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COMMITTEE ON NATURAL RESOURCES
February 8, 2006
LB 1097, 1031, 1161
Confirmation Hearing

The Committee on Natural Resources met at 1:30 p.m. on February 8, 2006, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing regarding the confirmation of a gubernatorial appointment, and LB 1097, LB 1031, and LB 1161. Senators present: Ed Schrock, Chairperson; Elaine Stuhr, Vice Chairperson; Carol Hudkins; Gail Kopplin; Bob Kremer; LeRoy Louden; Vickie McDonald; and Adrian Smith. Senators absent: None.

SENATOR SCHROCK: Good afternoon. For the record, my name is Ed Schrock. I chair the Legislature's Natural Resources Committee. I would like to introduce the members of the committee. To my far right is Senator LeRoy Louden from Ellsworth; that's out in, what do you call it, the western edge of the Sandhills?

SENATOR LOUDEN: About right.

SENATOR SCHROCK: And he is getting close to Alliance. Next to him is Senator Kopplin from Gretna. Senator Hudkins is not here; she may be introducing a bill in another committee or she probably will show up later. Senator Hudkins is from Malcolm. Next to me is Jody Gittins; Jody is the committee counsel. To my immediate left should be Senator Stuhr; she is Chair of the Retirement Committee, and they met over the noonhour, so she may be grabbing lunch. Next to Senator Stuhr's seat is Senator Vickie McDonald; Vickie is from St. Paul, Nebraska. Senator Kremer is also absent but he probably will show up; Senator Kremer is from Aurora. And at the end is Senator Smith from Gering. Next to Senator Smith is our substitute committee clerk today, Kendra Papenhausen; she is the committee clerk for the Business and Labor Committee. And if that name sounds familiar, her brother is our page, and Marcus is a sophomore at UNL and he is in elementary education. So we've got a family reunion going on here this afternoon. Just some instructions: If you have a cell phone, please silence it or if you have a pager or something that makes a noise. We do forgive people that make mistakes. If you wish to testify on a bill and the bill is in the process of being heard, please come to the front of the room and have your sign-in sheet filled out

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ahead of time. If for some reason or another you, at the spur of the moment, decide to testify, please fill the sign-in sheet before you leave. If you would like to leave written testimony but don't want to testify, give it to the page. If you would like a drink of water as you are testifying, ask the page. I think that pretty well covers most things. No vocal display of support or opposition to a bill; it's not that big a group today. I have a meeting in Sutton tonight at 6 p.m. I would like to get done in time to an Exec Session, so if you are a proponent of a bill and you take too much time, that's just that much less time we have to advance your bill, should we look favorably on it. If you are an opponent of the bill, you might want to take all day. But you know, a lot of committee chairs have a light system, and after three minutes they turn the light onto yellow and then it's red. If you talk too long, I will stop you and we will move on, and I don't normally say this, but this afternoon I will tell you, all things considered, I would rather be fishing, but we're here today to do the state's business. So with that, we have a confirmation hearing to start the afternoon proceedings. I will be leaving to present testimony on two bills in the Revenue Committee. At that time I will turn the proceedings over to Senator Stuhr, and if she has to leave she'll turn it over to somebody else, so thank you. With that, we have Rod Gangwish who is another appointment to the Environmental Quality Council. Rod, we've had some pretty good candidates for those positions. Do you live up to the standard that we've been getting lately?

ROD GANGWISH: I'll try to.

SENATOR SCHROCK: All right. Just tell us something about yourself and why you would like to serve, and are you reappointment or a new appointment?

ROD GANGWISH: I'm a new appointment.

SENATOR SCHROCK: Okay.

CONFIRMATION HEARING ON
ROD GANGWISH TO THE
ENVIRONMENTAL QUALITY COUNCIL

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ROD GANGWISH: Senator Schrock and members of the committee, my name is Rod Gangwish. I'm from Shelton, Nebraska.

SENATOR SCHROCK: Rod, you need to spell your name.

ROD GANGWISH: (Exhibit 1) It's Rod, R-o-d G-a-n-g-w-i-s-h, and again, from Shelton, Nebraska. I understand that they have forwarded you some personal information so I'm not going to go into any of that. By way of background, I am a farmer. I farm there at Shelton with my son, John, in a family farming operation. We farm about 2,000 acres and we grow...most of our corn is seed corn and we do grow some commercial corn and soybeans in about a 50-50 rotation. I've been involved agricultural organizations throughout my life and I am representing the crop production slot, the way I understand it, on the Environmental Quality Council. I have an interest in natural resources and water and environment, et cetera, and I would hope to bring that perspective to the council. I would like you to know that I have no agenda. I don't come to this appointment with any axe to grind other than to represent production agriculture. And if I'm confirmed, I would pledge to represent my constituents, those folks who are in crop production on the council. And I'll just leave it at and answer any questions if you have them.

SENATOR SCHROCK: Which position do you fill, Rod?

ROD GANGWISH: I fill the crop production position on the council.

SENATOR SCHROCK: Are there questions for Rod? Senator Stuhr.

SENATOR STUHR: Yes. Thank you for coming today. And I hear congratulations are in order. Aren't you a new grandfather?

ROD GANGWISH: Thank you very much.

SENATOR STUHR: So congratulations.

ROD GANGWISH: She's a week old yesterday.

SENATOR STUHR: All right. That's very good because we had

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John, I believe, as a page, so thank you.

ROD GANGWISH: He's a proud father.

SENATOR STUHR: Well, good. Very good. What do you see as a challenge that you might be facing as a new member on the Environmental Council?

ROD GANGWISH: I suppose one of the challenges that I face is to be able to come up to speed on the issues that are brought to the council, and I guess it would be the decisions that I would have a vote on, and they're quite broad and yet many times quite specific. And some of those things I've heard a little bit about, but I don't know very much about, and so I've already been to a meeting and had to do some reading and make some phone calls to try and figure out what was going on. So I guess on the surface that's one of my challenges.

SENATOR STUHR: All right. Well, thank you. Thank you very much for your willingness to serve.

SENATOR SCHROCK: It brings a new meaning to production agriculture when you have a grandchild just a week old, right?

ROD GANGWISH: (Laugh) Yes, it does.

SENATOR SCHROCK: Senator Smith.

SENATOR SMITH: Hi, Rod. Thanks for your service. When we look at environmental issues, especially relating to livestock production, would you favor more of a sized-based or risk-based approach in terms of regulating livestock waste?

ROD GANGWISH: I suppose there's a mix there. Certainly, size creates issues with things that have to be complied with. And that, I suppose, translates into risk if there are any kinds of violations. And I guess if I were to give my bias, it would be to have less kinds of regulations not to infringe on risks, but less regulations to the smaller producers because it seems that we're driving everything big and it has to be big because it's expensive, and in order to afford the expense, you've got to divide that expense over

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more animals. And I'm not sure that's the right message that we should be sending. I'm not sure it's the right or the best approach for livestock production in our state. But that's the answer to my question, I guess.

SENATOR SMITH: Sure. Do you see any areas of regulation where the state should be more restricting than the EPA, just off the top of your head?

ROD GANGWISH: No, I really don't.

SENATOR SMITH: Okay. Okay, thank you.

SENATOR SCHROCK: Other questions? Rod, if memory serves me correctly, I'm..by the way, Rod is past president of the National Corn Growers Association--not in the state but on the national level, and served us well in Washington. But if my memory serves me correctly, I sold you your first Corn Grower membership.

ROD GANGWISH: (Laugh) I think that might be right, yes.

SENATOR SCHROCK: Just look at the trouble I can cause people. Well, thank you for your service and thank you for being with us today.

ROD GANGWISH: Thank you.

SENATOR SCHROCK: Do we have people who would testify in a proponent capacity for Rod Gangwish's confirmation? We have a letter from, a surprise from Craig Head from the Nebraska Farm Bureau that is recommending that we look favorably upon your appointment. That didn't get passed out, did it. (Exhibit 2) Are there people who would testify in an opponent capacity? Is there neutral testimony? If not, that will close the hearing on Rod Gangwish's appointment to the Environmental Quality Council, and we will move to the bills at hand.

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JODY GITTINS: Good afternoon, Chairman Schrock, members of the Natural Resources Committee. My name is Jody Gittins, J-o-d-y G-i-t-t-i-n-s. I'm committee counsel for the

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Natural Resources Committee, introducing LB 1097 on behalf of Senator Schrock. LB 1097 is a simple bill. It creates the Storm Water Management Plan Program, which is to be a grant program administered by the Department of Environmental Quality. Cities that are required by the federal government to develop storm water plans under the National Pollutant Discharge Elimination System, otherwise known as the NPDES system, are eligible to apply for grants. The grant amount, in part, is to be based on the city's population. That's it.

SENATOR SCHROCK: Thank you, Jody. Are there questions?
Senator Smith.

SENATOR SMITH: The grant amount, you said, is, in part, to be based on a city's population.

JODY GITTINS: Yes, Senator.

SENATOR SMITH: Is that the best...I mean, I'm assuming you believe that to be the best factor to consider.

JODY GITTINS: It's just one of the factors that should be considered. The department will develop the criteria for eligibility for the grants. The two criteria are, one, that you have to be under the requirement by the federal government to get a National Pollutant Discharge Elimination System permit. And the amount of that grant, in part, can be based on population, as well as need and other factors. Those other factors would be determined by the EQC, the Environmental Quality Council, as to how they want the department to administer the program. So they could consider other factors, but that would be one of the factors that they would have to consider because that's in the law.

SENATOR SMITH: Um-hum. Okay, thank you.

JODY GITTINS: Um-hum.

SENATOR SCHROCK: Senator Stuhr.

SENATOR STUHR: Exactly, is this money...as I understand, it looks like it is to be a grant from \$5 million to \$10 million per year?

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JODY GITTINS: Yes, Senator.

SENATOR STUHR: And where from?

JODY GITTINS: From the General Fund.

SENATOR STUHR: From the General Fund.

JODY GITTINS: Yes.

SENATOR STUHR: Okay. I knew it had to come from somewhere.
(Laugh) Okay, thank you.

JODY GITTINS: (Laugh) Yes, Senator.

SENATOR SCHROCK: Other questions? If I may shed a little light, I believe the cities cannot participate unless they have a program in place. So this would preclude almost...so it would not go to smaller communities.

JODY GITTINS: Only if they were required to get an NPDES permit and been working on their program.

SENATOR SCHROCK: Yeah. Typically speaking, cities of 5,000 or less probably would not have a plan in place.

JODY GITTINS: That's right.

SENATOR SCHROCK: And it might even be higher than that. But the cities we're talking about generally would be places like Kearney, Lexington, Omaha, Lincoln. Senator Smith.

SENATOR SMITH: So how many NPDES have been issued?

JODY GITTINS: Have been issued?

SENATOR SMITH: Well, I mean, are required. Have any of them...are any of them required yet?

JODY GITTINS: Yes.

SENATOR SMITH: All of them?

JODY GITTINS: I'm not sure how many. I believe there are at least 17 cities that have been required to at least get a

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program started. I believe that...I'd rather not say, but people who follow me from the city of Lincoln and the city of Omaha can tell you about the status of their permit. I believe there are others here from smaller communities that will also identify for you, and the department is here to answer questions. And, I'm sorry, I don't have that information for you.

SENATOR SMITH: Okay. That's fine.

SENATOR SCHROCK: Other questions? Thank you, Jody. Proponent testimony?

NICOLE FLECK-TOOZE: (Exhibit 3) I have some written testimony also.

SENATOR SCHROCK: Marcus, why don't you bring that over here. That works for everybody but LeRoy. He's going to have to turn his head.

NICOLE FLECK-TOOZE: Good afternoon, Senator Schrock and members of the committee. My name is Nicole Fleck-Tooze, N-i-c-o-l-e F-l-e-c-k, hyphen, T-o-o-z-e, with the Lincoln Public Works and Utilities Department, and I'm representing the city of Lincoln. I've provided a letter from Mayor Coleen Seng, expressing Lincoln's support for LB 1097 and the creation of a Storm Water Management Plan program as a grant program administered by the Department of Environmental Quality. Passage of this bill would give communities another funding source to assist in implementing federal law requirements. We've heard a lot of discussion recently about the funding needs to address water issues in rural Nebraska. We are here to speak to you about the urban water issues, which we feel are no less significant. The presentation board and the map we've provided show the 20 cities and four counties across Nebraska which now have requirements for storm water management programs, and two additional cities under consideration. We have estimated the near-term statewide costs for storm water quality programs at about \$24 million annually, and Lincoln's costs represent over \$6 million of that total. But when we look at the real statewide needs, which include all of the related flooding and storm water issues that our urban areas are facing, near-term costs approach \$32 million. The storm water fee enabling legislation proposed in LB 102 is also

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central to addressing these critical urban water issues. Without a storm water fee system, a disproportionate share of the costs will be borne by homeowners through property taxes. You can see this in the graphics on the presentation board and on the back of the map handout where we've provided an estimate for Lincoln to show what happens when the full burden for funding this program comes from property tax versus a fee, where the costs are based on the impact of each property to the storm water system. The grant program proposed by LB 1097 has the potential to provide funding that is critical to the implementation of the federal mandate. If enabling legislation is passed to allow storm water fees, LB 1097 also has the potential to be a source of funding to offset fees for the public sector, with a key area being state properties and local public schools. Under a storm water fee system, we would expect the statewide cost for state properties and for local public schools to be about \$2.3 million, again based on those near-term cost estimates. I would like to thank the committee for the opportunity to comment this afternoon and also to thank Senator Schrock for taking the initiative to introduce this legislation, and we would urge the committee to advance this legislation to assist Nebraska's communities in addressing this very important clean water issue.

SENATOR SCHROCK: Thank you, Nicole. Are there questions?
Senator Smith.

SENATOR SMITH: Thank you for your testimony. Now, the reason why this isn't coming out of property tax, or at least traditional property tax, is what?

NICOLE FLECK-TOOZE: Well, first of all, I think nobody has in place at this point a system that is set up for property taxes to cover the dollar amounts that we're talking about.

SENATOR SMITH: So there's not enough money?

NICOLE FLECK-TOOZE: There's not enough money.

SENATOR SMITH: Okay.

NICOLE FLECK-TOOZE: So that is one factor, and then another factor is looking at if you ultimately end up having to increase property taxes to cover these costs, should those

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costs really be borne by all of the taxpayers paying for their residential properties or should it be more equitably distributed based on the impact of each property to the storm water system.

SENATOR SMITH: Okay, so who would you say would be the most likely offender, so to speak? I shouldn't say offender...the most likely suspects in causing the storm water runoff issues?

NICOLE FLECK-TOOZE: Well, it's going to vary because not every category of land use would necessarily have the same impact in terms of runoff. For example, the downtown businesses which are built up in the sky versus out laterally are going to have much less in terms of their impact of runoff. But certainly some of the more traditional approaches to parking areas and larger impervious surface areas have a greater amount of impact.

SENATOR SMITH: So we're talking schools, churches, hospitals.

NICOLE FLECK-TOOZE: Those certainly can be, although as you look at the alternative approaches that are taken today, you can have a lot less impact than I think historically some of those land uses have had. But, yes, large parking lots certainly can be a contributor.

SENATOR SMITH: Well, just a large roof, basically.

NICOLE FLECK-TOOZE: Large rooftop, also.

SENATOR SMITH: And which would be hospitals, schools, churches, that are typically tax exempt, right?

NICOLE FLECK-TOOZE: Certainly, those can be, as well as other businesses that, in terms of parking areas, some of the business uses are also going to have those large parking areas--shopping malls, those types of things.

SENATOR SMITH: Okay. And so that the property taxes that perhaps SouthPointe mall is paying now is not covering the problems they're creating, is that what I hear you saying?

