minute closing. (Laughter) But it will take me about five seconds. First of all, I think this is a win-win situation.

SENATOR SCHROCK: Well, I think the group ought to understand that we had you first so we could get you headed out of town quicker.

SENATOR ENGEL: Ed, I'm ready to go.

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SENATOR SCHROCK: Okay.

SENATOR ENGEL: But I do appreciate your attention to this and I appreciate your advancing the bill as soon as possible because we need to act on this very soon, so. Thank you very much.

SENATOR SCHROCK: I do have a question.

SENATOR ENGEL: Yes, sir.

SENATOR SCHROCK: I didn't check. Does the bill have the emergency clause?

SENATOR ENGEL: Yes.

SENATOR SCHROCK: Okay.

SENATOR ENGEL: It will have, yes.

SENATOR SCHROCK: And you think that would be important also?

SENATOR ENGEL: I do because we...they have to get started on this as soon as we can so they start building it up because it's going to be. So we do think it's important.

SENATOR SCHROCK: All right.

SENATOR ENGEL: Thank you, very much.

SENATOR SCHROCK: Thank you, Senator Engel. I'm going to close the hearing on LB 776. And I'm going to turn the proceedings over to Senator Stuhr.

SENATOR STUHR: We'll now open the hearing on LB 872.

LB 872

JODY GITTINS: Good afternoon, Vice Chairman Stuhr and members of the committee, my name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s, I'm committee counsel for the Natural Resources Committee introducing LB 872 on behalf of Senator Schrock. LB 872 amends the Nebraska Environmental

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Protection Act to authorize the Environmental Quality Council to adopt necessary rules and regulations for implementing emissions trading programs that are consistent with the Federal Clean Air Act. Existing authority is limited to sulfur dioxide or acid rain. The expanded authority would allow development of a mercury emissions trading program and potentially use one for regional haze. The Department of Environmental Quality would administer the emissions trading program adopted by the council through the Operating Permit Program. This bill was presented to Senator Schrock by the Department of Environmental Quality. Shelley Kaderly is here from the Air Quality Division Manager for DEQ who can explain further why they feel that this program is important to the department and to the state of Nebraska.

SENATOR STUHR: Okay, are there any questions for Jody? I think we might have some questions, but maybe they'll be answered by the next testifier. Next testifier, please. Good afternoon.

SHELLEY KADERLY: (Exhibits 21 and 22) Good afternoon, members of the Natural Resources Committee. My name is Shelley Kaderly, spelled S-h-e-l-l-e-y K-a-d-e-r-l-y. I am the Nebraska Department of Environmental Qualities Air Quality Division Administrator and I am here today to provide testimony in support of LB 872. In addition to a copy of my testimony, I am submitted to you a handout that provides additional background and details you may find useful in your consideration of LB 872. This bill would amend the provisions relating to emissions trading programs. Emissions trading programs, also known as cap-and-trade programs, are aimed at reducing emissions and address the transport of pollutants by utilizing a market-based approach. Currently, Nebraska has implemented the sulfur dioxide allowance system through the operating permit program. This program is more commonly referred to as the acid rain program. Nebraska, under its operating permit program, issues acid rain permits to affected sources, verifies data submitted in emission reports, and assures compliance with the program by comparing the emissions reported to the allowances held by the source. The US Environmental Protection Agency administers the trading and financial aspects of the program. So in essence, we work in partnership with the EPA to fully implement that program.

