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Natural Resources Committee
January 21, 2011

[LB28 LB29 LB30]

The Committee on Natural Resources met at 1:30 p.m. on Friday, January 21, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB28, LB29, and LB30. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; Beau McCoy; and Jim Smith. Senators absent: None. [LB28]

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee hearings. We'd like to welcome everybody in the crowd that's here to participate and those of you that are watching on the closed-captioned television and as well as those that are watching the committee hearings on-line. We welcome you to the committee. My name is Chris Langemeier, I'm the Chairman of the Natural Resources Committee. I'd like to introduce to you the committee and starting to my far left we have Senator Jim Smith from Papillion. We have Senator Ken Haar from Malcolm. Senator Christensen will be with us momentarily from Imperial, Nebraska. And the Vice Chairman of the committee, Senator Ken Schilz from Ogallala. We have Senator...senator, we have Laurie Lage, the legal counsel to the Natural Resources Committee. To my right, or your immediate left, we have Senator Annette Dubas from Fullerton. We have Senator Tom Carlson from Holdrege. And joining us in a moment here we have Senator Beau McCoy from western Omaha. We have...also with us, we have Trisha Clark who is here, she is a new committee clerk for the Retirement Committee so she is here spectating our committee clerk, Barb Koehlmoos as we work forward today. We have Katie DeLashmutt who is a senior at UNL and she is from Burwell and she will be acting as our page today if you need something in that regard. We start out today as testifiers, as you're here to testify, in the corners of the room you're going to see these green sheets. We ask that you fill it out for the bill you're going to testify. And as you come up to testify, you give that to our committee clerk, Barb Koehlmoos. It helps us keep track of the record. If you're here in the audience today and you want to have a record that you were here, but you're not going to testify, you'll also see that there's this piece of paper in the corner of the room, it looks like a spreadsheet that you can sign in and put whether you support or oppose and what bill you're here for so we can have a record that you were here, but chose not to testify. At this time I would ask that you turn your cell phones to vibrate or off so we don't disrupt the committee hearing process. If you have anything you'd like to hand out to the committee, we ask that you have 12 copies. If you know right now you don't have 12 copies, Katie will be happy to help you make those copies to get up to 12. We also advise that if you do hand it to us to pass out and look at, we are going to keep it and it's going to become permanently part of the official record of this hearing today. So if it's something you want us to see but you don't want us to keep, please just show it to us from the table and then after the hearing the committee members would have the opportunity to come approach you as far as look at it in more detail. As you come up to testify, we do use a light system in the Natural Resources Committee. You get five minutes of testifying

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time. You'll have a green light before you in that little box and it will be on for four minutes. Then you'll get the yellow light will come on and it will remain on, kind of a one-minute warning. And then when you get to the red light we ask that you stop your testimony and open yourself up for questions. We ask that when you come up there, the first thing you do is say and spell your name. It helps us keep a more accurate record of these proceedings and we appreciate your cooperation with that. So at this time, without any questions, we're going to hear the bills in order as posted and in numeric order with LB28, LB29, and LB30. At this time I'll turn the committee over to Vice Chairman Schilz and it's all yours.

SENATOR SCHILZ: Thank you, Senator Langemeier. And with that we will turn it over to you for the introduction for LB28. [LB28]

SENATOR LANGEMEIER: Thank you, Senator Schilz and members of the committee. My name is Chris C-h-r-i-s Langemeier L-a-n-g-e-m-e-i-e-r. I'm here today to open on LB28 which was introduced on behalf of the Nebraska Natural Resources Association. All three bills I'm going to open on today would fall under our ability to become more efficient and less cost. So this is kind of part of the 542 process. Again, I've introduced this on behalf of the NARD. This bill is pretty simple. It removes some paperwork requirements, as far as managing chemigation permits. Currently, immediately upon giving out new chemigation permits, they submit that to DEQ. This bill asks and requests that that stop. They do an annual report that would go to DEQ every year. And it would also allow that DEQ, if they had a question, they could request a copy of someone's application and permit that was granted at their request. They wouldn't have to submit them continuously. So that's what it does. If you look at the fiscal note, which we had a discussion about fiscal notes today, we're projecting to save the state, through DEQ processing all that paperwork, we're talking 18,000 to 19,000 chemigation permits a year for the paperwork so we're projecting a savings on the fiscal note of saving that department \$6,000 a year. So not a big deal, but it's a paperwork nightmare for the NRDs. This is just the state's DEQ's savings in processing that paper that they get. It doesn't include what the NRDs save from not having to submit that. They would keep it on file and use it at a later date. So if there's any questions I'll conclude because I know NARD wants to testify on their behalf as well. [LB28]