NICOLE FLECK-TOOZE: Yeah, yeah. That's exactly right. And

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I think one of the things that we're trying to point out is that we recognize that there may be a need to offset fees for some of those tax exempt, certainly for the state properties, the local public schools. We've heard a lot of concern about how this issue might impact them, and I think that's where we're looking to solutions like possibly LB 1097 to try to offset the costs for some of those fees.

SENATOR SMITH: General Fund.

NICOLE FLECK-TOOZE: Yes.

SENATOR SMITH: So it's not really an effort to attach to the party causing the runoff, like perhaps last year's LB 102. Do I hear you saying that?

NICOLE FLECK-TOOZE: Well, I guess what I'm trying to say is that we are still very much in favor of LB 102. And if that legislation passes and these 22 communities move forward with a fee-based system, we recognize that there should be some state funding provided for relief for, at a minimum, the state agencies, the local public schools, some of those public entities not paying property tax today.

SENATOR SMITH: So, roughly, do you know how much property tax SouthPointe mall pays, just roughly?

NICOLE FLECK-TOOZE: I don't know offhand. We could try to get that information.

SENATOR SMITH: But you are saying that's basically not enough.

NICOLE FLECK-TOOZE: Yeah. Yeah. It's certainly not proportionate to the impacts in terms of those costs that we're seeing in Lincoln and in other communities.

SENATOR SMITH: Is the city of Lincoln up against its lid?

NICOLE FLECK-TOOZE: We are not yet up against our lid.

SENATOR SMITH: So there is some capacity there for property tax.

NICOLE FLECK-TOOZE: There is.

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SENATOR SMITH: Thank you.

NICOLE FLECK-TOOZE: Um-hum.

SENATOR SCHROCK: Other questions? Thank you, Nicole.

NICOLE FLECK-TOOZE: Thank you very much.

SENATOR SCHROCK: Next proponent? And we have a letter here from Marty Grate. We have a letter here from the Omaha Public Works Department on behalf of the city of Omaha. Oh, these are testifiers. Are you Marty Grate?

MARTY GRATE: Yes, I am.

SENATOR SCHROCK: All right. Thank you, Marty. I was not communicating well with my counsel.

MARTY GRATE: (Exhibits 4-9) That's okay. Good afternoon, Senator Schrock and members of the Natural Resources Committee. My name is Marty Grate; that's M-a-r-t-y G-r-a-t-e. I am the environmental services manager for the city of Omaha and I want to thank you for the opportunity to testify on LB 1097. I have provided, in the materials that are being distributed, a letter from Mayor Mike Fahey that conveys Omaha's support for the establishment of a Storm Water Management Plan program to provide grant funding needed to assist Nebraska communities in meeting the federal mandates of the Clean Water Act. I also have provided a letter of support from the Papillion Creek Watershed Partnership. This organization represents nine cities, two counties, and the natural resource district in the greater Omaha metropolitan area. Nicole has done a good job of giving you an overview of the statewide storm water management funding needed to address the requirements of the permits issued by the Nebraska Department of Environmental Quality. Omaha's estimated costs have also been provided in your packet. I'm available to answer any questions you may have on those cost estimates, but I would also like to provide you with information that goes beyond the standard litany of budget struggles and mandate woes. Since Omaha's storm water permit was issued in 2003, we have been gathering data to characterize the quality of the discharges from our storm sewers. In 2005, a joint effort with DEQ, we

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also gathered a substantial amount of in-stream water quality data. These monitoring efforts have confirmed what were our earlier assumptions, and that is that the streams in the Omaha metropolitan area do not meet the state established water quality standards, and that storm water runoff is a contributor to this impairment. Water, both rural and urban, is one of Nebraska's greatest natural resources. The grant funding provided via LB 1097 would do more than just assist regulated communities in meeting technical permit requirements. It would help advance best management programs and practices that allow progress towards the real goal, which is restoring and protecting Nebraska's invaluable resource of clean and abundant water. I want to thank Senator Schrock for introducing this important legislation and ask that this committee continue its commitment to Nebraska's water resources by advancing LB 1097.

SENATOR SCHROCK: Thank you, Marty. Are there questions? We appreciate that and I think we are in receipt of the letter from Mayor Fahey in the positive form. And we have letters of support from Gordon Adams, the mayor of Norfolk. A letter of support from Rick...ooh, I can't say that one. Help me out there, Adrian. Rick... (Exhibits 10 and 11)

SENATOR SMITH: Kuckkahn.

SENATOR SCHROCK: Kook-han (phonetic)?

SENATOR SMITH: From Scottsbluff?

SENATOR SCHROCK: Uh-huh.

SENATOR SMITH: Yeah.

SENATOR SCHROCK: Rick Kuckkahn from Scottsbluff. And we have a letter of support...no, that's a different letter. All right, go ahead.

GARY KRUMLAND: (Exhibit 12) Senator Schrock, members of the committee, my name is Gary Krumland. That's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LB 1097. We view LB 1097 as part of an overall effort for cities to meet the federal storm water mandate, and it would be another tool.

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We also support LB 102. What I passed out is, and maybe it duplicates one of the letters you have, but it's letters of support from South Sioux City, Norfolk, and La Vista, and a resolution from the Columbus City Council in support of these efforts. As you've heard, it's not just a Lincoln and Omaha problem. Recently, ten other cities across the state, generally along the Platte River, had been added to the list of cities who are now under this mandate. And so these cities are in the process now of beginning to do their plan and trying to meet the mandate. And so it's no longer just an Omaha/Lincoln problem; it's spreading out across the state. For these reasons, we do support LB 1097.

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

SENATOR HUDKINS: Gary, according to the fiscal note, this could cost, for fiscal year 2006-07, almost \$24 million out of general funds, and for FY 2007-08, almost \$25 million. Realistically, is that enough money?

GARY KRUMLAND: Well, I don't know if it is or not. Part of the problem is, at least for the... I think Lincoln and Omaha have a pretty good idea of what it's going to cost them. The other cities are just now beginning their programs, and I don't know that we have cost estimates. We tried to make estimates based on Lincoln and Omaha, and do that. But it's going to be in that area. I mean, I understand that we're not going to get all that money from the state, but as you've heard, if maybe the state can use general funds to pay for state properties, possibly some of the other public entities, and then with some other tools, I think the cities would be able to meet these requirements and mandates.

SENATOR HUDKINS: Okay. Between the chances of slim or none, do you really think that the Appropriations Committee is going to come up with this much money?

GARY KRUMLAND: I doubt if they'll come up with that much money, but if it's geared toward state properties, I mean, at some point... it would be a much lower figure than those, but.

SENATOR HUDKINS: What right now can Lincoln do, as to the storm water runoff, to pay for it? Can they do something

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now? Can they raise their sewer fees? Can they...?

GARY KRUMLAND: Well, I think...and I'll talk about cities in general because I'm not sure if I should talk specifically to Lincoln; I don't know. But most of the cities under the mandate have sales tax and they all have the ability for property tax. I don't know that they would be able to use sanitary sewer fees and some of the fees they have for other utilities to do this because those are pretty much required to be spent on those utilities. So I don't know that. Under the current authority, they can charge fees for storm water management. They could use other sources of taxes. Most of the cities who have sales tax probably are not under the...they are under the levy so they probably have levy ability. A lot of those cities, though, there is also a budget lid in place, so there are two different restrictions on that, and a lot of them are having problems raising their budget from year to year just to cover the ongoing costs--salaries, health insurance, all that--so they don't really have a lot of flexibility to raise additional money to pay for these mandates.

SENATOR SCHROCK: Other questions? Senator Smith.

SENATOR SMITH: So this would be in addition to LB 102?

GARY KRUMLAND: Well, realistically, I'm assuming, like Senator Hudkins mentioned, the Appropriations Committee is not going to put in \$25 million or \$30 million, but if there was some money to put in towards public entities, and if the cities were given some additional authority to raise some permits, I think that would be the ideal situation. Either one would be good to have; it would be helpful.

SENATOR SMITH: Okay. So...and an optimal scenario then, do I hear you saying that LB 102 would be good to cover the private entities, and LB 1097 would be good to cover the public entities?

GARY KRUMLAND: I suppose that would be one way to address this.

SENATOR SMITH: So we're still not getting the private nonprofit to cover their share.

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GARY KRUMLAND: Well,...and I guess that would kind of depend on how much money is put into LB 1097 and what this committee and the Legislature would want to do with.

SENATOR SMITH: And would it be conceivable that LB 102, if passed, would allow a fee to whoever the city would choose? Is that accurate? And the city could exempt the nonprofits or public or...?

GARY KRUMLAND: I know that there were some discussion of including that in the bill, and I don't recall exactly what authority is granted for cities to do that under the bill.

SENATOR SMITH: Okay. Okay, thank you.

SENATOR SCHROCK: Senator McDonald.

SENATOR McDONALD: Could a city raise their city sales tax to cover this?

GARY KRUMLAND: If they're...a city has authority to either charge 0.5 percent, 1 percent, or 1.5 percent. So depending on where they are...you know, if they are already at 1.5 percent, they would have no authority to raise that. If they are less than that, they would have authority. It would require to go to a vote of the people because they can only impose or increase their sales tax with a vote of the people, so...

SENATOR McDONALD: Any of the cities that you are basically representing here today, do you know where they are at with this?

GARY KRUMLAND: I would guess most of the cities are at 1.5 percent. I can find out for sure, but I...based on the size and all that, that's generally where they are.

SENATOR McDONALD: Okay.

SENATOR SCHROCK: Other questions? Gary, LB 1097 is not contingent on the passage of LB 102,...

GARY KRUMLAND: Oh, I understand they're completely separate.

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SENATOR SCHROCK: ...and, in fact, they are totally separate, is that correct? Would you agree with that?

GARY KRUMLAND: Yes.

SENATOR SCHROCK: Would you agree with that?

GARY KRUMLAND: Yes.

SENATOR SCHROCK: Okay.

GARY KRUMLAND: Yeah.

SENATOR SCHROCK: So one is not contingent on the other, either way.

GARY KRUMLAND: No. I...

SENATOR SCHROCK: You can live with either one or both.

GARY KRUMLAND: Yes. I mean, ideally, we would have both, but...

SENATOR SCHROCK: Tough to live with neither one.

GARY KRUMLAND: It would be nice to have at least one of them, yes.

SENATOR SCHROCK: All right. Other questions? Thank you. Next proponent.

GARY KRUMLAND: Um-hum.

LARRY RUTH: Senator Schrock, members of the committee, my name is Larry Ruth, R-u-t-h. I am representing a number of associations today: the Nebraska Restaurant Association, the Nebraska Retail Federation, the Nebraska Press Association, the Nebraska New Car and Truck Dealers Association, the Trucking Association, the Commercial Property Owners Association, and the Petroleum Marketers and Convenience Store Association. I only say that so that they don't all have to get up here and say something and try to save you some time. I'm appearing in general support of the concept. I realize that there are a lot of questions here, specifically on the amount of money which may be available,

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and I think that that is not something that we feel that we're capable of answering right now and in giving support to. But the general notion of having general funds available to assist in this area is something that we do support. We have followed the storm water legislation and discussion for a number of years, most of this, and it is a learning process for all concerned. Most usually we've been before this committee in opposition to legislation dealing with fees, and LB 102, we would reiterate our opposition to that bill, and we would specifically not concur with the...

SENATOR SCHROCK: Stick to the subject at hand, Larry.

LARRY RUTH: Pardon me?

SENATOR SCHROCK: Stick to the bill at hand, would you?

LARRY RUTH: Well, I would happily do that, but I just want to make sure that you understand that again. And we would not concur with the testimony from Nicole regarding the need for fees, and so we want to separate ourselves from that. However, with that much said, we would support LB 1097 because it appears to be part of the solution. It's really difficult to know how much money is needed in this area. I have been looking for an answer to that for years actually. And part of the problem comes from a difference of opinion as to what may be required by the federal law and what is ongoing maintenance and capital construction in this area. And it is very difficult for us to get a handle on what a city's needs are that are actually being required by this new law, this federal law. And I only point out that because in LB 102, for example, the statutory authority was being sought to not only go for that which is being newly required, but it was also available for that which is in place. And I just want to tell you that the real hard work, it seems to me, of this particular grant process, is the guidelines and limitations that the Department of Environmental Quality would have to set forth, as well as the municipal plan, and to make sure that you're not paying, through general funds, for those kinds of improvements which are natural and ordinary to a city not required under the federal law. And I just point that out because that's something we'll be looking at very closely as this program develops, if, in fact, it passes. But I do want to give you general support for the notion. You did ask...one senator

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asked about what could a city do, and that's a pretty difficult question to answer, aside from property tax. But I do recall, in one section of law, that there is a special levy which can be applied by a city; in fact, it's mandated to be applied by a city to meet law requirements. And I have asked the question before whether or not the cities have complied with that section, and I would be very interested to know if that has been done. Thank you.

SENATOR SCHROCK: Thank you, Larry. Questions?

LARRY RUTH: Thank you.

SENATOR SCHROCK: Appreciate you appearing.

LARRY RUTH: I'll take my water and run.

SENATOR SCHROCK: All right. Other proponent testimony?

KEN WINSTON: Good afternoon, Senator Schrock, members of the Natural Resources Committee. My name is Ken Winston, W-i-n-s-t-o-n, and I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in support of LB 1097. The explanations have already been given by previous proponents as to the rationale for this, and the needs for funding to meet the storm water discharge mandates that have been put in place by the federal government. The Sierra Club prefers a more stable, long-term funding source based upon the impact on storm water discharge, but we believe that this is a responsible method of addressing this part of this issue, and we would ask that the bill be advanced.

SENATOR SCHROCK: Thank you, Ken. Questions? We appreciate you being with us. Next proponent. Seeing none, is there opponent testimony? Is there neutral testimony? I notice we have DEQ representatives here. Would one of you be available for questions or comments? I might note that only two of us on this committee have cities that would be affected by this program: Senator Kopplin and Senator Smith. The rest of us all have rather rural areas with no cities involved in this program at the present time. Will that be changed?

JAY RINGENBERG: That will not change. Just for the record, Jay Ringenberg; that's R-i-n-g-e-n-b-e-r-g from DEQ. That

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will not change. Our bottom line numbers right now, probably 28 or 29 programs as far as cities are included. Phase I hasn't changed. That's Lincoln, Omaha, and the metropolitan areas for both, and Dakota County, and the three, two counties up there, plus Dakota City, South Sioux City, and those have not changed; those are all Phase I. Phase II communities, there's ten. We issued the permit...I've got to use my techno thing here just real quick to make sure I don't miss one of them here...January 1, 2006, we did issue the permits for Norfolk, Beatrice, Hastings, North Platte, Grand Island, Kearney, Lexington, Columbus, Fremont, and Scottsbluff. We're currently drafting, in addition to those other entities that you may have an interest in, MS4 permits for the State Fair Park, University of Nebraska-Lincoln, University of Nebraska-Omaha, Nebraska Department of Roads, and some of the railroads that will have MS4 permits. And then we have a number of other permits we issue for construction, like site construction; we've issued 1,800 of those. And industrial sites, 500 or 600 of those. But as I read the bill, the grant program is designed to cover the costs of the cities, the 20-some cities approximately. And one of them...that number is probably a little misleading because in Omaha you have the coalition that Marty talked about. You have 10 or 11 of them there in one group up there, as one program versus ten individual...

SENATOR SCHROCK: So that would include the Millards and the Elkhorns and...

JAY RINGENBERG: Right. And some of the other ten outstates, a number of them are getting together and hiring one consultant to do their programs so they look a lot alike from a cost standpoint. But they are doing some of that now. But that's kind of the impact. We don't see that changing, Senator.

SENATOR SCHROCK: Questions for Jay? Senator Stuhr.

SENATOR STUHR: Does the cost vary according to population or how...what...?