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The emissions trading approach has worked well for acid rain program. The handout provided to you details the beneficial results achieved by the acid rain program. EPA has recently expanded the use of emissions trading programs in other cases such as the Clean Air Interstate Rule, the Clean Air Mercury Rule, and allows its use under the regional haze program. EPA sees these types of programs as an effective strategy to manage interstate transport of pollution, protect public health while still allowing flexibility for pollution sources to comply. What brings us here today is a trading program for mercury. The primary purpose of LB 872 is to provide the authority for Nebraska to proceed with adopting a cap-and-trade program consistent with the emissions trading program EPA has developed for mercury. The language of LB 872 is broad so that other trading programs could be developed or adopted for other pollutants, should the need arise. In the next couple of years we foresee a possible need to utilize this approach for meeting our obligations to improve visibility in the nation's parks under the regional haze program. In the short term, decisions must be made soon on mercury in order to meet the time lines EPA has set for states. We propose that Nebraska follow EPA's lead by developing and implementing a cap-and-trade program for mercury consistent with the EPA model rule. Emissions trading programs have at least six key components: an emissions cap; allowances; emissions measurement; flexibility for emitters; allowance trading; and compliance demonstration. An emissions trading program establishes a permanent declining emissions cap for each individual state or region. The sources affected by the program are allocated allowances for each unit or facility emitting that pollutant, granting them to emit a fixed amount of that pollutant. The unit or facility will have to measure their emissions and ensure the measurements are accurate. Facilities have the option to invest in pollution reduction measures. They may also buy or sell allowances on the open market. Other entities may also be able to buy allowances at a market rate in order to retire them. Lastly each facility is responsible for demonstrating annually they didn't exceed their allowances. Emissions trading provides companies flexibility to comply. Facilities can choose to over comply and bank allowances for future use, sell allowances to sources that can't comply, or invest in pollution control equipment. The program creates financial incentives for companies to find new, low cost ways to

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reduce emissions, improve control equipment and explore other low cost compliance strategies. And more importantly, since the emissions cap declines over time, emissions will not increase as the economy grows. This is because new and expanded facilities must also hold sufficient allowances under the cap. In March of 2005, EPA issued the Clean Air Mercury Rule. This rule is the first federal rule to reduce mercury emissions from coal-fired power plants. There are two essential elements of the rule. The first are performance standards limiting mercury emissions from coal-fired power plants built after January 30, 2004. The second is a market-based cap-and-trade program that is expected to reduce nationwide utility emissions of mercury in two phases. Despite trading for allowances, the total emissions cap for the nation cannot be exceeded. Mercury emitted from coal-fired power plants comes from mercury in coal, which is released when the coal is burned. Coal-fired power plants are the largest remaining source of human-generated mercury emissions in the United States. In Nebraska coal-fired power plants make up approximately 80 percent of total mercury emissions reported to the department in 2004. Once emitted from nearby and distant sources, atmospheric mercury falls to Earth through rain, snow and dry deposition and enters lakes, rivers and other water bodies. Once there it can transform into methyl mercury and can accumulate in fish tissue. Fish are then caught and consumed by people. In its organic form (methyl mercury) mercury acts as a neurotoxin and may adversely affect the neurological development of human fetuses, infants and young children. Mercury is a contaminant we are concerned about in Nebraska. There are approximately 514 publicly owned lakes and reservoirs and over 1,500 stream segments in Nebraska. The department has identified fish tissue advisories for 19 lakes and three streams. While reducing domestic mercury emissions may not solve the problem in Nebraska or the United States, reducing mercury emissions from power plants is a step in the right direction. Therefore, we believe it is important for Nebraska to take action. Under the Clean Air Mercury Rule, Nebraska is given an emissions budget to meet by 2010 and a lower budget to meet by 2018. Whether or not Nebraska implements a cap-and-trade program, these budgets must be met. Included in your handout are the budgets for Nebraska and the surrounding states. Also provided are the emissions reported by Nebraska electrical generating units affected by

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this program in the 2003 and 2004 emissions inventories. As you can see, the utilities must take some action in order to meet the 2010 budget. For the eastern 28 states, emissions are expected to be reduced by taking advantage of "co-benefit" reductions achieved by reducing sulfur dioxide and nitrogen oxides emissions under the Clean Air Interstate Rule. Since Nebraska is not subject to the Clean Air Interstate Rule, compliance will need to be found by other means. Control technology for mercury is emerging and developing. Some examples of control technology that show promise include: capture of particulate mercury through the use of existing particulate control equipment, such as bag houses or electrostatic precipitators, capture of soluble mercury through the use of flue-gas desulfurization, and activated carbon or absorbent injection. If Nebraska is to implement the cap-and-trade program, there is little time to act. There are many steps that Nebraska must take in the very near future. All of these steps are included in your handout. Additionally, a description of Nebraska's role as well as EPA's role are included. Under the Clean Air Mercury Rule the state has until October 31 of this year to submit to EPA the allocations per unit for the first five years of the program. The state then has until mid-November of 2006 to submit the implementation plan to EPA, which would require adoption of rules governing such aspects as the allocations, the permitting mechanism and the measurement and reporting requirements. We have contacted EPA about what happens if legislation is not passed in time to provide the appropriate authority, and it is unclear to us what happens to us if we miss the deadlines. Given that EPA has already developed a model rule for states to adopt or mirror and that emission reductions must be achieved between now and 2018, we believe it is most appropriate to utilize the approach EPA has outlined for regulating mercury from utilities. In closing, mercury is a pollutant that coal-fired utilities emit; it is a pollutant that is of concern to Nebraska as well as other states. It is important to act quickly to provide certainty and to take advantage of the strategy that EPA has outlined. In order to do so, the department requires the appropriate authority to move forward. LB 872 would provide that authority. Thank you for your consideration of LB 872 and I would be happy to answer any questions you may have.