SENATOR SCHILZ: Senator Haar. [LB28]

SENATOR HAAR: Thank you. So the NRDs all look at these permits and decide whether it should be allowed or not. I mean, do they get their approval one way or another? [LB28]

SENATOR LANGEMEIER: The NRD, currently, is the issuer of the permit. [LB28]

SENATOR HAAR: Okay. [LB28]

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SENATOR LANGEMEIER: That wouldn't change. But when they do issue it, they have to send a paper copy to DEQ. This would take away that requirement to send it immediately. They would still hold it on file. If DEQ had any questions, they could request it to be sent. But then they also send a matrix at the end of the year with all of them, so DEQ currently gets that on an annual basis. This would just take it...that would be the only one unless required. [LB28]

SENATOR HAAR: Thank you. [LB28]

SENATOR SCHILZ: Any other questions? Senator Dubas. [LB28]

SENATOR DUBAS: Thank you, Senator Schilz. Senator Langemeier, do you have any idea where they're at in the completion of this database? I mean, are they close to having this...says this database program, when it's ready, will allow them to use an electronic filing system? So are... [LB28]

SENATOR LANGEMEIER: I don't. I'll let them demonstrate that to you. [LB28]

SENATOR DUBAS: All right. Thank you. [LB28]

SENATOR SCHILZ: Any other questions for Senator Langemeier? Thank you and we'll wait for your closing. At this time I would invite proponents to the bill to come forward. Welcome, John. [LB28]

JOHN TURNBULL: Senator Langemeier disappeared? [LB28]

SENATOR SCHILZ: No, he's right there. [LB28]

JOHN TURNBULL: (Exhibit 1, Exhibit 2) Anyway, all right, great. I'm John Turnbull, J-o-h-n, middle initial C, Turnbull, T-u-r-n-b-u-l-l. And Senator Schilz and Senator Langemeier and members of the committee, I'm glad to be here today to talk about LB28. I'm testifying in support of the bill on behalf of the Upper Big Blue NRD board of directors and the Nebraska Association of Resources Districts. The state's 23 NRDs are charged with protecting the quality of Nebraska's groundwater. One of the regulatory protections is the Nebraska Chemigation Act was passed by the Legislature and signed into law in 1986. The positive vote of this committee and passage by the Legislature will allow for increased efficiency in the tracking and reporting by districts and the department. The increased efficiency should result in savings of time and money. Chemigation is defined as the process where chemicals such as fertilizers, herbicides, and pesticides are applied to land or crops in or with water through and on farm irrigation distribution system such as a center pivot. When utilized properly, chemigation can be an effective method of controlling pests such as insects or weeds. Another