JAY RINGENBERG: Well, we've done some of that cost stuff that we've talked with the committee about in the past, but, in general, the size of the community, it relates to

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population, it relates to costs, layout of the cities, Lincoln and Omaha, how they're receiving streams. In Lincoln and Omaha, you have Papillion Creek going through the communities, gives you a lot different layout than in Lincoln here, where it's all Salt Creek primarily. So it depends on the lay of the land, as well. But it is related to population, I think, just because it relates to the size of the community which relates to more storm water, more storm sewers.

SENATOR STUHR: Okay.

SENATOR SCHROCK: Other questions? Senator Smith.

SENATOR SMITH: What are the practices in the maintenance of these buildings that are causing the problems?

JAY RINGENBERG: In the...what type of buildings? Can I clarify your question just a little bit, Senator?

SENATOR SMITH: Well, is it the contents of the roof materials? Is it snowmelt?

JAY RINGENBERG: Oh, okay. Well, there are two things, one being just the size of the roof and the impervious surface equals runoff from a volume standpoint. And any time you're talking storm water, you've got to deal with the volume, too.

SENATOR SMITH: All right, but this is more of a water quality issue, isn't it?

JAY RINGENBERG: It doesn't normally relate to water quality issues because you get...once you have a rainfall event, you get an initial flush that washes stuff off, whether it's roofs or a parking lot of whatever. You would get more off parking lots than you will off roofs, by far.

SENATOR SMITH: And what is it on the parking lots, though, that's causing the...?

JAY RINGENBERG: Parking lots: oil, cars, salt, some organics from hydrocarbons from car exhausts, some of that.

SENATOR SMITH: Thank you.

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SENATOR SCHROCK: Other questions? Thank you, Jay.

JAY RINGENBERG: Thank you.

SENATOR SCHROCK: That closes the hearing on LB 1097 and we'll move to LB 1031. Thank you for being with us.

LB 1031

SENATOR SCHROCK: We'll open the hearing on LB 1031. The good Senator Preister is probably across the hall; it should not take long to get him here, is what I'm saying. It may take long after he gets here. So like they say in the army, stand at ease. Only smoke them if you have them doesn't apply. Senator Preister, welcome. You're authorized to open the hearing on LB 1031.

SENATOR PREISTER: Thank you, Chairman Schrock, members of the Natural Resources Committee. I appreciate this opportunity. LB 1031...my name is Don Preister, P-r-e-i-s-t-e-r. LB 1031 is introduced to ensure the safe and environmentally sound recycling and disposal of electronics and to encourage the design of electronics that are the least toxic and more recyclable. The bill's goals include: one, minimizing the cost of recycling electronics for the consumer while maximizing consumers' convenience; placement of responsibility on the manufacturers to insure and absorb the costs associated with proper recycling and disposal of discarded electronics; three, establishment of performance goals to increase the amount of recycling in order to not only catch up with recycling the backlog of electronics, but to handle the current amount of recycled electronics; and last, alleviation of the burden on local governments and taxpayers who shouldn't have to bear all the costs for electronics recycling. LB 1031 is drafted to require manufacturers to create, manage, and finance a comprehensive electronics recycling program in Nebraska as a condition of selling their products in the state. Manufacturers have two options in participating in the program. First is they may institute their own recycling program individually or in collaboration with other manufacturers, which means their individual goals and contributes to the overall goals of the program. Or,

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second, manufacturers who do not institute their own programs will make payments into an electronics recycling fund to pay for these companies' recycling obligations. Legislation has been introduced in Congress several times in previous years to address this issue. But unfortunately, no federal legislation has been passed. Therefore, the National Conference of State Legislators, the NCSL, has proposed electronics recycling models for use by the states as they begin to address this issue. This model legislation, which is LB 1031, is the producer takeback model. The goal of states passing model legislation is to provide some uniformity among all of the states which will be less confusing for manufacturers. The National Safety Council estimates there are 300-500 million obsolete computers in the U.S. ready for disposal. There are an additional 57 million televisions and computers sold annually to households and businesses in the U.S. and the FCC-mandated transition to digital television, or HDTV, will speed up the pace of television replacements as consumers will soon be dumping large numbers of old TVs that can't receive the new digital-only signals. Over 1,000 materials including chlorinated solvents, brominated flame retardants, heavy metals, including mercury and cadmium, plastics and gases which are used to make electronics and their components, including semiconductor chips, circuit boards, and disk drives are in these electronic devices. A computer monitor contains between five and eight pounds of lead alone. Big screen TVs contain even greater amounts of lead. LB 1031 addresses the environmental concerns and goals of a producer pay recycling program, which places the responsibility on the manufacturer producer rather than on political subdivisions and thus citizens who should not have to bear these costs through tax increases. I do want to update you on some of the discussions that have taken place on e-waste legislation within the last week with a number of interested parties. Representatives of Hewlett-Packard contacted my office late last week. They much prefer the approach taken in this bill, LB 1031, to the advanced recycling fee that I proposed in LB 190 last year. Last Friday evening, HP forwarded a new model product stewardship bill they are proposing, which is very similar in approach to LB 1031, although much more technical in its application. My staff has been in discussion with HP staff regarding LB 1031 as well as their HP bill. They have spoken a number of times on conference calls and communications through

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e-mails. In addition, I have also shared HP's information and e-mails with NACO, the League of Municipalities, Jim Otto with the Retailers Association. My staff also met with the Natural Resources legal counsel, DEQ staff, and Senator Smith's staff. I believe some excellent questions have been raised as well as several places in LB 1031 where language could be clarified. There were a number of suggestions made by DEQ staff in particular with which I agree. However, there was not enough time to draft specific provisions in an amendment. So I want to point out to you some of the clarifications in LB 1031, which I agree still need to be made. First one, LB 1031 should be amended to limit covered electronic devices to CRTs rather than all electronic devices listed. Though I believe these other products also pose similar problems with hazardous components, passing a program to address just the CRTs is a good starting point. Second, the \$100 fee which accompanies each manufacturer's annual plan to DEQ should be deposited into the existing Waste Reduction and Recycling Grant Fund rather than establishing a separate cash fund. It facilitates and makes it easier for NDEQ. Three, LB 1031 needs to clarify payment requirements on pro rata costs shared on orphan waste. Four, violations and enforcement provisions need to be added to the bill by referring to the current violation and enforcement statutes currently contained in the Nebraska Environmental Protection Act. And five, language needs to be clarified as to whether the department is the best entity to seek cost recovery from manufacturers who do not pay their costs allocated to them. Finally, my office was informed by Natural Resources legal counsel yesterday afternoon that she had just received a call from a representative of the Electronic Manufacturers Association for Recycling whose members include manufacturers of televisions such as Philips, Sharp, Panasonic, and Sony. This morning, I received a fax copy of their testimony. They do not support LB 1031 but prefer the approach taken in LB 190, which proposes an advance recycling fee. Though I have been working on this issue for five years through interim studies and bill introductions, this is the first time manufacturers of televisions have ever contacted anyone in Nebraska regarding their interests or concerns. It is my desire that the committee advance LB 1031 with amendments, rather than my bill from last year, LB 190. I will, of course, continue to work with all interested parties in drafting amendments to the bill. And as the committee well

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knows, it's been a matter of trying to find agreement, trying to find what works best out in the community, and it becomes very difficult when the retailers have an interest, the manufacturers have a different interest, and yet, year after year, we continue to accumulate more waste. We continue to have problems with disposal of that waste in landfills and we, at the federal level, as I said, do not come up with a national solution and at the state level we have done nothing either. So I would ask the committee to assist me with being able to deal with this issue and am certainly willing to continue working with you on it. With that, I'd be happy to entertain your questions should you have any.

SENATOR STUHR: Yes, thank you, Senator Preister. Are there questions for Senator Preister? Senator Louden.

SENATOR LOUDEN: Yes, Senator Preister, welcome back to the committee and thank you for bringing this forward again in a different light. I guess my question is, the way you're going to fund this is to have money, the manufacturers would pay a fee or something like that. Am I correct on that?

SENATOR PREISTER: That would be part of it. It would be a \$100 annual fee that they would pay in addition to their plan. Essentially, the manufacturers would create whatever plan they wanted to for a takeback or a recycling. It's intentionally broad so that they can create whatever kind of a takeback or a recycling or whatever program they want. They can do it on their own, they can do it in collaboration with other manufacturers. But rather than charge the consumer, which is the approach I've taken in the past, and put in a fee, this would essentially be, the manufacturers decide how to do it.

SENATOR LOUDEN: Okay.

SENATOR PREISTER: And if they don't want to do it, then they could pay a proportionate fee to deal with products.

SENATOR LOUDEN: How do you get a hold of all these manufacturers? I mean, like now, all this electronic equipment, I mean, it's made all over the world by everybody. How would you track all of that to get your fees from these people?

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SENATOR PREISTER: Well, if they're selling products in the state, the responsibility would be for them to register and to pay the fee. It's no different than any other kind of registration fee or licensing process for individuals, like doctors or lawyers or CPAs or manufacturers who have other responsibilities.

SENATOR LOUDEN: Would this work...

SENATOR PREISTER: So I don't think it would be that difficult to do.

SENATOR LOUDEN: Would it work better if it was like the wholesalers or somebody like that had to pay that fee instead of the manufacturers?

SENATOR PREISTER: Well, then we run into the wholesalers saying, we're the middle people here and it's unfair to us to have to do that. And that's part of the issue we ran into with the fees and putting some of the responsibility on the retailers that we did in the past.

SENATOR LOUDEN: Well, the only difference is you would have more contact with the wholesalers and then the wholesalers must have contact with the manufacturers in order to get the product here. That's, I guess, my questions. I'm just wondering, you know, if it was feasible to be able to collect these fees and assess them to the right people. That was my major concern, I guess.

SENATOR PREISTER: And that has not been an issue that any of them or anyone has raised to this point, that that would be difficult. It may be working out the details of doing it but I have not heard from anybody, at least at this point, until you've raised the issue of that being that difficult to do.

SENATOR LOUDEN: Okay, thank you.

SENATOR PREISTER: You're welcome, thank you.

SENATOR STUHR: Are there other questions? I don't know which one was first. Senator McDonald.

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SENATOR McDONALD: What are other states doing in this?

SENATOR PREISTER: Well, in some states, they're using this same model. It's, I think, that's why I adopted it from NCSL because it's been somewhat successful. I believe it's Oregon that has had some good success with it. But other states like Nebraska are grappling with it. They're waiting for something to be done at the federal level but the federal government is not doing anything at this point other than a lot of talk.

SENATOR McDONALD: When we get new tires, you know, we have to pay a fee, impact fee, so to speak. Why not, when somebody buys a TV, there's a \$20 charge, impact fee, that then goes into something to take care of this, \$20 or \$25, whatever? So that when you purchase something, even though that person might not be getting rid of that TV at that point in time, but at some point in time, they will, or another TV. What about something like that?

SENATOR PREISTER: Senator McDonald, that's a good idea and it's probably, as folks will tell you, better to pay on the front end when you buy something than to try and pay a disposal fee on the back end when you're trying to dispose it. And then things end up in ditches and you have more serious disposal problems. So the pay when you purchase and contribute that money into a fee is one idea. And I proposed that and I proposed a \$25 fee. This committee chose not to advance that and negotiated that down to where it was only a \$5 fee. And there was still opposition to that. So I've tried about every approach I could try and I appreciate you retrying for me. (Laughter) But I have yet to get people to get agree and to come to a resolution. And in the meantime, the problem just keeps getting worse. Thank you, though.

SENATOR STUHR: Thank you. Senator Smith.

SENATOR SMITH: Okay, on page 3, Subsection 3, the covered electronic device, and then there's a litany of items, does not include, though, some items there.

SENATOR PREISTER: And with the amendment I would eliminate all of those things. It would just be CRTs.

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SENATOR SMITH: Okay, so then do we kind of miss out on the uniformity among states?

SENATOR PREISTER: I'd rather do something than do nothing. And if I keep getting opposition, I'm willing to start smaller. This would still be uniform, it just wouldn't be as inclusive.

SENATOR SMITH: Yeah. Okay, is there currently a ban on the disposal, or a regulation on the disposal of CRTs?

SENATOR PREISTER: If you are a business, you're not allowed to dispose of them in a landfill. If you're an individual, you still can.

SENATOR SMITH: Okay, and how, what percentages are we talking there, in terms of total Nebraska product of CRTs? What percentage are business related that would be regulated and what are not?

SENATOR PREISTER: Businesses probably turn over their computers more quickly than a resident does because technology is changing and there's more likelihood that there will be an upgrade. But most homes now have computers and there are children in these homes who have computers. So the residents and the business, I can't give you numbers. I mean, that's something that's out there. But in terms of giving you actual accurate data, I'm not sure I could do that.

SENATOR SMITH: Okay, so what percent of the, let's just say computer monitors, contain the CRT?

SENATOR PREISTER: Well, a CRT is the monitor. A CRT is the...

SENATOR SMITH: I thought a CRT was a cathode ray tube.

SENATOR PREISTER: Right, it can be in a television or it can be in a monitor.

SENATOR SMITH: Do all computer monitors contain a CRT, is that what you're saying?

SENATOR PREISTER: As far as I know, that's the...

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SENATOR SMITH: Does a flat panel contain a CRT?

SENATOR PREISTER: ...screen that you're looking it.

SENATOR SMITH: Do the newfangled, that are becoming rather prevalent, do those contain a cathode ray tube?

SENATOR PREISTER: I don't know that.

SENATOR SMITH: Okay.

SENATOR PREISTER: I'm assuming that they do. But maybe there's a different technology that somebody else can answer that question.

SENATOR SMITH: And my concern being that, you know, technology, the marketplace is...

SENATOR PREISTER: Sure.

SENATOR SMITH: ...demanding environmental friendliness. I believe that, we may disagree on the extent of that. But I truly believe that the marketplace wants to be friendly to the environment. And this would be a program, pretty hefty program, that has been started that's based on the assumption that everything sold is a CRT. And I don't think that it is. And we're seeing more and more, you know, more technology getting away from that. But yet, the premise is that all of the CRTs are out there. So that would be my concern.

SENATOR PREISTER: Sure.

SENATOR SMITH: And I was looking for a landfill ban, or a ban on CRTs in here.

SENATOR PREISTER: There isn't one. There's already one for business but not for residents.

SENATOR SMITH: Right, right, right.

SENATOR PREISTER: But I didn't put a ban in because the committee chose in the past not to accept that. So again, in the spirit of compromise, I'm trying to do things that

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the committee has already taken action on.

SENATOR SMITH: Okay, so we have a regulation on the manufacturers. For example, there's civil action authorized for the Attorney General and then the funds collected as a result go certain places. So we have a regulation on the manufacturers without, what I would say, enough consumer education. And consumer education is really what impacts landfills more than the mere manufacturing of the items. Yet we're regulating one end without addressing the other end. And all of a sudden fees have been paid and we have some regulations and the marketplace has been affected and I think, damaged as a result. And we haven't accomplished much.

SENATOR PREISTER: We don't know that we haven't accomplished much because we haven't done it yet. So until we try it, we can't say for sure what the effect would be. But your point about educating the public I think is a valid one and that has to be a component, I agree. But it's just like my continually being told what won't work, rather than trying and putting something in place and building upon that. So if we were to say, but this doesn't include educations therefore we shouldn't do it because it would hurt the marketplace, I don't see as a viable alternative from my view. But I agree that education needs to be a component because we need to educate people to bring their used electronic equipment some place where, instead of it just ending up in a landfill, it can be recycled. And these heavy metals and other environmental contaminants can somehow be recaptured and reused where possible.

SENATOR SMITH: Okay, thank you.

SENATOR STUHR: Are there other questions? Senator Hudkins.