SENATOR STUHR: Are there questions for Shelley? Senator

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Schrock.

SENATOR SCHROCK: Does the bill meet the deadline without the emergency clause?

SHELLEY KADERLY: An emergency clause would make it go a little faster. We'd have the authority sooner. If it looked like we were going to get the authority, we would start the process of working on adopting the rules, get things ready to go as soon as possible after we had the authority.

SENATOR SCHROCK: How would you compare...mercury is a naturally occurring material.

SHELLEY KADERLY: Yes it is.

SENATOR SCHROCK: The lakes and the streams in this state, some of them have mercury warnings. What percent of that is man-made; what percent would you say is naturally occurring?

SHELLEY KADERLY: It is really difficult to determine how much is attributed to naturally occurring mercury and how much is attributed to human generated activities.

SENATOR SCHROCK: Is it about a 50-50 thing, or is it weighed way heavily on the side of emissions, or is it weighed heavily on the side of naturally occurring?

SHELLEY KADERLY: We don't know the answer to that.

SENATOR SCHROCK: How long has the department been taking water samples and what do you see as a trend?

SHELLEY KADERLY: My understanding is that the department has been looking at mercury in the fish and water bodies for over 30 years, or yeah, about 30 years. And the trend since about 1987, has been pretty steady. There are a few areas that have gone down and a few areas that have gone up, but it's all pretty much been steady since 1987. And our strategy for sampling takes into account those water bodies where folks are going to be doing more fishing activities.

SENATOR SCHROCK: Okay.

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SENATOR STUHR: Shelley, you talked about this cap-and-trade program that is outlined by EPA. Is this a new program, I mean this cap-and-trade situation?

SHELLEY KADERLY: The cap-and-trade program for mercury is new; that was promulgated in March of 2005. Cap-and-trade programs for other pollutants have been done in the past. Under the acid rain program, for example, they utilized that approach and that worked very well in obtaining reductions in emissions and it helped the acid rain situation in the United States.

SENATOR STUHR: Okay. You also made another statement saying that Nebraska is not subject to the Clean Air Interstate Rule, and I'm wondering why are we not subject to that?

SHELLEY KADERLY: My understanding of why we are not included in that program is that the emissions from our state do not contribute significantly to nonattainment areas or areas in other parts of the country that have problems attaining or meeting the ambient air quality standards. And EPA made a decision that we didn't have much of an impact and so it wasn't cost effective to reduce our emissions or be involved in that program.

SENATOR STUHR: Okay. I've not had a chance to look at this handout, but there will be a new requirement for the power industry, is that correct?

SHELLEY KADERLY: Yes.

SENATOR STUHR: And is that... I mean is this going to be a significant change from what, you know, the emissions that they're emitting now or... and is that pointed out on this handout?

SHELLEY KADERLY: What the handout points out to you is it does show what has been reported to us from the power industry for the last couple of years on mercury emissions.

SENATOR STUHR: All right.

SHELLEY KADERLY: I think that the mercury emissions for 2004, the total emissions were close to 900 pounds.

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SENATOR STUHR: Right.

SHELLEY KADERLY: Under the clean air mercury rule we would see a reduction in emissions of mercury, first in 2010, and second in 2018. Our 2018 ultimate goal, I believe, is .16 tons of mercury emissions. So that would be around...a little over 200, between 200 and 300 pounds...or tons...pounds, I'm sorry, excuse me.