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important use for chemigation is the application of fertilizers which avoids over-fertilization and protects groundwater. We at the Upper Big Blue NRD are convinced that applying split applications of nitrogen during the growing season through center pivots and drip irrigation systems is much better than fall applications of anhydrous ammonium. Applying nitrogen through these irrigation systems allows the producer to use less fertilizer to get the same yield and, of course, protects groundwater quality because the reduce time of possible leaching. It was important to document all the chemigation systems in the state when the Chemigation Act was first passed in 1986. This means to accomplish and was to have the DEQ prepare application forms and then service as a central repository for all NRD-approved chemigation applications. The department then manually enters the data into a master database. For example, in our case, the Upper Big Blue submitted an annual report in 2009, printed on paper that included a cover letter, five-page summary of the chemicals used by chemical and quantity, ten-page spreadsheet, single spaced listing of the permit number, location, and the owner of each permitted chemigation system and the type of any inspections. In addition to those 16 pages, paper copies of all 346 permits were included as required by statute. Each of the 22 other NRDs are required to submit the same report, the length of each report determined by the number of their permitted sites. The department's job then is to manually re-enter all that data into their computer system. This is a lot of work for little gain when we already have all the information in our computer system and we maintain the records for each permit. Since 1986 there have been advances in computer technology that the NRDs have taken advantage of. All of the NRDs are maintaining multiple and sometimes lengthy databases to manage the multiple program responsibilities including chemigation. Through the use of spreadsheets and Internet, this information can electronically be transferred in lieu of triplicate forms, photocopies and postal service. The transfer of information electronically will save time and money for both the NRDs and the state of Nebraska. Over this past year, the NRDs worked through the DEQ liaison with the Department of Environmental Quality to develop reasonable ways of streamlining the reporting. The NRDs are willing to take steps to make the electronic reporting of chemigation information the norm rather than the exception. An example of this is for the 2011 reporting year where one of the NRDs proposed a single reporting form that is being utilized by all the districts. This consistency will improve accuracy in the reporting process and reduce review time by all. And this second page that was handed out is the form that we're talking about that was developed jointly between the districts and DEQ. In closing, LB28 allows the NRDs to take advantage of computer technology available and provide information to the Department of Environmental Quality when requested rather than historic process of using photocopies and duplicating manual data entry. And thanks for allowing me to testify in support of LB28 and will be glad to answer your questions. [LB28]

SENATOR SCHILZ: Thank you, Mr. Turnbull. Are there any questions for Mr. Turnbull? Seeing none, thank you. Any other proponents to LB28? [LB28]

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MIKE LINDER: Good afternoon, Senator Schilz, members of the committee. My name is Mike Linder, last name L-i-n-d-e-r. I'm the director of Nebraska Department of Environmental Quality. I'm here today to testify in support of LB28. I believe that LB28 will make the chemigation reporting requirements more efficient and less burdensome for both the NRDs and my agency. The application information will still be maintained and available for NRDs if needed. And the NRD's annual summary reports will still be a useful tool for the department. And to answer the question, the database is available now so we think this just makes sense so, for all the reasons John indicated earlier. So if there are any questions, I'd be happy to entertain them. [LB28]

SENATOR SCHILZ: Thank you, Mr. Linder. Any questions for Director Linder? Seeing none, thank you. [LB28]

MIKE LINDER: Thank you. [LB28]

SENATOR SCHILZ: Any other proponents for LB28? Okay. Moving to opponents for LB28. Opponents? Seeing none. Any neutral testimony on LB28? Okay. Well, if they could all be that easy. At this point we'd ask Senator Langemeier to close if he so wishes. [LB28]

SENATOR LANGEMEIER: I'll waive closing. [LB28]

SENATOR SCHILZ: Okay, thank you. And now we will move onto LB29. Senator Langemeier. [LB28]

SENATOR LANGEMEIER: Maybe we'll get to go home at 2:30. Senator Schilz and members of the committee, my name is Chris Langemeier, C-h-r-i-s L-a-n-g-e-m-e-i-e-r. LB29 was introduced at the request of the Department of Environmental Quality. The bill modifies language for the use of various funds within the department administration so that the funds can be used more efficiently. You will see there's no fiscal note on this bill, but it's my belief that as they have more efficient ways to do it, we're going to save money within the administration of DEQ and the way they operate. Background information, first of all there's a fee on solid waste of \$1.25 per ton from municipal solid waste that goes into the Integrated Water Cash Fund. Half of that cash fund is to be used for regulations and monitoring of waste facilities, dump management. And the other half goes into the Waste Reduction and Cash Fund for solid waste management grants. Keep Nebraska Beautiful gets a lot of those kinds of grants and so forth. Now, the different uses of the Integrated Water Management Waste Fund, all these funds are get...tongue twisters, Integrated Waste Fund were added over the years including...we added in the livestock waste cleanup; the illegal roadside dumping program continuously gets added to these funds. Over the years we've never used a number of these funds. So the changes to this bill are in three. The first one, changes of fund sources for the reimbursement of political subdivisions for the cleanup of illegal roadside