SENATOR HUDKINS: Senator Preister, the goals on your bill, the number two, where it says placement of responsibility on the manufacturers for proper handling, recycling, and disposal. Once it is manufactured and shipped, it's out of their hands. So how would they, yes, of course it would be proper handling in their warehouses. But of course, they want to keep it in good shape until after it's shipped and sold. So how do you put the responsibility on them? I don't think the \$100 fee that they pay to Nebraska is going

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to cover that.

SENATOR PREISTER: That's correct. And the handling is for the recycling portion of it and they would have to come up with a plan, their state plan on how they would collect them, the used electronic components, in this case the CRTs, which may need some clarification possibly. They would have to develop their plan or they would have to take financial responsibility. So they have two options. Either individually or working with somebody else, develop a takeback, recycling...however they wanted to structure a plan. The \$100 wouldn't really cover that.

SENATOR HUDKINS: How many manufacturers of electronic equipment are there in the state?

SENATOR PREISTER: I don't have a number.

SENATOR HUDKINS: Would you be willing to say that there are probably more outside of the state than there are within Nebraska?

SENATOR PREISTER: Oh, manufacturers who manufacture in Nebraska?

SENATOR HUDKINS: Yeah, um-hum.

SENATOR PREISTER: That would most likely definitely be more from outside Nebraska.

SENATOR HUDKINS: So other than the, I mean, how do you force someone in another state to do this?

SENATOR PREISTER: Well, part of the provision in the bill is that the Attorney General would have a course of action if they didn't voluntarily comply. I would assume most manufacturers and most businesses operate within the legal parameters of each state that they operate in. I don't think that they're going to intentionally violate the Nebraska laws. I think most of them would voluntarily comply if this were to be the law.

SENATOR HUDKINS: So then would it be up to the dealers? Let's say you go buy a new computer and you have your old one. Would it be up to the dealer then to take your old one

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and then get it back to the manufacturer somehow?

SENATOR PREISTER: That's totally up to the manufacturer and how they want to structure their takeback program. They can set it up any way that they choose to.

SENATOR HUDKINS: Okay, and then goal number four, I'm a little confused there, too. The placement of responsibility on the manufacturer to absorb costs associated with the handling and recycling of electronics before the point of purchase. Why would you have recycling before the point of purchase?

SENATOR PREISTER: Well, that's part of their plan. If they're selling it here and before they sell it, they establish a takeback plan. So they can even inform people when they sell them the product of how they're handling it, how they're taking responsibility, what the options are. That gets back to Senator Smith's education component. We've tried to provide some opportunity. There's never enough education. We need to find more ways. But that's one area where education would be a part of it. They would establish it before the fact and inform people of that at the point of sale.

SENATOR HUDKINS: Last year, maybe the year before, we had a series of recyclers, I think one of whom happened to be from Waverly. Is he still in business do you know, to take back these electronic things?

SENATOR PREISTER: There's still one in Omaha that I know for sure is still operating. But the other ones, at this point, I don't know. But this again is separate from those current ones. One of the manufacturers could contract with the in-state recyclers to set up a program. There are several options. So I didn't limit it to what we have existing or exclude what we have existing.

SENATOR HUDKINS: So if there are not electronic recyclers in Nebraska, that leads me to believe that they don't stand to make any money doing it. Would you say that's true?

SENATOR PREISTER: I think they can but there's a cost associated with what they're doing and many of the items have been shipped to third world countries where in those

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other countries the labor is cheaper. There's less concern for human life. And so some of the standards of how the materials are recaptured are different than they are in this country. So to do it here requires building infrastructure, requires market development. The manufacturers are in a far better position to deal with that than an individual small mom and pop kind of recycler operation that would have far more challenges presented to them than a large manufacturer would.

SENATOR HUDKINS: Would this be retroactive then, that they would, the manufacturers would have to take back these 300-500 million obsolete computers?

SENATOR PREISTER: Well, we can only regulate what they do in Nebraska and those are national numbers.

SENATOR HUDKINS: National, okay.

SENATOR PREISTER: So it wouldn't be retroactive on those and there's an operative date in the bill as well. So it would be going forward.

SENATOR HUDKINS: Forward, all right, thank you.

SENATOR PREISTER: Although we still have a backlog.

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

SENATOR SMITH: In another segment of our economy, Nebraska requires a permit when other states do not, the permit to sell certain products. And the result has been fewer products available in the marketplace which means less competition. So it is less friendly to the consumer and certainly less profitable for the retailer. Are there any assurances that that wouldn't be the same result with this bill?

SENATOR PREISTER: In life, there are few assurances. (Laughter) And I can't say that that's the case. And I think each particular segment of a market and each market is different. I've heard that same analogy about insurance, in auto liability insurance. And yet, Nebraska is a very good market and though they're regulated, we have plenty of

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insurers providing the product to people here. We've got a lot of people, enough people anyway, that there's a big market and there are places like Nebraska Furniture Mart that do very well in selling these things. I highly doubt that we would have manufacturers not want to be a part of that market for something that, as you said, they're already showing responsibility in doing. So is there assurance? Of course not. But I don't think there are manufacturers that aren't going to look for a market to sell in when this is a, I think, a somewhat minimal requirement.

SENATOR SMITH: Okay, thank you.

SENATOR PREISTER: In my view.

SENATOR STUHR: Are there other questions? Senator Preister, I had one. When you were listing some of the proposed amendments, you talked about some payment for orphan waste. Do you have, can you expand...

SENATOR PREISTER: I can certainly work with committee counsel in terms of coming up with actual language. That was an issue that was raised. But orphan...you're probably more familiar with the leaking underground storage tank concept.

SENATOR STUHR: Um-hum.

SENATOR PREISTER: And where you have what is called there orphaned waste is where you don't have an owner or you have an old site. You don't have a responsible party, some way that you don't identify a manufacturer or a responsible person. So you have essentially this old waste or orphan waste where perhaps a manufacturer isn't even in business. But it would not be directly attributed to somebody. And those would be proportionately divided by all manufacturers so nobody was overly burdened in the disposal or recycling of products like that where they might exist.

SENATOR STUHR: Right. Also, I was interested, saying that you had worked with NCSL and that there were different models of legislation.

SENATOR PREISTER: And in fact, you and I, Senator, attended some of those meetings together...

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SENATOR STUHR: I know.

SENATOR PREISTER: ...and were equally frustrated at some of those meetings.

SENATOR STUHR: That's right, which I think the goal is certainly very good to have some uniformity among states in dealing with this issue, wouldn't you agree?

SENATOR PREISTER: Yes, and that's why, Senator, I prefer this approach to the one in LB 190 that I introduced here to the committee last year. This provides, even with the amendment and some of the reduction, it provides that kind of NCSL across the state uniformity.

SENATOR STUHR: Right.

SENATOR PREISTER: And I do think that is important. It's helpful to the manufacturers.

SENATOR STUHR: Yes.

SENATOR PREISTER: And I want to make it as easy for them as I can make it, I want to make it workable for everybody.

SENATOR STUHR: Right. I commend you for your persistence.

SENATOR PREISTER: If nothing else, Senator, I am persistent.

SENATOR STUHR: That's right. All right, are there any other questions? Thank you very much.

SENATOR PREISTER: Thank you.

SENATOR STUHR: Will you be staying to close?

SENATOR PREISTER: I will be staying. I also have the next bill up so I will be here.

SENATOR STUHR: All right, thank you. Are there proponents, those wishing to testify in support? Please come up towards the front and that will help speed things up. Welcome, thank you for coming.

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DARYL MICHL: Senator Stuhr and members of the committee, thanks for letting me testify. My name is Daryl Michl and I will spell that, D-a-r-y-l M-i-c-h-l. And I'm here today to support the intent of the bill, if not in its original form, something that might work. I'm representing the Nebraska Electronic Service Association and I own TV Service Company in Crete and we're a service center and a retailer. This bill puts the economic responsibility of recycling where it belongs, with the producers of the electronic products. Making the manufacturers pay for the cost of recycling may raise the price of products at the front end, but this is much more desirable than having the consumer pay for it at the end of the product's life. If the consumer is forced to pay a fee to recycle their worn out electronics, many of them will dispose of the product illegally. You'll find it hidden in garbage, in the ditches, and worst of all, piled at the back door of my business. Burdening the retailer or the service centers with recycling costs is also unfair, as they have no control over the manufacturing process and in the case of servicers, do not directly benefit from the sale of the product. The increase in the end cost of the product due to recycling costs might encourage the consumer to have a product repaired instead of replacing it. This would ease the burden of recycling costs paid by the manufacturer. There was some questions about CRTs. The current television signal, the analog signal that we're watching now, the feds have decided definitely to terminate it in February of 2009. This just happened, I think, two weeks ago. At that point, the current sets that we're watching, unless you have a high definition television, will be worthless without a converter box which converts the new high definition signal, which is four times the resolution, down to the old analog signal. So most of those sets will be disposed of in some fashion. Also, the question about computer and CRTs in computers, the monitors that are deep have a CRT. The ones that are flat do not. And more of the computer monitors now are of the LCD type, which is a flat screen. So right now, there's a lot of computer monitors being thrown away and there's going to be a glut of TVs thrown away when the analog signal is turned off. That's all I have. Do you have any questions for me?

SENATOR STUHR: Are there questions for Daryl? Senator Smith.

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SENATOR SMITH: This regulation, I would assume, is prospective in nature rather than retro, you know, looking back. And yet, the CRTs that are out there, I mean, that's looking back more than it is forward. But yet all of the premises upon which we're building this regulation are prospective. How do we deal with that?

DARYL MICHL: There are a lot of television CRT sets new still being sold.

SENATOR SMITH: About what percent?

DARYL MICHL: I don't know. There's a lot of manufacture...in my business, 90, I would say 90 percent.

SENATOR SMITH: I'm sorry, your business is what?

DARYL MICHL: We own a television service center in Crete, sales and service. We're starting to see a lot of manufacturers rebuild these sets to refurbish sets. So those CRTs are going to be sold up until the end of the current analog signal.

SENATOR SMITH: So do you see our society outliving, or the marketplace outliving this regulation when CRTs...if this boils down to just CRTs?

DARYL MICHL: Well, obviously it would have, it would be great for it to evolve. I personally like the bill the way it's written, which includes more than CRTs. But I'm kind of with Senator Preister in the fact that you have to start somewhere.

SENATOR SMITH: But it is your desire and intent to push it to more products?

DARYL MICHL: Yes, definitely.

SENATOR SMITH: Okay, thank you.

SENATOR STUHR: Okay, are there other questions? Do you, I guess I might have a questions. Do people leave things in your back door, so to speak or do you arrange for...

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DARYL MICHL: Not so much anymore but it happens occasionally.

SENATOR STUHR: Um-hum, do you arrange or do you take...

DARYL MICHL: No.

SENATOR STUHR: ...some of the old? No, you do not.

DARYL MICHL: No.

SENATOR STUHR: Okay. Senator McDonald.

SENATOR McDONALD: You talked about the HDTVs as the way it's going to go and if you don't have a box to put on your old TV, estimate of the box, what, \$100, \$200, \$500?

DARYL MICHL: The federal government has now decided that they're going to subsidize the costs of providing these boxes, which we'll all be paying for, to go on antiquated TVs. It doesn't make sense to me but that's going to happen. So if that happens, I'm assuming the cost of the box will go down and just pull a figure out of the air, \$50. I don't know.

SENATOR McDONALD: So is there a TV at some point that would not even be compatible with that box?

DARYL MICHL: No.

SENATOR McDONALD: Every TV that's out there, no matter if it's 20, 30 years old would be compatible with that box?

DARYL MICHL: If it still works, yes.

SENATOR McDONALD: If it still works, okay. So we could see a lot, we wouldn't necessarily see all of the old TVs being thrown away. New purchasing, of course, would be the HDTVs. But the old ones could be used.

DARYL MICHL: Yes, but I don't foresee a lot of them being used.

SENATOR McDONALD: Okay.

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DARYL MICHL: I lost my train of thought here. The new sets, the new TVs are either, there's basically one of three types; LCD, which is the flat panel monitor, just like is used in a laptop, DLP, which uses a halogen bulb that has a life and it's a maintenance item and those are hazardous materials, by the way, and the other one escapes me right now but...

SENATOR McDONALD: The plasma?

DARYL MICHL: Plasma is the other one. That has a lot of hazardous materials in there, too.

SENATOR McDONALD: Okay.

SENATOR STUHR: Okay, thank you.

DARYL MICHL: Thank you.

SENATOR STUHR: If there are other questions. Next proponent? Welcome.

STEVE ANDREWS: (Exhibit 13) Thank you, Senator Stuhr, rest of the committee, my name is Steve Andrews, that's A-n-d-r-e-w-s. I'm with the Nebraska State Recycling Association and I've been working on this issue as long as Senator Preister has and have grown frustrated at times but also am happy to see it still moving forward. The association supports this bill, A, because it's a product stewardship bill. In product stewardship, all parties involved are involved in the life cycle management of products. There's a shared responsibility for those impacts during production, use, and end of life management. That also deals with the energy use in the manufacturing, the packaging design, and this goes beyond just the hazards, the CRT, but other packaging designs. A lot of the material that is recyclable that is thrown away in landfills is part of packaging. It also would deal with water emissions during the design. We also support this because I think it's a comprehensive approach and probably as comprehensive as we have seen regarding this issue since Senator Preister introduced his first bill. It's a comprehensive approach to end of life management for e-waste. I think it would also be comprehensive in how we deal with recyclables statewide. So not only would this help us deal with e-waste, but I also

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think it would contribute to the management of recycling of other materials. We also feel that it has the ability to contribute to economic development, environmental protection, and community betterment. I say community betterment because I've traveled this state for the last eight years visiting with communities that both recycle and don't recycle. And I will say, and I can't back this up with quantitative data, but I will say it is in my opinion that communities that recycle, do a good job of handling their waste, are communities that are strong, that are thriving communities and are moving forward. And now they're suffering from some other aspects of, you know, flight and other issues. Again, I want to just go back real quick to, this is product stewardship so it's dealing with CRTs. It's deal with flat panels. As the witness before me said, the other components, those other monitors, those other displays also have hazardous waste and issues that we need to be concerned with the end of the life of those materials. As I noted, and I'll pass this out and this was a testimony I gave last time, just a slight bit changed. But William McDonough and Michael Braungart have written a fantastic books called Cradle to Cradle and they look at material. This material that we are throwing away into landfills is reusable and it is less energy intensive to use a recycled material in almost every case than it is to use a virgin feed stock in feeding manufacturing. The American Can Council is working very diligently right now with curbside programs across this country to recover aluminum because the recovered aluminum takes less energy and natural resources than does virgin feed stock to create aluminum. I will kind of say that we shouldn't be just concentrating on CRTs. I think we need to look at the other materials that are in computers because those have a higher value at the end of their life than the CRT does. And I'll give an example and it might not be a good example. But it would be like doing curbside recycling and collecting three through seven plastics, which have little value, if any, and ignoring ones, twos, and other fibers that have higher value. Again, the American Can Council, through their Curbside Value Partnership Program, is saying, if you're going to do curbside recycling, the first thing you need to do is go after materials that have high value. Those high value materials are going to return the most revenue into the program. And again, I would say the same thing is true here. We cannot ignore the CPUs, the central processing

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units, of computers because we would be losing out on some of that value. And I also agree with the money being put into the Waste Reduction Fund. There is a mechanism that's already in place and that distributes grant funds throughout the state. I do agree that putting it into there would be as efficient as anything. With that, I'll end. If there are any questions I'd be more than glad to try to answer them.

SENATOR STUHR: Are there questions for Mr. Andrews? If not, thank you very much.

STEVE ANDREWS: All right, thank you.

SENATOR STUHR: Thank you for coming. Next proponent? Welcome.