SENATOR STUHR: Okay. Is that going to be a real difficult challenge?

SHELLEY KADERLY: It...and perhaps the...I believe after me there's going to be someone from the power industry to speak on that, and you might be able to ask them what kinds of things they foresee doing or how difficult it's going to be to achieve those limits.

SENATOR STUHR: All right. Are there additional questions? Senator Schrock.

SENATOR SCHROCK: Yes. Does NDEQ intend to propose regulations that closely follow the federal EPA program regarding the stringency limits, or are we going to be...we going to follow their guidelines? Are we going to be more stringent, less stringent?

SHELLEY KADERLY: Our plan is to follow the EPA model rule. There are decisions within that model rule framework that we need to make. And our intent is to work with the stakeholders on making those decisions. One of the...specifically one of the decisions that we need to make regards the allocations or how much each facility will be allowed to emit. And we need to, because this program includes anything that might be...any growth that we would see in the future, we need to think about how best to allocate those emissions to plan for the future. And we plan to work with our stakeholders to achieve that.

SENATOR SCHROCK: Will there be a border issue? Can we trade with other states, or...

SHELLEY KADERLY: Yes.

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SENATOR SCHROCK: ...is that a good idea?

SHELLEY KADERLY: We will be able to trade with other states, that's how this program is designed. The EPA program...it works best when you have more people at the table that can trade allowances. And...

SENATOR SCHROCK: What kind of trading would you anticipate we would do?

SHELLEY KADERLY: Well, for example, if our facilities decided to put on a lot of control and they had a lot of extra allowances, they may trade those allowances and sell those to other utilities outside of the state that are having trouble meeting their current allocation budget. That would be an example and vice versa, the same could happen here. But again, it's important that the nationwide cap is not exceeded. So the whole pie, so to speak, doesn't get bigger.

SENATOR SCHROCK: I see the emissions on the chart here, and obviously Gerald Gentleman is emitting more, but is that relatively the same amount of emissions based on their size, or are they pretty much all the same, or...for example, I don't know where Lon Wright Unit 8 is, oh, it's Fremont.

SHELLEY KADERLY: That's Fremont, yes.

SENATOR SCHROCK: But I see that it looks like the emissions from Gerald Gentleman is about 20 times as much. I assume the plant is about 20 times as big?

SHELLEY KADERLY: It...I'm not sure how much bigger it is, but the emissions difference would be a factor of things like the size of their units, how much coal they need to burn, the efficiencies of their control technology that they do have, and how they reported their emissions to us; they may have used different methodology. That is acceptable.

SENATOR SCHROCK: And emissions from natural gas fired plants is not an issue?

SHELLEY KADERLY: That is not an issue.

SENATOR SCHROCK: Okay. Thank you.

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SENATOR STUHR: Okay other questions? Senator McDonald.

SENATOR McDONALD: I see on the Nebraska mercury information, the last statement says, mercury in fish tissue has generally remained constant 1987, which is about the last 20 years. Prior to that was it considerably less, more, what was prior to that? And since we're...EPA is regulating this now, so to speak, you know, what has changed? Why haven't the...mercury in fish gone up, I guess, in the last 20 years?

SHELLEY KADERLY: That's a good question. I can't answer about what was prior to 1987. I could go back and visit with some of the folks in our water division and see if we can get that answer for you. As far as why it's remained generally consistent since 1987, it could be a number of factors involved in that. The utilities within Nebraska are not the only contributors of mercury emissions in the state. We do get emissions transported in from other states and other countries. Also as we mentioned earlier, it is naturally occurring in the soil as well. I really can't speak to why it hasn't gone up or gone down.

SENATOR STUHR: Okay, are there other questions? Senator Schrock.

SENATOR SCHROCK: Are we dealing with something here besides mercury? Are we dealing with...

SHELLEY KADERLY: Just mercury for right now. In the next few years we may be needing to do a similar program to meet our regional haze obligations, but right now we're planning only mercury.

SENATOR STUHR: Okay, are there other questions from the committee? If not, thank you very much.

SHELLEY KADERLY: All right, thank you.

SENATOR STUHR: Are there other proponents for LB 872? Please come forward. Welcome.