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dumping. It takes it from the Integrated Solid Waste Management Cash Fund to the Waste Reduction and Recycling Incentive Fund. The cleanup of these sites is more...become more of a recycling program than anything else. The second one allows the DEQ to fund petroleum related emergency response activities that were currently coming out of this kind of...this recycling fund if you had a semi overturn or something like that that had to go out. It allows that funding to change and come from the Petroleum Released Remediation Act. Probably makes more sense to come out of there, hopefully allowing some more funds to be used for recycling instead of that particular activity. And the third thing, it eliminates the authorization of the Integrated Waste Cash Fund for abandoned livestock facility cleanup. My understanding is we've never had an abandoned livestock waste facility needing to be cleaned up. So it would remove that requirement to this fund to fund that because the reality is, if you had one of any significant size, there's not enough money in this program to even do it anyway and so it cleans that up as well. And so with that it's pretty simple. We're trying to be a little more efficient. As you saw in the fiscal note, it says there's no impact on how these monies are spent. We're hoping that we can be a little more efficient within DEQ with this bill. So with that I will take questions, otherwise I will let you talk to Director Linder next. [LB29]

SENATOR SCHILZ: Any questions for Senator Langemeier? Seeing none, thank you. [LB29]

SENATOR LANGEMEIER: Thanks. [LB29]

SENATOR SCHILZ: Proponents for LB29? [LB29]

MIKE LINDER: Good afternoon, Senator Schilz and members of the committee. My name is Mike Linder, last name L-i-n-d-e-r. I'm the director of Nebraska Department of Environmental Quality here today to testify in support of LB29. I would like to thank Senator Langemeier for introducing LB29 on behalf of DEQ. As you look at the bill, you'll generally, and as Senator Langemeier summarized, you'll note that it changes how two of the department's existing programs are funded and eliminates some authority to spend funds on cleanup activities of livestock facilities. All changes are proposed in order to better manage the Integrated Waste Management Fund. As Senator Langemeier indicated, the specific changes include three primary elements. First, the bill will change the funding source for reimbursement of a political subdivision for a cleanup of illegal roadside dumps from the Integrated Solid Waste Management Fund, which is the administrative fund within the department, to the Waste Reduction and Recycling Incentive Fund, which is the grants program. Second, the bill will enable the department to fund its emergency response to petroleum spills out of the Petroleum Release Remedial Action Cash Fund, which is the underground storage tank cleanup program. Other emergency responses that are non-petroleum based would still continue to be paid out of the Integrated Waste Cash Fund. And the third element of the bill is to

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remove statutory authority to utilize this fund for the performance of cleanup activities under the Livestock Waste Management Act. And I want to be clear as Senator Langemeier indicated, this authority was added in the year 2004 and we have not had a circumstance that would cause us to use that authority and don't foresee any situations like that. And even if we did have that situation, there isn't sufficient money in that fund to address the issue. So we'd just like to remove that language and that expectation from the statute. Currently the revenue generated and remitted to the Integrated Waste Cash Fund is not adequate to support requirements beyond the fund's original purpose of regulating landfills and other solid waste management activities. These additional uses of the fund were put into place through legislative changes throughout the years when revenue was more than necessary to support the original purpose of the fund. And as noted in some of the summaries, the \$1.25 tipping fee was set up in 1992 and has not been changed since then. So thank you for the opportunity to testify and I'd be happy to answer any questions you may have. [LB29]

SENATOR SCHILZ: Thank you, Director Linder. Any questions for Mr. Linder? Seeing none, thank you. [LB29]

MIKE LINDER: Thank you. [LB29]

SENATOR SCHILZ: Any other proponents for LB29? Okay. Any opponents for LB29? Any neutral testimony? Okay. Senator Langemeier, you can close or open the next one. He waives closing. Okay. [LB29]