CARRIE HAKENKAMP: Thank you, Senator Stuhr and the Natural Resources Committee. My name is Carrie Hakenkamp, and that's spelled H-a-k-e-n-k-a-m-p, and I'm the executive director of WasteCap Nebraska. We're a similar organization to Mr. Andrews with the Nebraska State Recycling Association. However, we focus solely on business recycling within the state of Nebraska. I have testified over the last few bills, both introduced by Senator Preister and by Senator Smith against those bills, primarily because they don't include anything that would include a business. Businesses are regulated under state and federal statute, depending on the size of their business, to recycle the CRTs. I support this bill for a lot of different reasons. WasteCap has been working with electronics for the past six years. Ever since the first Y2K scare, we wanted to find out what to do for our businesses when all of their computers became obsolete on January 1, 2000. So we've been trying to be very proactive with that. Steve Andrews had mentioned the grant funds that are already in place. Over the last several years, WasteCap has received over \$243,000 in grant funds from both the Nebraska Department of Environmental Quality and the Nebraska Environmental Trust Fund to provide businesses with education regarding the proper handling of their electronic equipment and to do computer collections throughout the state. And we have successfully hosted 12 computer collections throughout the state, collecting well over 100,000 pounds of equipment in that time since 2002. We support this bill and would like

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to echo Senator Preister's comments related to the uniformity of this bill. I attended a national electronics conference in October. And at that time, we were told by the United States Environmental Protection Agency that they were not going to take a stand on electronics, that they would like for the producers to come up with something or the private industries to decide on their own program, maybe particularly base that upon what they're doing in the European Union and how those manufacturer takeback programs have been designed. And this bill seems to follow a lot of those standards that have been set in Europe and are being tested today in developing those programs throughout. The sustainable design features that are in this bill will help those manufacturers to reduce the amount of toxics because every time they have to recycle a computer, it costs them money. And the less materials that they have to recycle and the less hazards that they put in those computers, it's going to cost them less money. So the extended producer responsibility that's in this bill encourages the manufacturers to develop a better design on equipment. And again, this is already happening. The manufacturers are already working together. All of your Sonys and Sharps and Mitsubishis and all of the large manufacturers of electronic equipment are currently working together because of the European standards that are set in place. And when they've had to change over their whole entire company and their whole entire way of manufacturing and their takeback programs for the European Union, they're going to want to do that for all of their manufacturing throughout the world. I believe you had asked earlier, Senator Hudkins, about the recyclers that are in business. And I can attest that there are still several businesses in Nebraska, including the one in Waverly and a couple in Omaha and some in other states that provide services in Nebraska that are doing fairly well and growing their businesses and adding on to their businesses. So you know, I don't think that anything that we've done in the past has hurt electronics recycling and it's really only a business that is in its infancy and will grow continually and exponentially over the next few years. And Senator Preister had mentioned that there was no landfill ban in this one and one reason that we have not supported the bills in the past with the landfill ban was because those bills didn't necessarily create any kind of infrastructure. And this bill seems to at least set the stage for the creation of infrastructure throughout the

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state by setting different locales that can serve as processing units throughout the state. So we do support that as well. I think that another question I had heard was how many computers are out there. And in the last estimates that I have heard is that there will be one computer to dispose of for every computer that's going to be purchased. So whatever that number might be, it's in the hundreds of millions a year. But we're at the point where we're replacing our equipment one to one now. And I think you had asked about, Senator Smith, about the percentage of business versus household equipment. And I believe that the estimates are roughly 60-80 percent of all electronics are from commercial sources. And what we have found through research throughout the country and through other places is that a lot of businesses are donating off that equipment right now. They're not necessarily ending up in a recycling program. And what happens with those donations is that places like Goodwill might get them in their backyard. And for instance, one collection we did a few years ago, we subsidized the recycling of 254 computer monitors from just one Goodwill in Lincoln because that's orphaned equipment that's been dropped off at their door that doesn't work that they can't sell, that they can't use. And they have to pay a price to have that recycled. So WasteCap Nebraska does support this bill for lack of anything that has been more comprehensive than this bill and again, to do something versus nothing over the period. And that's all I had. If there's any questions, I'd entertain those.

SENATOR STUHR: All right, thank you, Carrie. Are there questions? Senator Smith.

SENATOR SMITH: If 60-80 percent of the monitors are already... I mean, the problem is already solved. Are you shooting for 100 percent? I mean, can we expect 100 percent compliance?

CARRIE HAKENKAMP: I don't think that the problem is solved. I think that 60-80 percent of what is generated for disposition is generated by commercial resources. And they are either donating off that equipment or if the equipment is too old, then they have to find a proper disposition.

SENATOR SMITH: How many consolidation facilities are there across the state?

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CARRIE HAKENKAMP: There are two in Omaha and two, well, one in Waverly and one in Lincoln.

SENATOR SMITH: And if disposal at a consolidation facility is required in Scottsbluff, how do we do that?

CARRIE HAKENKAMP: You would have to work with the private industry or the manufacturers would have to develop that disposal facility and then there would...

SENATOR SMITH: So there's a pretty good chance for a consumer based fee?

CARRIE HAKENKAMP: Not if, within this bill, the manufacturers are covering the cost of that.

SENATOR SMITH: You're assuming that the manufacturers would cover the cost of that entire process up front?

CARRIE HAKENKAMP: Isn't that what this bill does, is it creates that extended producer responsibility where the manufacturer has to come up with the process and...

SENATOR SMITH: There's that potential, I mean...

CARRIE HAKENKAMP: ...to pay for it?

SENATOR SMITH: ...they have to have a plan. But I could be reading it wrong but that doesn't necessarily guarantee.

CARRIE HAKENKAMP: Okay, and I may have misread that as well.

SENATOR SMITH: And in terms of the political battle, I mean, there aren't enough votes in the Panhandle to establish a consolidation point in the Panhandle.

CARRIE HAKENKAMP: Sure. Well, I think though, in the Panhandle, that they've had some very successful computer collections in Scottsbluff. And as a matter of fact, I believe that collection in Scottsbluff, they ended up turning away a whole truckload of equipment and storing it because they didn't have enough grant funds to pay for the recycling until they applied for another grant to cover

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that. So I think there's the volume out there. It's a matter of creating a program where, this would be a basis for creating that program, where you can create some sort of, either takeback program with the manufacturers or maybe a tail end cost to the consumer. I think that's what we're trying to avoid, though.

SENATOR SMITH: Okay, thank you.

SENATOR STUHR: Are there other questions? I just had one question. When you said you had a computer recycling day or whatever and you had 100,000 pounds, then how did you dispose of that? Was that through a company?

CARRIE HAKENKAMP: We contracted with one of the current recyclers, either within Nebraska or with another company that we work with out of St. Paul, Minnesota. And they came on site, brought a semi truck, brought scales, weighed it, and we collected money from the businesses for those materials.

SENATOR STUHR: All right, thank you. There are no other questions...

CARRIE HAKENKAMP: Okay, thank you.

SENATOR STUHR: ...thank you very much for coming. Are there other proponents? Welcome.

JEREMY McNEAL: Good afternoon, committee members. My name is Jeremy McNeal, M-c-n-e-a-l. I work for CP Recovery in Omaha. We're a computer recycling company. In terms of Senator Preister's bill, overall, we feel that this is a good start to legislation. We are in support of this bill. The one concern that my company has, and this is nothing on Senator Preister's bill, is that manufacturers will take the recycling portion of what they receive out of state, eliminating recycling businesses and jobs because they... typically, a company, a manufacturer has nationwide contracts. So they will honor those contracts and ship everything to one consolidation point nationwide. In response to that, I'd also like to say that we feel that maybe a little bit of oversight should be appropriated if this bill would go through and let that be appropriated by NDEQ or other third party organizations, manufacturers'

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plans also being reviewed by a committee like that. Also, while some opponents of this bill say collect CRTs only, I feel that that is a mistake. I think that you also have to collect the computer towers, the keyboards, things of that nature. And the reason being, a person that walks into, say, my company and has a computer system, typically people just don't have a computer monitor, they have the entire system. If this bill was to go forward, then basically we could say, here, we will take back the old monitor and the manufacturers will pay for that. However, we would have to charge for the rest of the computer system. That leaves a lot of households, homeowners very confused about why they're taking one and not the other. That could lead to more improper disposal in the landfills, things of that nature, especially in the smaller communities. If there's a consolidation point and they work their way to get to that consolidation point and drop off that monitor, what are they going to do with the rest of it? They have no further outlet. However, like I said, we do feel that this is a good start to the legislation. We are in support of this. If you have any questions, feel free to answer them.

SENATOR STUHR: Okay, thank you very much for coming. Are there questions? If not, thank you.

JEREMY McNEAL: Thanks.

SENATOR STUHR: Next proponent? Welcome.

GARY KRUMLAND: Thank you. Senator Stuhr, members of the committee, my name is Gary Krumland, that's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB 1031. We've been contacted by several city landfill officials who wanted us to come here and support the bill. There are elements in the bill that they really support and think is important as part of an electronic recycling statute. And I won't repeat what other people have said but I'll just emphasize three points. One is, the plan does require that the public be informed and as mentioned here, public information and education is a very important aspect of this. And they like that it's in here and if anything, could be strengthened. Second one is that it does provide incentive or the ability to work with the existing landfills, the public and private recycling entities. And they think that's a good approach and will

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help create a statewide...well, to use the word, infrastructure for doing this. And the third one is, and this has been mentioned, too, it does not ban household devices from the landfills. The concern is, is that if there is a ban put in place before the program is up and running and people are aware of it and are using it, these devices will be dumped in places like the ditches and things, places where they're not as safe as they would be in a landfill. Landfills may not be a desirable place, but they are licensed, they do have lining, and they're better to put there than somewhere else. So those are the elements they really like about the plan. So we support the bill.

SENATOR STUHR: Okay, are there any questions for Mr. Krumland? Thank you very much for coming. Other proponents? If we could move along. Welcome.

KEN WINSTON: Good afternoon, Senator Stuhr and 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 support of LB 1031. We support establishing a system to provide for the recycling of wastes that are generated by electronic devices. There are, as Senator Preister discussed, there are vast amounts of hazardous materials, including mercury, cadmium, and lead, that are contained in the various electronic devices that are likely to be disposed of. These hazardous wastes should not be disposed of in landfills or otherwise they should be recycled to the extent that they can be, many of these materials can be reused in manufacturing new products. We believe that it's a responsible method to require the manufacturers who profit from their sale to be responsible for their management and we believe that this is a logical method of establishing a recycling program. And at this point, we would ask that LB 1031 be advanced. Thank you.

SENATOR STUHR: Okay, thank you. Are there questions for Mr. Winston? If not, thank you.

KEN WINSTON: Thank you.

SENATOR STUHR: Welcome.

GORDON KISSEL: Thank you, Senator. I'm Gordon Kissel,

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G-o-r-d-o-n K-i-s-s-e-l. I'm the registered lobbyist for the Nebraska Goodwill Industries. All of my testimony has already been said. I'll just add one point. The National Goodwills have entered into agreements in Austin, in San Francisco, and in Michigan with Dell Computers. And we provide services as a collection point and also as a training of tearing down the computers and then getting them to a collection point that Dell has, a recycling area that Dell has identified in those areas. And we think that it is a legitimate position for an industry like Goodwill to provide that service and we look forward to working with the manufacturers. We have no opinion on the manufacturer model that Senator Preister has offered. We just want to make sure that there is a phrase in the bill that says, and other parties, and we can be one of those other parties.

SENATOR STUHR: Okay, thank you, Mr. Kissel. Are there questions?

GORDON KISSEL: Thank you.

SENATOR STUHR: Thank you very much. Other proponents? Okay, are those wishing to testify in opposition? Welcome.

SARAH BALOG: (Exhibit 14) Hi, thank you. My name is Sarah Balog with the Consumer Electronics Association in Washington, D.C. I'd like to hand out my written testimony which goes into great length on some finer points. But we'd just like to briefly discuss some of the questions that have been raised earlier in the hearing. First, as to some of the questions about the transition to DTV.

SENATOR STUHR: Did you spell your name?

SARAH BALOG: Oh, I apologize. Sarah, S-a-r-a-h, and last name is Balog, that's B-a-l-o-g.

SENATOR STUHR: Thank you.

SARAH BALOG: With regard to DTV, the transition is coming. Congress did sign the bill two weeks ago, as another witness said. But an important point to note is that 80 percent of people in the United States will see no change at all because...excuse me, I have a little bit of a cold so my voice keeps going out.

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SENATOR SCHROCK: Would you like a glass of water?

SARAH BALOG: I'm sorry?

SENATOR SCHROCK: Would you like a glass of water?

SARAH BALOG: Oh, I'd love one. Thank you. Eighty percent of people will see no change because any cable or satellite subscriber, the digital signal will come through their cable or satellite subscriptions so they will not need a converter box. As the other witness noted, the government will be subsidizing to, it's estimated, to the tune of \$50 up to two converter boxes for each household. So, excuse me, just real briefly, I'd like to note that CEA, my trade association, represents over 2,000 companies, most manufacturers but also some retailers and integrators. And they are almost all affected by this proposed legislation, LB 1031. First of all, we support safe and effective recycling. The entire industry is very supportive of the concept and the international issues that have been raised are of concern to us and we are working to address those and working with our partners in the recycling industry to address those. The other point that I wanted to address also is that the Ross Initiative, which is part of what the EU has just implemented and that will take effect in July of this year, 2006, affects only design issues, it does not address recycling issues at all. So manufacturers are coming together to address the, you know, reducing lead, reducing cadmium, reducing mercury. But that does not affect recycling at this point. We essentially oppose the bill as it is currently written because we believe that the burden of recycling these products should be equally shared amongst all parties involved in the chain and not placed solely on manufacturers. Systems that mandate direct manufacturer financing of government recycling systems are ineffective in diverting products of concern from improper disposal and impose higher costs on consumers due to the inherent flaws and inefficiencies of such a system. Furthermore, the unenforceability of such proposals coupled with the zero cost burden by new market entrants who do not face these recycling costs until the end of the estimated 15-year life span of many products, including televisions, introduces unsustainable market distortions in the form of a decisive cost based competitive advantage to these new

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market entrants. I think what we're seeing a lot of is that companies that, I know Senator Preister mentioned that HP has been very involved in the drafting of this bill. And HP is also a member of CEA. Part of the problem is that the, just pure and simple, the business model of computer manufacturers is very different than the business model of television manufacturers. It makes sense for a computer manufacturer to say, you know, the University of Nebraska or a city or a small company, a small business, if you are going to upgrade your computers, we'll take away your old computers if you buy all new ones from us. And that makes sense for them. But for television manufacturers, I mean, I know the television I have in my living room is the one that my dad bought in 1986 and they last just much longer. And so there's really no business model for television manufacturers to, people don't upgrade their televisions every two to three years. And so the inherent just confusion within the industry, I think, is based on the different business practices of different consumer electronics manufacturers. But I was very encouraged earlier to hear that Senator Preister has agreed to narrow the scope of products listed in this legislation because we do believe it's overly broad. And also, just wanted to show you that we do believe that enforcement of the act will be problematic. Given the large number of small manufacturers and importers of covered electronic devices, CEA anticipates an immeasurable level of noncompliance if the manufacturer financed fund is implemented as proposed. CEA requests that LB 1031 be amended to clarify that the costs and fees for complying manufacturers should not be raised to compensate for noncomplying manufacturers and that recycling costs designated for those noncomplying companies be paid prior to state enforcement action and recovery from manufacturer costs. And I guess just in conclusion, CEA strongly believes that a national solution is most appropriate and primarily as a means to avoid an undesirable patchwork of state legislative mandates. We discussed a lot during this hearing about the NCSL model legislation and that process. And CEA has tried to be very involved in that process. I think it's worth noting that the largest state in the country, California, has implemented and is up and running an advanced recovery fee system, which is very similar to what you were about with the tires. To us, it makes the most sense because then it's paid at the beginning and companies such as Goodwill Industries in California are

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actually raising funds as a nonprofit, being involved in the transportation and things like that. So we believe that California has the right model and that other states, as that arose from the NCSL process, other states will also adopt that model. So I would be happy to answer any other further questions. But just, I guess, in summary, the consumer electronics manufacturers, other than the very few computer manufacturers who have a business model that makes absolute sense for them to incorporate, you know, the takeback of products, it makes it very difficult. You know, again, going back to my personal television, I have a Magnavox that my dad bought in 1986 and Magnavox is no longer with us. So if this bill was enacted, who would pay to recycle my Magnavox television? And that's a big question. So I'd be happy to answer any other questions.