JOSEPH CITTA: (Exhibit 23) Good afternoon, Senators. My name is Joe Citta, that's spelled J-o-e C-i-t-t-a. I'm the

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corporate environmental manager for Nebraska Public Power District. I'm here today representing Nebraska Public Power District and utilities of the Nebraska Power Association. I'm here in support of LB 872 and urge the committee to pass the proposed legislation. I'd like to point out that throughout the entire federal rulemaking process, Nebraska Public Power District has actively supported the need for additional regulations in this area. Additionally, we have always been an advocate for the cap-and-trade program and its proactive approach and quality results. Cap-and-trade is a proven approach to cost effective reductions of air pollution. In fact, the acid rain program, which is a cap-and-trade program which was adopted in 1990, is an example of this by far exceeding removal expectations. The comments made earlier by Nebraska Department of Environmental Quality also help point out and support the associated benefits with the EPA model cap-and-trade program. I'd like to point out that Nebraska is a part of EPA Region VII, along with Iowa, Missouri and Kansas. These three states are presently adopting the federal EPA model cap-and-trade program. We feel that in order to achieve the benefits of the cap-and-trade process, the program adopted in Nebraska must be able to work with the other state programs in our region and the state programs in the rest of the nation. Therefore, the Nebraska program should be very close to and, if possible, almost identical to the EPA cap-and-trade program. Thank you very much. That concludes my testimony and I do urge you to pass LB 872 and would be glad to answer any questions you might have.

SENATOR STUHR: Are there any questions for Mr. Citta?
Senator Schrock.

SENATOR SCHROCK: I can't resist, Joe.

JOSEPH CITTA: Yes, sir.

SENATOR SCHROCK: We're going to vote on your confirmation to the Environmental Quality Council which would regulate environmental issues...

JOSEPH CITTA: Um-hum.

SENATOR SCHROCK: ...emissions. Is this an example of the fox guarding the hen house, or how does that work?

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JOSEPH CITTA: Well, I hope it's an example of informed policymaking. You know, one thing through my association with Nebraska Public Power District and the rulemaking process, I mean, we followed this completely through. I am intimately familiar with the EPA studies and models, the DOE studies, also the EPRI studies. I would hope then by my being on the council I can make an informed policy decision. As you know, in any environmental (sic) there's a lot of information and there's a lot of misinformation that's associated with these issues. And I would hope I would be able to add to the accurate information needed to make good policymaking.

SENATOR SCHROCK: Do you see us as a state that...where emissions are relatively clean and that we would trade some of those clean air credits to states that are dirtier, or would it go the other way?

JOSEPH CITTA: Well that will depend upon...that really depends upon the specific emission...the specific unit. Nebraska has pretty clean emissions, we do not have any attainment area...nonattainment areas in the state; the entire state is attainment. We've got, in public power we've got very proactive power facilities that take a real aggressive approach toward air pollution. That's hard to say. I would hope depending...mercury is such an evolving technology that that's one of the reasons they divided it into two phases, to allow technology to hopefully kind of catch up with the regulations a little bit. Depending upon the types of units that the individual power company has, the technology developed may work very well or it may work, you know, might get them 80 percent there, and then they've got to trade some allowances. I would assume that we would be able to meet our...meet and possibly exceed and therefore maybe even trade some allowances out of the state, or most likely probably bank them for future, like Shelley had indicated where the limits are going to be decreasing, there might be some need there. But that's going to be difficult until we see what the technology comes about, Senator Schrock.

SENATOR SCHROCK: Okay. Gerald Gentleman...

JOSEPH CITTA: Yes, sir.

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SENATOR SCHROCK: ...went through some retrofitting, some new baggers or something some years back.

JOSEPH CITTA: Yes.

SENATOR SCHROCK: Was that solely or mostly for controlling mercury emissions?

JOSEPH CITTA: No, actually it was mainly for controlling particulate matter. But one of the decisions that was made when installing the bag houses is that at the time...right now the bag house technology is one of the most promising mercury removal technologies. So NPPD, when they made that decision on evaluating what type of particulate matter technology to put on, the knowledge that we needed to control more mercury emissions helped us to decide to put on a bag house. So a bag house is one of the more effective ways of reducing mercury.

SENATOR SCHROCK: Would you describe Gentleman as a relatively clean emissions plant or on the dirty side, or somewhere in the middle?

JOSEPH CITTA: Well first of all, you know, it meets all federal and state regulations. We do burn very low sulfur coal. With the bag houses, the bag houses are actually the best particulate matter technology that's available, and so our particulate matter emissions are extremely low. And because of...and then mercury, I think we're going to have a good...basically an arm up on the mercury regulations because of having the bag house. So I would say it's relatively clean. And we are installing, this next year we're installing low NOx burners at Gentleman station, which will reduce our NOx emissions by 50 percent, and that's a voluntary method, you know it's not required, but we're actually doing that voluntarily to help, you know, because the burners need replacing and we need...we're going to a low burner technology, a low NOx technology that would additionally remove that NOx. So I think it's fairly clean, sir.

SENATOR SCHROCK: All right thank you.

SENATOR STUHR: Are there any other questions? I do have a

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question.

JOSEPH CITTA: Yes, Senator.

SENATOR STUHR: In your testimony you related that the EPA Region VII includes Iowa, Missouri and Kansas.

JOSEPH CITTA: Yes.

SENATOR STUHR: Do you expect that we would work also with other neighboring states...

JOSEPH CITTA: Yes.

SENATOR STUHR: ...in this cap-and-trade?

JOSEPH CITTA: Yes, most definitely, yes.

SENATOR STUHR: And would that be South Dakota or North?

JOSEPH CITTA: Those also, I mean hopefully they would also adopt...their states would adopt a cap-and-trade program, very close to the federal program, which would allow, you know, depending on the rules of the state, that would determine your ability to be able to trade. So I think it would be very important that we have programs similar to the...our adjoining states, yes.

SENATOR STUHR: Do you see...I know this would be difficult. But we have this cap-and-trade program for the acid rain, now we're having it for mercury. Do you foresee that there will be something else in the next couple years that we'll be also working on as far as...

JOSEPH CITTA: I believe so. I think there's a trend across the country to, as technology is getting better, we're starting to take the air regulations and try to...and lower them. And cap-and-trade has proven to be such a successful program. It allows you some flexibility; it allows you cost effectiveness and still effective reduction. So, yes I do, I think that it will be used for other pollutants.

SENATOR STUHR: Okay, all right. Senator Schrock.

SENATOR SCHROCK: Maybe you can do some research for me. I

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wouldn't...I would guess you don't have the answer to this.
But we have irrigation on our farm.

JOSEPH CITTA: Yes.

SENATOR SCHROCK: And the electric motors are very important to pumping water for us. We also have a couple of wells on diesel engines. In proportion to its size, am I helping with the pollution by using electric power, or am I hurting the pollution, or would the diesel engine pollute more than the proportion of electricity I use generated from a coal-fired plant? Do you have any idea?

JOSEPH CITTA: I've got some idea, but I can't give you a real good answer on that. I don't...I believe...you know, we know that stationary sources like the power plants are significantly regulated so they have fairly clean operations. Diesels can...a good operating diesel can operate fairly cleanly. One that's poorly tuned can be extremely polluting, so it depends upon...would depend on the situation.

SENATOR SCHROCK: And is there mercury emitted from burning diesel?

JOSEPH CITTA: There's some, but it's not...it's very, very small amounts. But it's predominantly not an issue.

SENATOR SCHROCK: Okay. But they're going to reduce the phosphorous...well no, it's sulfur, it's the sulfur...

JOSEPH CITTA: The sulfur is a big issue with diesel, yes.

SENATOR SCHROCK: ...with diesel fuel. That's not an issue with coal?

JOSEPH CITTA: It's already regulated through the acid rain program, but it used to be, yes. It used to be a huge issue. But with the cap-and-trade acid rain program, the sulfur, the SO₂ has been regulated and, like I mentioned, very successfully.

SENATOR SCHROCK: Okay. A little too complicated for me maybe,...

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JOSEPH CITTA: Okay.

SENATOR SCHROCK: ...but appreciate your input.

JOSEPH CITTA: Certainly.

SENATOR STUHR: Are there any other questions? If not, thank you very much...

JOSEPH CITTA: Thank you very much, senators.