SENATOR STUHR: Okay, thank you, Sarah. Are there questions for Sarah? Senator Schrock.

SENATOR SCHROCK: Are you driving your dad's Buick, too? (Laughter)

SARAH BALOG: No, but actually I did just trade in about two weeks ago our old Celebrity sedan, which was an '89.

SENATOR SCHROCK: About the same thing, then.

SARAH BALOG: So maybe we just use things a lot in my family, I don't know.

SENATOR STUHR: Sarah, I do have a couple questions for you. I know you mentioned something about a national program. But how long do we have to wait? Because we don't seem to be able to get anything done on the national level.

SARAH BALOG: And again, we, I share your and Senator Preister's frustration. We work on a daily basis in D.C. trying to make Congress understand that this issue is pressing and that it's fine for people in Washington, D.C. to be removed from this. But that, you know, state and local governments are the ones dealing with televisions left on the curb and computer monitors left on the curb. And so it's not, you know, in the absence of any action, states will take action and we're seeing that. Maine has adopted a bill, California, Rhode Island, Oregon. So it's starting to

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happen.

SENATOR STUHR: All right, wouldn't you agree that working with NCSL, I mean, and trying to establish somewhat of a uniform kinds of recycling programs is the right step?

SARAH BALOG: Absolutely. And as part of that NCSL process, this isn't the...the producer takeback model is not the only model...

SENATOR STUHR: Right.

SARAH BALOG: ...that has been put forth by NCSL. There seems to be probably two or three different approaches. And we just would advocate the use of the ARF or the A-R-F approach instead of the takeback approach.

SENATOR STUHR: Okay, and you also mentioned that you had a certain program. How are you working with consumers, the manufacturers?

SARAH BALOG: As far as the design?

SENATOR STUHR: No, not the design, in the recycling area.

SARAH BALOG: The Consumer Electronics Association actually has partnered with the National Center for Electronics Recycling. And we have put together a program that's in its infancy called NERIC, the National Electronics Recycling Infrastructure Clearinghouse, which is essentially going to be a partner. We view it as a partner to the NCSL process which would, we view it as an information clearinghouse, not only for state and local governments who are seeking to implement legislation, but also for, you know, individuals who...right now, we're in the process of developing a web site which will be hosted off of our CEA web site so that an individual can type in their zip code and bring up, you know, I have one television and my zip code is, you know, 37918. What in a 25-mile radius, where can I take this one television? So we're not working not only to try to get what we believe is the best recycling model...preferably nationally but also at the state level. But we're also working educate consumers on an individual one-to-one basis through our Internet presence and through just public policy initiatives.

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SENATOR STUHR: All right, maybe you could share that, a copy of that or something with us.

SARAH BALOG: Oh, absolutely. I'll be happy to provide all that information to you.

SENATOR STUHR: Okay, thank you. Are there other questions? Senator McDonald.

SENATOR McDONALD: Yes, are you from, Sarah, are you from Washington, D.C.?

SARAH BALOG: Actually, not originally, but I live there now.

SENATOR McDONALD: But you live there now.

SARAH BALOG: Yes, actually my mom was born and raised in Dodge County and I'm having dinner with my grandmother tonight. (Laughter)

SENATOR McDONALD: We're happy to have you back. So you have told us that various states have implemented their own laws...

SARAH BALOG: Yes.

SENATOR McDONALD: ...regarding this. And you were notified that Nebraska was looking at this, too, and that's why you're here.

SARAH BALOG: Yes.

SENATOR McDONALD: What other states are working at the same type of legislation?

SARAH BALOG: A takeback approach?

SENATOR McDONALD: Yes.

SARAH BALOG: Okay, Maine has passed a law and is in the rule making process for implementing their program. There's been some discussion that it will actually get held up by a lawsuit. There, again, I think, I can't remember if it was

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Senator Loudon or you, Senator Kopplin, who brought up the question of just interstate commerce issues. The main law and a lot of takeback models say, you know, if you sell products here then you have to register with us and pay for them. But the problem that's inherent with that is Internet distribution. Because if someone buys a product on the Internet and it's delivered there, is that manufacturer then subject, because it was delivered into that state, which is another just, you know, as with anything Internet commerce, I think those issues almost always become the subject of lawsuits. And then interstate commerce clause issues, if a person, if a businesses is then going, wholesaling their product across the line to New Hampshire or any other neighboring states and then bringing them in for the sale in Maine, is that a way to circumvent that law? So all of those issues are being brought up right now in a lawsuit. But that is, Maine is really the state right now that has implemented a takeback model.

SENATOR McDONALD: How about a point of sale, are you seeing that more often?

SARAH BALOG: California is the state, is the only state right now that...California and Maine are the only states who, and Maine is not even functioning yet. But California is the only state that has a fully up and running electronics recycling program and it is an advance recovery fee, as you stated, very similar to tires or a bottle deposit. You know, those analogies aren't perfect but it is similar, in that a person, when they buy something, is charged. In California, I think the max fee is \$12. I need to check that but I can find that specifically. But I think that's the highest, going all the way down to \$1 or \$2 depending on the product.

SENATOR McDONALD: Okay, thank you.

SENATOR STUHR: Okay, are there other questions? If not, thank you, Sarah...

SARAH BALOG: Okay, thank you.

SENATOR STUHR: (Exhibits 15, 16, and 17) ...for being here. Others wishing to testify in opposition? Okay, I do have three letters we do have in opposition. I believe it's

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from the Apple Computer, Dr. Michael Foulkes, who's the manager. We also have the Advancing the Business of Technology in opposition that will be entered. The Electronics Manufacturers Coalition for Responsible Recycling and Philips Electronics of North America in opposition. Senator Preister would you...oh, are those wishing to testify neutral, excuse me, neutral? Welcome.

JIM OTTO: Senator Stuhr, Senator Schrock, members of the committee, my name is Jim Otto, O-t-t-o. I am a registered lobbyist for the Nebraska Retail Federation and am testifying in a neutral position on LB 1031. I am, I was wanting very much to testify positive. But in talking to some members, I was forced to testify neutral. So I want this to be the most positive neutral testimony it can possibly be. The retailers are very much in support of the concept of this bill. It really, several questions have been asked about whether it should be an advance recovery fee, which obviously retailers don't want because they don't want to charge, don't want to actually charge another fee at the sale. But the question really comes down to, who's going to pay for it? And whether we're talking about an advance recovery fee or incorporating it into the cost of manufacturing, the customer, the consumer is eventually going to pay for it. But if it isn't, I guess our point is that it makes the most sense to incorporate it into actually the cost of goods sold for the manufacturer to bear that responsibility because otherwise, there's no incentive, as has been brought up before, in the design process. There's no real incentive to design a computer so that it has less waste or that it's easier to recycle if the manufacturer isn't responsible for that. So what we're really talking about is, how should the customer pay? Should the customer pay an advance recovery fee or should the customer pay in just across the board, probably higher price because of this extra cost in the cost of goods sold? And we think it makes best overall sense for that to be in the cost of goods sold and the manufacturer to bear that. One of the things that Senator Hudkins brought up was, there really isn't a good infrastructure to get this going. And the reason we would submit that there isn't a good infrastructure is because there's no way to pay for it right now. And what Senator Preister is struggling for is to try to find a way to pay for it. So with that, I would say that we are very, very supportive of the concept. The only real reason that I

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couldn't testify positive is because officially, my national members are for a national solution. But that's, as you pointed out, Senator Stuhr, probably a long ways away.

SENATOR STUHR: Right, thank you. And I don't recall, did you spell your name?

JIM OTTO: I'm sorry, O-t-t-o, backwards or forwards.
(Laughter)

SENATOR STUHR: All right, thank you, Jim. Are there any questions for Mr. Otto? If not, thank you for testifying. Anyone else wishing to testify in a neutral capacity? Senator Preister, would you like to close?

SENATOR PREISTER: Thank you, Senator Stuhr and members. I think it's been a productive hearing and I appreciate that. I do appreciate the manufacturers, the retailers, the thrift stores like Goodwill, who deal with these problems. Everybody admits that there's a problem. But each has a little different slant on what a possible solution is. The California model, I tried. The committee didn't like that model. So I keep trying and sometimes I can try your patience. But I do keep trying. So I have what seems to be a moving target, because once I adjust to the concerns and the issues and come up with another solution, then I get other problems presented. So it is a challenge for me that I accept, but I think it's a challenge for this committee. Because I think it's within the purview of the Natural Resources Committee to try and come up with a solution. So I hope that the committee this year is somewhat limited but for the future, those who may remain on the committee will continue to help in dealing with this problem. And I certainly will continue to work with everybody and we'll stay in touch with everybody who wants to be in touch.

SENATOR STUHR: Thank you, Senator Preister. Are there any questions? If not, that closes the hearing on LB 1031 and I will turn the proceedings back to our Chair, Senator Schrock.

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SENATOR SCHROCK: Thank you, Senator Stuhr. Senator

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Preister, you're up next on LB 1161.

SENATOR PREISTER: (Exhibit 18) Imagine that. (Laughter) Thank you, Senator Schrock and Natural Resources Committee members. My name is Don Preister, P-r-e-i-s-t-e-r. I'm here as the primary introducer of LB 1161. It has been introduced to address health and environmental concerns related to emissions from tire-derived fuel energy sources compared to previous or current energy sources. For example, the emissions from a recent TDF, or tire-derived fuel tire burn at Ash Grove were compared with the emissions from coal, which is the facility's current energy source. Some of the most toxic emission pollutants from the TDF trial burn exceeding coal's emissions included: dioxin/furans, PCBs, beryllium, barium, cadmium, hexavalium (sic) chromium, lead, and selenium. The intent of LB 1161 as originally drafted is to prohibit the issuance of a TDF permit if any of the emissions are higher than the current energy source's emissions. If tire-derived fuel has higher emissions than coal in those categories, then it would be inappropriate to burn the tires, is my contention. My concerns go to the public health effects and potential degradation to the environment. However, a proposed amendment is also before you. I've printed that amendment in the journal so that it was available already to others and hopefully you have a copy of it. I did not bring additional copies but can provide it. It would strike all the current sections of the drafted LB 1161 and take a new approach to address concerns related to TDF. The language is patterned after the provisions contained in Senator Schrock's bill, LB 1109, which are known as bad actor provisions. And it's thanks to Senator Schrock who suggested this solution. Adopting a TDF bad actor statute to address health and environmental concerns is the same approach which has been in statute for CAFOs since 1999. The bad actor provisions for CAFOs and the provision proposed in this amendment for TDFs are far less stringent than numerous other bad actor provisions administered by agencies such as Banking, Insurance, Health and Human Service, Professional Certifications, and the Liquor Control Commission. The proposed amendment, AM2159, includes the following requirements. DEQ must reject an application for a permit for TDF upon a finding that the applicant is unsuited to perform the obligations of a permit holder. This determination is based on a finding that, within the

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previous three years, the applicant has allowed five emissions exceeding levels allowed by permit conditions, federal or state statutes, or regulations adopted pursuant to such statutes in any facility in Nebraska owned or operated by the applicant or the applicant has a criminal conviction for violation of the Nebraska Environmental Protection Act or for violation of environmental laws in any jurisdiction. Again, responsible parties aren't affected by this. It's essentially the bad actor provision. DEQ shall revoke or suspend a permit if the applicant is found unsuitable based on five violations in the past five years at the permitted facility. Seems fairly generous to me. Three, the department shall also reject an application for major modification on the facility if the applicant is found unsuitable based on five violations in the past five years at the permitted facility. Just as a note, too, the fiscal note that you have in your notebooks on the original bill is certainly different because it didn't take into account this amendment. So the fiscal note, at this point if this amendment were adopted, would certainly be outdated and a new fiscal note would have to be issued. I believe DEQ's no fiscal impact determination on LB 1109 is probably closer to the fiscal impact of the amendment, AM2159, should it be adopted. And I believe this approach is more consistent with the policy approach the Legislature has determined is justifiable for violations in another environmental program as well as in a host of other state programs. The second provision contained in the green copy of LB 1161 grants DEQ authority to adopt air quality regulations which are more stringent than federal air quality regulations. The language is not a mandate for DEQ to draft more stringent requirements but merely allows the department to pursue this course if they feel it would be necessary to protect public health. That provision was a concern to the cattlemen and to other producers. And so the draft amendment takes that out and should allay some of what would otherwise be opposition testimony to the amendment. With that, Senator Schrock, I would be happy to answer any questions I'm capable of answering.

SENATOR SCHROCK: Thank you, Senator Preister. I was in a one-act play once and somebody mentioned to me about a bad actor then, too, so I don't know. (Laughter) Any questions for Senator Preister? Thank you for being with us and we'll give you the opportunity to close. Can we see a show of

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hands of those in support of this bill? Can we see a show of hands of those in opposition? Okay, I'd like to limit testimony to 15 minutes each, 15 minutes for proponents, 15 minutes for opposition. That means if you take ten minutes, that leaves five minutes for the rest of them. That's kind of tough.

KEN WINSTON: I will be very brief, Mr. Chairman. Senator Schrock, 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 support of LB 1161. This bill is similar to LB 1109 or the amendment is, I should say. Currently, we limit licenses and permits based up on violations that threaten groundwater in the Livestock Waste Management Act. This amendment would limit licenses based upon violations for air pollution. We believe that the same principle should apply and we're asking that LB 1161 be advanced. Would be glad to answer questions if I can.

SENATOR SCHROCK: Thank you, Ken. Questions?

KEN WINSTON: I'm guessing Senator Schrock will probably ask me some questions about LB 1109 at some point, maybe not in this hearing. And I'd be glad to visit with you about that.

SENATOR SCHROCK: We will do that.

KEN WINSTON: Thank you.

SENATOR SCHROCK: Next proponent, please? If you're a proponent, please move to the front of the room so you're ready to testify.

LYNN MOORER: Good afternoon, Senator Schrock and members of the committee. I am Lynn Moorer, M-o-o-r-e-r, a Lincoln attorney today representing Eastern Nebraskans Against...

SENATOR SCHROCK: Did you spell your last name for us?

LYNN MOORER: M-o-o-r-e-r, Moorer.

SENATOR SCHROCK: Okay, I'm sorry.

LYNN MOORER: I'm representing Eastern Nebraskans Against

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Chemical Trespass. We support LB 1161 as amended by AM2159, offered by Senator Preister and thank him for his responsiveness in addressing significant concerns by area residents. As a basic matter, burning tire-derived fuel, if not done properly, can be quite hazardous to public health and the environment. Burning TDF, as it's known, TDF rather than coal poses special risks and concerns. Among them, tires contain metals and have significant levels of chlorine in them, both of which, when burned, can generate very hazardous emissions. For example, when chlorine-containing products are burned, they can create dioxins and furans as products of incomplete combustion, especially when there are malfunctions and upsets. Dioxins and furans, for your information, are irreparably toxic in minuscule amounts. There is no proven safe level for inhalation or ingestion of dioxins or furans. Burning TDF in cement kilns, as is being considered in Nebraska, is especially risky. This is because cement kilns are a relatively unsophisticated technology as compared to commercial hazardous waste incinerators, which have much more stringent performance standards and pollution control requirements than cement kilns have and which are required to have fail-safe combustion devices, which cement kilns are not required to install. This means that the margin of error is much smaller when cement kilns burn TDF, even when special attention is paid to getting all the equipment to operate in an optimal level during a test burn, a level that is much better than ordinary day-to-day operations. Emissions from TDF increased for eight toxic pollutants as compared to when coal was the only fuel, as Senator Preister outlined. This means that it is wise public policy to allow only those operations with demonstrated high competence and superior track records to burn tire-derived fuel. AM2159 takes a sensible approach in attempting to assure that only the best operators with good compliance records can burn TDF in Nebraska. Now it's important to keep in mind that even though an operation may report its numerous malfunctions and excess emissions within the time frame required by state regulations, that reporting does not in any way lessen the harm to the environment and public health caused by the malfunction. Many of the malfunctions and excess emissions that have occurred in Nebraska in cement kilns are significant. Some have allowed emissions more than three times the level allowed by state regulations. One operator had repeated malfunctions resulting in excess emissions.