SENATOR STUHR: ...for your testimony. Are there others wishing to testify in support? Are there opponents that wish to testify? Good afternoon.

KEN WINSTON: Good afternoon, Senator Stuhr, members of the Natural Resources Committee. My name is Ken Winston; last name is spelled W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in opposition to LB 872. I wanted to state that all the things that Shelley Kaderly talked about in terms of reducing emissions, the Sierra Club is in support of all of those things. And so...and the gentleman from NPPD, Mr. Citta, talking about reducing emissions we're...I think everybody is on the same page as far as that is concerned. I think we all want to reduce emissions, we all want to have less mercury pollution in the state. But the thing that...the reason that the Sierra Club has a policy in opposition to cap-and-trade with regard to mercury emissions is because of the issue of hot spots, and that's because of the fact that, as Shelley Kaderly indicated, mercury is a major neurotoxin, it does cause developmental problems in babies and fetuses, and there is large numbers of children nationally that are born with developmental problems as a result. But our concern about hot spots is because of the fact there are areas where mercury is particularly high. And as I understand it, mercury concentrations appear in certain areas. It tends to be more a local and regional kind of problem than one that's spread around. And so the problem is, by reducing it on a statewide level, you may not be reducing it in that hot spot. And so in general, the Sierra Club supports the policy that requires each source to be held to a set limit. The fact that a cap-and-trade program may make economic sense is not...should not trump the need to protect the environment and the health of the citizens who are in such a

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situation. There has been some discussion about the effect of the acid rain program, and I won't claim to know a great deal about that, but it's my understanding that that is a pollutant...that that dealt with pollutants that were more wide-ranging and more of a global...that spread out in more of a global fashion than mercury does, and mercury tends to accumulate in local areas. And that kind of a cap-and-trade program is generally more successful than one with a pollutant that's more local, such as mercury. And for that reason the Sierra Club is opposed to adopting a cap-and-trade program for the use of mercury. I would attempt to answer questions; remember my experience yesterday.

SENATOR STUHR: Are there questions for Mr. Winston? None. Thank you.

KEN WINSTON: Thank you.

SENATOR STUHR: Are there other opponents to LB 872? Are there those wishing to testify in a neutral capacity? If not, Senator Schrock, do you wish to close?

SENATOR SCHROCK: No.

SENATOR STUHR: That will close the hearing on LB 372. And I will turn the chair back to Senator Schrock.

SENATOR SCHROCK: Thank you, Senator Stuhr. Then we will opening the hearing on LB 871.

LB 871

JODY GITTINS: Chairman Schrock, members of the committee, my name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I am committee counsel for the Natural Resources Committee and introducing this bill on behalf of Senator Schrock. This is another bill that was presented to Senator Schrock by the Department of Environmental Quality. The bill amends the Integrated Solid Waste Management Act to clarify the authority of the council to adopt rules and regs establishing procedures for the issuance of renewal, suspension, denial, revocation, modification and major modifications of the solid waste permits. Existing law

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requires public notice for all modification of permits issued under the Integrated Solid Waste Management Act. Frequently, the owners and operators of permitted facilities request minor modifications to their permits that may be of little public consequence. The change that would enable the Environmental Quality Council to determine the types of modifications that are minor and that would not require public notice. Another portion of LB 871 deals with the process the department must follow when setting financial assurance for solid waste facilities. Financial assurance for permits is determined by the director and is used in the event of an investigation or corrective action. LB 871 amends the process to require the department to hold a public hearing only when that hearing is requested by the public. Currently, the department must always hold a public hearing after public notice is given. Mr. Haldeman is here again who's division head for the solid waste division and he can talk more specifically of why the department feels that this was very important to them to try and get this accomplished this year.

SENATOR SCHROCK: Questions for Jody? First proponent. I guess DEQ is going to be up first. Go ahead, David.