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Since October, 2005, for example, this operation has experienced malfunctions, which are also violations of their permit, on 13 separate days. This is an operation that was not even burning TDF. It was burning its normal fuels, coal and natural gas, which is much less complicated than achieving complete combustion and safe operation when burning TDF. That is why we do urge the committee to support AM2159 as currently structured by looking at all violations of state and federal statutes, regulations, and permit conditions when assessing an operator's track record, regardless whether or not the violations were reported to a regulator. It's important that the mere reporting of these violations not be allowed to effectively absolve it of the violations when assessing the compliance record and its eligibility to burn TDF. The reporting of the violations doesn't make the toxic emissions any less toxic or somehow recall, pull back those toxic emissions. Nor does the mere reporting of the violations make the operator any more competent or lessen the possibility that excess emissions will occur again in the future. Indeed, the operation I cited previously notified DEQ of its repeated malfunctions resulting in excess emissions, but kept on experiencing malfunctions. The mere reporting of the violations did not make the people in the community or the environment any safer. We agree, in sum, with Senator Preister that when assessing an operator's compliance history, what should count are the violations that result in emissions or discharges that are unpermitted, regardless of whether or not the violations were reported. And we do agree that we need to assure that operators who have not demonstrated a very high competence record are not allowed to engage in the risky and hazardous business of TDF burning. We urge you to support AM2159 amended into LB 1161. It will add a much needed layer of protection for the public and the environment. Thank you. If you have any questions, I would be happy to try to answer them.

SENATOR SCHROCK: Thank you, Lynn. Questions? Senator Kremer.

SENATOR KREMER: You had mentioned that the toxic pollutant emissions had increased on I think it was nine different...

LYNN MOORER: Eight different pollutants.

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SENATOR KREMER: Eight different pollutants. Did some decrease though? It seems like I saw a table one time that some had decreased also. Were there some, it seemed like, was mercury one that decreased or something? I'm not sure.

LYNN MOORER: This does indicate that mercury did increase...

SENATOR KREMER: It did increase?

LYNN MOORER: ...decrease...

SENATOR KREMER: Decrease.

LYNN MOORER: ...in a small amount.

SENATOR KREMER: Okay.

LYNN MOORER: That is correct. The eight that increased are, by and large, some of the most toxic pollutants that exist in tiny amounts. Mercury is also a very toxic pollutant. It, in this test burn, did decrease slightly.

SENATOR KREMER: Were there any others decreased also or...

LYNN MOORER: Yes, there other that, of the ones that they monitored.

SENATOR KREMER: Okay.

LYNN MOORER: Now there are literally hundreds of hazardous constituents that are created when you combust the materials that are in tires in combination with coal. There were roughly 15 or 18 of the very large number that were monitored. So this reflects what was monitored. It is not a complete picture by any means of what actually happens with respect to what goes on in a day-to-day basis. As I...

SENATOR KREMER: Do you have any idea how many decreased or does it say on there?

LYNN MOORER: I can count them.

SENATOR KREMER: Maybe we had that before one time. I don't remember where I got it.

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LYNN MOORER: Okay.

SENATOR KREMER: I don't want to take a lot of time.

LYNN MOORER: I think they were roughly about the same.

SENATOR KREMER: Increased or...so as many, it looks like more decreased than increased then.

LYNN MOORER: Right, recognizing, Senator, that not all pollutants are equal. Some are very, very toxic and the ones that I mentioned, dioxins and furans, are extremely toxic, tiny amounts, there is no safe level.

SENATOR KREMER: Okay.

LYNN MOORER: And they are some of the most persistent and difficult pollutants to deal with in the environment because, as I indicate, any time you have a chlorine, a product that has chlorine in it and it's combusted, then it creates and disperses dioxins.

SENATOR KREMER: Were any of those that decreased very dangerous ones, too?

LYNN MOORER: Mercury is the one that probably, I mean, it's all relative. It depends on whether or not you, the form that they're ingested. But mercury is definitely one of the most that is difficult.

SENATOR KREMER: Okay, thank you.

LYNN MOORER: Again, the point being here that this is a tricky, risky business. And you want to assure that only those who have a demonstrated good, very good track record are allowed to burn TDF because they are such a small margin of error.

SENATOR KREMER: Thank you.

LYNN MOORER: You're welcome.

SENATOR SCHROCK: Other questions? Lynn, you're referring to the emissions that, the test burn on the tires at Ash

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Grove this summer, is that the emissions you're referring to?

LYNN MOORER: That's correct, that's what Senator Preister was referring to, is my understanding.

SENATOR SCHROCK: All right, and then that's the chart you're referring to?

LYNN MOORER: That is correct. It is Ash Grove who experienced 13 malfunctions, not even operating the TDF, just burning their normal coal and natural gas, 13 malfunction events since October.

SENATOR SCHROCK: Did the malfunction events result in discharges of...

LYNN MOORER: Excess emissions, yes.

SENATOR SCHROCK: All right.

LYNN MOORER: As I indicated, some of them, more than three times what's the permitted level.

SENATOR SCHROCK: Thank you, Lynn.

LYNN MOORER: You're welcome.

SENATOR SCHROCK: If I'm not mistaken, your father is Charles Moorer?

LYNN MOORER: That is correct.

SENATOR SCHROCK: Okay, he was my associate pastor for quite a few years at Holdrege. Nice to see you.

LYNN MOORER: Nice to see you.

SENATOR SCHROCK: Next opponent, please?

LYNN MOORER: I was a proponent.

SENATOR SCHROCK: I mean proponent, I'm sorry. Next proponent? We are, we've used up about half the 15 minutes.

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JOHN KNAPP: Senator Schrock, my name is John Knapp, J-o-h-n K-n-a-p-p. Thank you for the opportunity to testify in favor of the amendment 2159. I'll be very brief. I think this is a very...I'm a neighbor to the facility that Lynn and Senator Preister referred to. I'm concerned about the...I'm down wind of the plant, approximately three miles. And in days of old, before they had any pollution controls, our fence would look like frost at times in the morning from the fine particulates coating the fence on a humid day, a humid morning. And so I think I'm in the direct line of their discharges and I am concerned about their compliance record and emissions that would be released if they were allowed to burn tires as such.

SENATOR SCHROCK: Okay, I understand they're allowed to burn tires now, they just...

JOHN KNAPP: They did the trial burn. They're not allowed. They have to go through the permitting process. So at this moment, they do not have a permit to burn tires.

SENATOR SCHROCK: All right.

JOHN KNAPP: They had a permit to do the trial burn.

SENATOR SCHROCK: Okay, are there questions for John? I guess that will be it then. Next proponent?

JAREL VINDUSKA: Senator Schrock, members of the council, my name is Jarel Vinduska, J-a-r-e-l V-i-n-d-u-s-k-a. I'm here in support of this legislation because ever since this issue of burning tires came up many years ago, I live fairly close to the area so I felt it prudent to become educated on the subject of burning tires. I don't claim to be an expert but I've done as much studying as I can. And the thing that I remember from years back that stuck in my mind, when tires were burnt at the Hallam Power Plant. I went up there to try to educate myself on it and I got to talk to a couple of the engineers up there. And they maintain that one of the reasons they quit is that tires are hard to burn on a sustained basis. If everything is right, if your pollution control equipment is functioning to the utmost, they maintained you can do a pretty good job at it. But the trick is, is on a sustained basis to do it and, because of the nature of the soot. It's a more gummy type of soot,

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supposedly. But anyway, because of that, everybody knows when you do a test, you're at your best, at least you ought to be. And so in the long term, that's what the danger is and that's why I think this legislation is prudent and fair. Because it would only be common sense that you'd want to watch something that has a potential to do so much harm. And if they're able to do it right, then they'll be able to keep doing it. If they can't do it right, then they ought to quit. And so this makes perfect sense. Thank you.

SENATOR SCHROCK: Thank you, Jarel. Are there questions? I see none. Appreciate you being with us. Next proponent? I see none. Is there opponent testimony?

DANIEL PETERS: (Exhibits 19 and 20) Mr. Chairman and members of the committee, my name is Dan Peters, P-e-t-e-r-s, and I'm the manager of Ash Grove Cement Company's Louisville, Nebraska plant, which is the only cement plant in Nebraska. Ash Grove's Louisville plant produces one million tons of cement a year. I would like to speak against passage of LB 1161 and specifically Section 2 of the bill; here is why. As you know, Section 2 would prohibit the Nebraska Department of Environmental Quality, NDEQ, from issuing a permit to use tire-derived fuel, or TDF, if any element measured during tests of TDF increases from the baseline test results. The Environmental Protection Agency supports TDF use in cement kilns. They issued a statement saying, in part, "Based on over 15 years of experience with more than 80 individual facilities, EPA recognizes that the use of tire-derived fuels is a viable alternative to the use of fossil fuels." As you know, the Louisville plant tested this high energy fuel last summer. We have shared the test results with you during testimony on another bill. We are making those results available to you again today, along with the EPA statement. The provision we are opposing today clearly targets the plant that I manage. An important and very basic point I want to make to the committee at the start is that Ash Grove Cement Company operates the Louisville plant under a permit from NDEQ. That permit sets limits on plant emissions and we have a sharp focus on operating within those limits. At no point in our TDF testing did we exceed the levels allowed in our permit for using coal. That was a condition of the variance granted to conduct the test. Results showed that less nitrogen oxides and sulphur oxides, the chemicals often

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associated with air pollution, smog, and acid rain, were emitted when TDF was used. Carbon monoxide stayed about the same but was a little lower. That's what we expected, that's the industry norm. As we shared with the committee previously, our TDF tests showed that 12 constituents had lower readings with TDF and eight had slightly higher readings. In the words of the NDEQ news release reporting the results, "Twelve different metals were measured. There were some barely measurable changes in emissions, some decreasing and some increasing. But the changes are considered insignificant." And for nonmetallic compounds we measured, the DEQ said, "Very small changes in emissions occurred for a number of other compounds." I'd like to take just a moment to explain what the state may have meant when they said the changes were insignificant. Although several of the tested materials showed far smaller increases, I will use lead in my explanation since it was featured predominantly in discussions of air quality. I want to be clear that the levels of lead that come from our plant are very low, whether we are burning all coal or substituting 10-15 percent of the coal with tires. The National Ambient Air Quality Standard for lead is 1.5 micrograms of lead per cubic meter based upon a three-month average. The Louisville test with TDF predicted a concentration of only 9,100-millionths of a microgram of lead per cubic meter of air. A microgram is one-millionth of a gram. Here's another way to look at that. If the acceptable ambient level for lead were 15 million, our number would be 7.2 using coal and 9 using coal and TDF. So our Louisville plant is a very tiny fraction of the national acceptable standard and there is essentially no difference between either number. That is what the NDEQ was understood to mean when it said the difference was insignificant. There's a real question whether the tests themselves can be accurate enough to measure the small degree of variation. And there is another variable in the test. Not every cart load of coal that arrives at our plant is exactly the same chemical makeup. The tiny change in lead emissions during the test could have come from the coal we used that day. I could analyze the findings further and we will if you have questions later. Our point in discussing results is to show that this bill would not add meaningful protection and that no added protection is needed in state law, nor, in the opinion of Ash Grove, does it help Nebraska or Nebraskans. Two weeks ago, Ash Grove held a ceremony in Arkansas, as an

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example, where we announced an expansion of our plant there. The head of the state Department of Environmental Quality joined the ceremony specifically to praise our TDF solution for Arkansas. We think that allowing us to help Nebraska with its scrap tire problem would bring the same kind of praise in this state. In our view, this legislation would provide no additional protection of public health. Instead, scrap tires will continue to be discarded in streams and along the state's roadsides. Those are ideal locations for mosquitos bearing West Nile virus to breed. The EPA supports TDF. The NDEQ found our test with TDF to be satisfactory. I urge you to decide that what has been found to be acceptable by Departments of Environmental Quality in 24 states, including Nebraska, is acceptable to you, too. I would like to address the amendment that Senator Preister has offered to LB 1161. First, I would note that no one in Nebraska has a better handle on whether Ash Grove's Louisville plant is responsibly operated than the Nebraska Department of Environmental Quality. The NDEQ applies the law very aggressively. Now I would like to review the process that we have been following. Under current law, Ash Grove requested a variance to test TDF. Ash Grove welcomed the opportunity to demonstrate that our partial solution to Nebraska's scrap tire problem was responsible from an air quality perspective as well as a waste management perspective. We participated in public meetings, we complied with the process requirements, and we earned the variance. The terms of the variance to test TDF stated that we had to stay within our permitted emission limits and that we would have to halt tests if we did exceed the limits. The NDEQ was present during the testing last July. There were no violations that required us to stop our test. Our test findings were positive and acceptable. The NDEQ said so in a news release and a spokesman added that they expected us to apply for a permit. The permit process lies ahead of us. The NDEQ already has the regulations in place which address the permitting process. The NDEQ can and will require us to submit a permit application and go through public comment, which will allow the public to make all comments that they feel necessary. The NDEQ will respond to the public comments and revise the permit terms and conditions as necessary. If a permit is issued by NDEQ...

SENATOR SCHROCK: Mr. Peters...

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DANIEL PETERS: Yes?

SENATOR SCHROCK: ...if you can kind of sum it up, we would appreciate it.

DANIEL PETERS: Okay. There's one last point I'd like to make.

SENATOR SCHROCK: All right.

DANIEL PETERS: We operate a complex facility where we process approximately 5,000 tons of material and burn roughly 400 tons of coal per day. The plant is operated and staffed 24 hours a day, 365 days a year. We are not perfect but we make an attempt to operate within our permit limits. Unfortunately, we do have some instances where we exceed standards. We report these instances, which mainly occur during equipment start-ups and shutdowns and equipment malfunctions. We make every attempt to minimize these and to address them immediately. We think that the regulations that are currently available by the state of Nebraska are effective to manage the firing of TDF.

SENATOR SCHROCK: Okay, thank you. Are there questions? We appreciate you being with us.

DANIEL PETERS: Okay, thank you.

SENATOR SCHROCK: Next opponent?

DOUG SWEENEY: (Exhibit 21) Thank you, Senator Schrock and members of the committee. My name is Doug Sweeney, it's spelled S-w-e-e-n-e-y. And I just wanted to follow up a little bit with Dan's testimony, specifically to share with you, as Dan mentioned, that we believe that the NDEQ and the Louisville facility is already permitted and that the NDEQ has the regulations that are already in place to manage not only the operations of the Louisville plant as it currently operates today, but as well as when and if we get a permit to use TDF as well. I've provided a packet to you and I don't intend to go through each of the regulations and read them to you, of course. But I did just want to go through, if you would. I did number the pages and just briefly I'll go through some of those just to give you a sense for the types of regulations, the amounts of regulations that are

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already in place at the facility. On page 1 is basically a summary of the rules, the current rules and regulations that are in Nebraska. If you'll turn to page 2, you'll see under Title 129 that deals with the air quality division, the Nebraska air quality regulations. If you'll turn to page 4, they have a section in Title 129, Chapter 8 that deals with the operating permit content. And as you can see, there's a very extensive list of things that are required as far as the content that's inside or in an air permit. If you'll turn to page 6, in essence, under 007, you'll see that there's some language there that requires permit...

SENATOR SCHROCK: You lost me for a little bit there, Doug.

DOUG SWEENEY: I'm sorry, on page 6...

SENATOR SCHROCK: But if I look at the bottom, if you look at the bottom, you'll see page 6 in the left-hand corner.

DOUG SWEENEY: Yes, sir. That's the page. In 007, you'll see under general conditions that permits contain the following provisions which, in essence, require that facilities comply with all conditions in their permits. If you turn to page 7, you've got areas that deal with compliance requirements. It requires that there's a compliance certification, that there's reporting and recordkeeping that's required in order for the department to ensure that there's compliance with the permit itself. The next provision allows for the department at any time to enter the facility and inspect the facility. If you turn to page 8, there is a section in there that deals with if the department feels that there are areas in which a facility is not in compliance, then a facility can develop a schedule of compliance and determine and set up a mechanism for coming in to compliance. Item 13 at the bottom of the page gives the director the opportunity to have conditions and other restrictions that he feels that are necessary to protect the health and the environment. If you turn to page 11, you'll see that this section, Chapter 17, deals with construction permits and when they're required. And clearly, you'll see that the Portland cement plants are definitely listed in the regulations under this particular chapter. On page 13, you can see that the director again has discretion when he receives an application to determine if, in fact, this facility or the operation of the facility may adversely

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impact the National Ambient Air Quality Standards. And if, in fact, it does look like they determine that that is the case, then a construction permit or a permit to conduct this activity is not issued. And if, in fact, they determine that there was a violation that did occur of the National Ambient Air Quality Standards, then they have the opportunity to pursue enforcement actions as indicated on page 14. Also on page 14, with respect to issuance of permits, there are opportunities for public notice. In other words, there's opportunities for public involvement in the permit activity. If we turn to page 19, there's additional regulations in Chapter 18 that deal with new source performance standards or emission limits for existing sources. Once again, on page 20, you'll see that Portland cement plants have a myriad of regulations under Subpart F, which limits the operations of Portland cement plants. If you keep turning on to page 25, again, another set of regulations that fall under Chapter 28, which deal with hazardous air pollutant emission standards. Once again, they fall under 40 CFR Part 63 of the environmental regulations. And on page 26, you can see that Portland cement plants, once again, are listed and are required to comply with Subpart LLL, which has a large number of conditions and requirements that control Portland cement plant activities. So in summary, as you can see, this was not a comprehensive list of all the regulations and the rules and regulations that are in place. But I think you get a sense for, that there is a lot of regulations that are already there that the department has the rules and regulations and that there really is no need to add any additional regulations. So that's all I have. I'd be happy to answer any questions.

SENATOR SCHROCK: Thank you, Doug. Questions? Senator Hudkins.

SENATOR HUDKINS: Mr. Sweeney, when you had your test burn, what percent of coal did you replace with tires?

DOUG SWEENEY: I believe we got up to approximating 15 percent replacement, Senator Hudkins, yes.

SENATOR HUDKINS: Fifteen...and if you were granted the authority to go to TDF fuel, would you make any engineering changes, any operational changes to attempt to keep those

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emissions under what you're already seeing with coal? And if so, what would they be?

DOUG SWEENEY: Well, we've got...one of the things that we did during the test, of course, is we manually fed the tires. So if, in fact, we were to proceed with the program, we would put in an automated system which would enable us to provide a consistent feed of the tires. So that in itself would be of benefit. We have continuous emission monitors that are already in place at the plant. And so we would be continuously monitoring the emissions and we would ultimately, with the permit that would be issued, we would have emission limits that would be in place that the NDEQ would require us to maintain the operation within those limits. And so that, we would again be monitoring with those monitors to stay under those limits.

SENATOR HUDKINS: It was said earlier that most of the emission problems were when you started and stopped; started and stopped what?

DOUG SWEENEY: It's typically when we're starting and stopping the cement plant operation or the pyro process. If you're starting up, in essence we have to heat the system up to operating temperatures.

SENATOR HUDKINS: So you don't operate 24 hours a day?

DOUG SWEENEY: We do...our goal, of course, is to operate 24 hours a day. But the fact is that you've got a lot of moving equipment and that equipment does fail and maintenance does have to occur. And typically what we try to do is schedule maintenance so we have scheduled maintenance. But there's always those instances where there's unexpected, unforeseen cases and that was what was alluded to earlier, what we may have what is called a malfunction, which is an unexpected occurrence.

SENATOR HUDKINS: Thank you.

SENATOR SCHROCK: Other questions? Doug, how many plants does Ash Grove operate nationwide?

DOUG SWEENEY: We have nine cement plants in operation right now, Senator Schrock.

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SENATOR SCHROCK: And is coal the primary source of fuel at all nine plants?

DOUG SWEENEY: Yes, that's correct.

SENATOR SCHROCK: And how many of those nine plants do you burn tires?

DOUG SWEENEY: Right now, we've got six that are operating on tires right now.

SENATOR SCHROCK: Okay. All right, other questions? Senator Louden.

SENATOR LOUDEN: On those other six, do you have any problems with emission control or anything for some of these types of pollutants that's listed here on some of the paperwork we have? Have you got that under control in those other plants?

DOUG SWEENEY: As we would have at Louisville, we have air permits, again, with limitations, conditions that the plants have to operate within those limits and conditions. And so we are operating in compliance with our air permits at all those locations using TDF.

SENATOR LOUDEN: When they...I think this, some of this material I have in front of me talked about when you had that trial burn, PCBs released into the air or whatever. Does that come out of your tires or come out of your coal?

DOUG SWEENEY: It comes out of the process there. It's hard to determine where the origin of that is. I don't believe that PCBs are in tires, a constituent of tires. But if I could say, Senator Louden, that the emissions that we're speaking of, even with respect to PCBs, are very, very low that were measured.

SENATOR LOUDEN: You mix, that all goes in...when it goes into the kiln, is the fire chamber separate from the dirt or whatever you call it that you're heating up?

DOUG SWEENEY: Yes, there's a burner pipe that's on the inlet to the kiln and it is separate from the material

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that's cascading down through the system.

SENATOR LOUDEN: There's no way that some of those emissions could come from the material that you're heating up?

DOUG SWEENEY: It could possibly be, there could be some from the raw material coming in. Yes, sir.

SENATOR LOUDEN: Okay, thank you.

SENATOR SCHROCK: Other questions? Thank you, Doug.

DOUG SWEENEY: Thank you, Senator Schrock.

SENATOR SCHROCK: The 15 minutes is up but I would allow brief testimony from a couple more.

LORAN SCHMIT: Senator Schrock and members of the committee, I'll be very brief. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I'm here this time to testify against the original bill. I think probably appreciate that Senator Preister has attempted to soften the bill somewhat and I've not had a good look at that amendment so I'm not going to testify on that. I want to say that, first of all, I oppose this kind of a bill because I oppose Section 1. I believe we do not need to be continually trying to tighten our standards beyond those of the federal government. This committee has just this year had to enact CAFO rule legislation because they federally went too far over their processes and were stricken down by the court. Secondly, I want to, I believe, comment on the fact that we ought to be glad that someone has found a use for a used tire which has become a real nuisance. All of us who live on farms have had to fight discarded tires, discarded objects of all kinds, not had any computers dumped out there yet, but we've had about everything else. And so I think that the fact that someone has found a use for the tire ought to be commendable and commended. We know that the unused tires are a nuisance and have become a real source of problem for disposal. Last, I wanted to say that NDEQ is not a laissez faire organization. They run a tough shop over there and if you can operate a business under the supervision of the Nebraska Department of Environmental Quality, you're doing a good job. They run a strict organization and they do it well. Thank you, Senator. I know you're not going to ask

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me any questions. I appreciate the chance to testify.

SENATOR SCHROCK: Well, thank you, Loran. Appreciate you being here.

LORAN SCHMIT: You bet, thank you.

SENATOR SCHROCK: Just wait a minute, there could be a question or two. So what did you do with your old tires on the farm?

LORAN SCHMIT: You know, Senator, if you wanted to do something, you might insist that all manufacturers manufacture them out of a higher quality products so they could be recycled. On the farm, you know, we dump them and cover them up. And there were, in the old days, we could recycle them. There were markets for them. And those of us who are old enough to remember World War II, we recycled everything. And so maybe you might consider. Say you can't manufacture products unless they can be recycled and, you know, solve the whole problem.

SENATOR SCHROCK: Senator Preister, would vote for that. Not a bad idea though.

LORAN SCHMIT: He might get it done, too.

SENATOR SCHROCK: Is there other opposition testimony? I would like to have someone from DEQ come forward. I have a couple questions for them but if committee members want to go first with questions, they would be permitted to do so. Any questions? Jay, Lynn Moorer alluded to the fact that there were some violations out there and they talked about start-up and stoppage violations on emissions. Can you shed some light on that?

JAY RINGENBERG: Well, the question really comes down to compliance with the permit. The air permit has provisions in it for exceedances for start-up, upsets, and other types of issues of that. So it depends on the particular violation you're looking at, whether that's a violation of the permit or not. There could be emission limits in a permit but there are provisions to exceed those emissions during particular times, such as start-up, new equipment, some maintenance periods. Also, those numbers depends on if

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you're looking at just an individual event or if those are averaged over a certain period of time. Some of the parameters are allowed to be averaged over monthly averages, weekly averages, and such. So very difficult without looking at the particular violation of...

SENATOR SCHROCK: To your recollections, were those violations, or did...were those emissions in excess or were those something, were they emissions that you would expect from a cement plant and they would be considered the norm?

JAY RINGENBERG: Well, I don't know without looking at the violations if I can answer that straight other than...I guess the question is...

SENATOR SCHROCK: To your knowledge, the violations that were referred to were just excess violations that are normal with the operating procedures of a cement plant?

JAY RINGENBERG: Well, I don't know. Because, I mean, we've had some enforcement actions, administratively and stuff, with Ash Grove in particular or other ones, you know. And those would be...or some...those could be reporting violations, those could be...

SENATOR SCHROCK: Would you do me a favor and...

JAY RINGENBERG: We can give you the history...

SENATOR SCHROCK: ...provide Jody a summary by 1:30 tomorrow of what went on out there and whether that's normal or...

JAY RINGENBERG: Are you interested in the trial? You're not talking trial burn, you're talking a longer period of time.

SENATOR SCHROCK: Yes, um-hum.

JAY RINGENBERG: Okay.

SENATOR SCHROCK: All right. Senator Kremer.

SENATOR KREMER: Are the emissions monitored continually or is it just spot checked or what...

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JAY RINGENBERG: Well, some emissions, some plants, like in this case, they have continuous emission monitors on, on the stacks.

SENATOR KREMER: So that's mechanically monitored...

JAY RINGENBERG: Right, and recorded...

SENATOR KREMER: ...and then you can check up and see what's happening all the time there?

JAY RINGENBERG: Um-hum.

SENATOR KREMER: Okay, thank you.

JAY RINGENBERG: That's required on some facilities.

SENATOR SCHROCK: All right, no more questions. Thank you, Jay.

JAY RINGENBERG: Thank you.

SENATOR SCHROCK: Senator Preister, you are afforded the opportunity to close. Did I ask for neutral testimony? Was there neutral testimony? Okay, thank you, Senator Preister. Proceed.

SENATOR PREISTER: Thank you, Senator Schrock. I will be brief in my closing. And the amendment that is here would certainly take away the concerns that former Senator Schmit talked about. His objection is to Section 1. That's the area that I said in my opening was a concern to others. The reason that that was there is because there was some uncertainty at DEQ whether they had authority. This would have just clarified that they did have authority to do what I proposed in the Section 2 of the green copy. In the white copy, we're not expanding any regulations. It's simply the bad actor provision. So if you adopted the amendment, it just says that the permit is contingent upon whether you're a good performer or if you've had the five violations or more within five years. That's one every year. So no additional regulation in the amendment. It's simply a bad actor provision in granting a permit. And there were some other things that I won't get into some of the things that I heard but would be happy to deal with any of those other

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issues after or at any time in further discussions.

SENATOR SCHROCK: All right. Senator Kremer?

SENATOR KREMER: If they did have five violations in five years and the permit was taken away, is there any provision in there for them to change some of the equipment or anything like that? They're just out of business or what?

SENATOR PREISTER: Well, they wouldn't be out of business. They would still keep operating. This only deals with burning tires. So it would only...

SENATOR KREMER: Okay.

SENATOR PREISTER: ...be related to their permit for burning tires. It wouldn't affect their operation or deal with...

SENATOR KREMER: So the violations would have to be while they're burning the tires and also not in a violation in another area then?

SENATOR PREISTER: No, the violation could be in their regular burning...

SENATOR KREMER: Anyway, but then they could not burn tires at that...

SENATOR PREISTER: ...but it only applies, both the bill and the amendment apply to tire-derived fuel.

SENATOR KREMER: Okay.

SENATOR PREISTER: So we're not talking about power plants unless they were attempting to get a permit to burn tires. Ash Grove wouldn't be affected except for applying for a permit for tires. So we're not talking about...

SENATOR KREMER: I see.

SENATOR PREISTER: ...their normal operations.

SENATOR KREMER: Okay.

SENATOR PREISTER: This just deals with burning tires. And

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just to add some clarity, currently there is no permit issued to Ash Grove or anyone else, to my knowledge, in Nebraska to burn tires. But there's no prohibition to burning tires. So anyone could apply for a permit. They would have to get the permit to do the test burn, give DEQ some information, and then DEQ would do the assessment. And then they could issue a permit to burn tires. What's really at issue in the bill that you had earlier is that they would also be able to take grant money to use grant money to burn those tires, which is a different situation. My bill doesn't specifically deal with that. But it is a related issue to this. So they could, right now they're prohibited from getting access to that grant money. And that was as a result of legislation that this committee enacted a number of years ago and did for good reason. So there are some reasons for that; that bill you've already advanced. This deals with whether or not somebody getting a permit has been a good, responsible citizen in their permitting process, but only as it relates to tire-derived fuel.

SENATOR KREMER: One other question, if they exceeded the emissions in the normal operation but still were in the parameters of what they're permitted in the start-up...he talked about there are times that you can exceed that in start-up or whatever in their permit. Would the violation be, that would be violating what the permit said or that there was ever excessive emissions?

SENATOR PREISTER: And that's a good defining kind of question and DEQ is certainly the one who defines it.

SENATOR KREMER: Okay.

SENATOR PREISTER: Because if DEQ determines that it's not an actual violation, then it's not an actual violation.

SENATOR KREMER: Okay, so you're just talking about if they would violate what the permit offered them.

SENATOR PREISTER: Correct, I'm not further defining violation. I'm not changing rules or regulations. I'm not adding any additional requirements. I'm saying if in applying for their tire-derived fuel permit, they would have had to have not had those five violations in the five previous years...

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SENATOR KREMER: Okay, thank you.

SENATOR PREISTER: ...to get permit to burn tires. It doesn't affect anything else. And DEQ determines whether it was a violation or not a violation to meet those requirements. I don't do anything with that or change how that's viewed or determined.

SENATOR KREMER: Thank you.

SENATOR PREISTER: Does that...

SENATOR KREMER: Yes, yes, that answers my questions.

SENATOR PREISTER: Okay, thank you.

SENATOR SCHROCK: Thank you, Senator Preister. No more further questions.

SENATOR PREISTER: My thanks to the committee. Once again, I bring you an easy bill. (Laughter)

SENATOR SCHROCK: We appreciate that, Senator Preister. That will close the hearing on LB 1161.