DAVID HALDEMAN: (Exhibit 24) Okay. Thank you. Good afternoon again, Chairperson Schrock and members of the Natural Resource Committee. For the record my name is David Haldeman. That's spelled H-a-l-d-e-m-a-n and I'm the division administrator for the waste management division. My testimony this afternoon is in support of LB 871. LB 871 is a simple bill to address two issues in our solid waste permitting process. First, the department is seeking the ability to issue minor modifications to permits without the need of public notice. Many times permittees like landfills, transfer stations, and compost sites request changes to their permits that are minor in nature. For example, changes in operating hours, more frequent ground water monitoring, and correcting typographical errors, changes in the operational plan, and other changes that do not adversely impact human health or the environment. A recent review of the department's regulations by the Attorney General's Office revealed that although the department has the authority to approve modifications to permits following public notice, the current statute does not give DEQ the authority to make minor corrections or

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changes without notice to the public. This bill seeks to amend the statute to allow the Department of Environmental Quality to approve department regulations that allows these types of changes. The other element of the bill again concerns the public participation process in establishing financial assurance for permittees. Presently statute requires a hearing each time the department intends to get these financial assurances. LB 871 intends to make this process consistent with other programs in our agency where public notice is provided and a hearing is held if requested. And very short testimony but I'd be happy to try and answer any questions that you might have.

SENATOR SCHROCK: Okay. Thank you, David. Are there questions? David, in our Solid Waste Management Act, do we have any bad actor provisions in there?

DAVID HALDEMAN: That's a good question. I don't believe that we do.

SENATOR SCHROCK: And in solid waste management we're dealing basically with the landfills, is that?

DAVID HALDEMAN: Correct. We have a permit program which is the authority to the department to issue permits on landfills, C and D sites, industrial disposal areas, and then what we term processing facilities. And those are like transfer stations, compost sites, and materials recovery facilities.

SENATOR SCHROCK: What you're saying right now is if my landfill was operating from eight to eight and we wanted to change from eight to six, we'd have to have a public hearing?

DAVID HALDEMAN: The way the statute is currently written, yes. It doesn't enable us to basically make those modifications to the permits without first issuing a public notice.

SENATOR SCHROCK: Public notice and a public hearing?

DAVID HALDEMAN: Well, not necessarily hearing. If a hearing is requested for a permit modification, we'd conduct a hearing in almost all cases. But otherwise if no hearing

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is requested, no hearing would be held.

SENATOR SCHROCK: It does make me wonder why we made the...why we weren't a little more flexible when we started with our statutes.

DAVID HALDEMAN: It might make you wonder, but then you'd have to look at our permitting process too. I'd say the department to some extent how we developed our program. What we did was, we developed a program where a permittee and applicant would submit their application and we have our regulations and we review the application and we want to make sure that the application meets standards of the regulations. And essentially, it's...they provide both design and specifications on...and plans for how the things can be constructed. And then there are requirements that they write out in there to format for how they operate the facilities, ground water monitoring plans and so on. And these applications then actually become the permit when the permit is issued. And it was important for us to have this level of detail so that we could evaluate the application and make sure they meet the regulatory requirements and the public would have an understanding of how the landfill or other "permittedency" would be constructed and operated. But the down side to getting that information and having that understanding is that when somebody does change some of the verbiage, or for example wants to use a different piece of equipment or change their operating hours, the way the statute is and the fact that the application is a part of that permit it just simply doesn't enable us to do that.

SENATOR SCHROCK: Is this something that the industry, the owners and operators of these landfills, have asked for or is it something that you have seen as a nuisance and is...are the regulations being strictly enforced now as far as if somebody wants to make a minor modification, do you overlook it or do you pretty well make them toe the line?

DAVID HALDEMAN: Well practically speaking, to answer your question, yes, we toe the line. We're not trying to get around the statutes or the regulations. But practically speaking, if you...if they want to make that modification and we have an understanding, the process, paying the fee, making the formal submittal, the time frame that's involved. I wouldn't expect that they, unless there was something

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extremely urgent about this minor modification, that they probably would not make the modification. So for example, if they wanted to purchase a new piece of equipment that was unidentified in the permit, they may hold off on purchasing that equipment until their five year renewal comes around and then they would incorporate changes in the permit at that time and purchase the equipment.

SENATOR SCHROCK: Okay. Other questions for David? Thank you for being with us.

DAVID HALDEMAN: Thank you.

SENATOR SCHROCK: Proponent testimony, please, anybody coming forward? Opponent testimony? Got an exciting Friday afternoon going here. (Laughter) Neutral testimony? I will waive closing. And that will close the hearing. And do I have a motion to go into Exec Session?