SENATOR LANGEMEIER: I'll waive closing. And the third one today. We might make it out of here by 2:30 yet. My name is Chris Langemeier, C-h-r-i-s Langemeier, L-a-n-g-e-m-e-i-e-r. Senator Schilz and members of the committee, I bring you LB30, again introduced at the request of the Department of Environmental Quality. As we talk about solid waste processing in Nebraska, one type of that solid waste processing is composting. And so this bill is to talk about composting. The bill does three things. It changes how compost site permits are granted. From a five-year permit, it would extend it to make them a ten-year permit. Not a lot of changes happen in a compost site over a number of years so we would allow them to have ten years instead of five years. The second, it removes a semiannual compost site inspection requirement. Again, a compost site doesn't necessarily change very much from year to year to year. So we would remove this semiannual inspection. The third thing, it removes the prohibition of transferring permits. Right now, if I'm running a compost site and I would like to sell it to Senator Carlson as a business, right now if that happens I have to cease composting. Senator Carlson has to make application to continue and then once he's granted then he could buy it and continue. By removing this, would allow the natural flow from my license or my permit to do it when Senator Carlson makes application. It allows a natural flow to allow him to take that facility over and own it. So that's what it does. I think Director Linder is going to testify again on this behind me. We would ask that you

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advance LB30. [LB30]

SENATOR SCHILZ: Thank you, Senator Langemeier. Any questions for Senator Langemeier? Thank you. [LB30]

SENATOR LANGEMEIER: Thank you. [LB30]

SENATOR SCHILZ: Proponents for LB30? [LB30]

MIKE LINDER: Good afternoon, Senator Schilz, members of the Natural Resources Committee. My name is Mike Linder, last name is spelled L-i-n-d-e-r. I'm director of Nebraska Department of Environmental Quality here today to testify in support of LB30. And again, I'd like to thank Senator Langemeier for introducing LB30 on behalf of the DEQ. LB30, as Senator Langemeier indicated, will do three things and our process for compost permits is really most relying on the regulations and we would like to change those regulations to streamline the process, but our statutory authority would need to be changed in the three areas that we've identified and that is the semiannual inspection which we don't believe is necessary for these type of facilities. We'd like to have more leeway to decide on inspection frequency. On the five-year permit, we'd like to be able to extend that so it matches our other solid waste permit time frames. And on transferability of permits, as indicated, it's much more of a cumbersome process than need be and is actually more burdensome than I think most, if not all, of our other permitting programs. We'd like to make that consistent so that a transfer of a permit is something that we can do without needing to reissue the permit. So that is the purpose of the bill and I'd be happy to answer any questions; otherwise ask for your support. [LB30]

SENATOR SCHILZ: Senator Carlson. [LB30]

SENATOR CARLSON: Thank you, Senator Schilz. I think I know the answer to this, but just for the record, then this change doesn't in any way compromise your knowledge of and oversight on composting sites? [LB30]

MIKE LINDER: Not at all. No. I might say that the permitting requirements for composting don't kick in until a certain level. There are only, currently, eight permitted sites in the state, most associated with municipal landfills. So we want to encourage more composting and I think we need to get some of these obstacles out of the way so we can encourage more. [LB30]

SENATOR CARLSON: Okay. Thank you. [LB30]

SENATOR SCHILZ: Any other questions for...Senator Smith. [LB30]

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SENATOR SMITH: Yes. Not seeing a fiscal note on it, I'm assuming that there must not be any type of inspection fee or permitting costs involved in this. [LB30]

MIKE LINDER: I believe there may be an application fee. [LB30]

DAVE HALDEMANN: There is. [LB30]

MIKE LINDER: Yep. We'll get you that information. I believe there may be an application fee, but it's such a nominal amount we probably didn't do a fiscal note on it. [LB30]

SENATOR SCHILZ: Okay. Any other questions? I have one, I guess, just for my own curiosity, what's a typical composting operation, how big would it be? [LB30]

MIKE LINDER: I can tell you some of the facilities we have. They usually associate with yard waste. City of Beatrice has a yard waste and sewage sludge composting facility, so pretty significant size. I think it's over a certain number of cubic tons that...or cubic yards that are going to be composted. Some livestock facilities do...or slaughter facilities do paunch manure composting. So they're pretty good sized facilities. [LB30]

SENATOR SCHILZ: Okay. And then as you said, I suppose your oversight still remains and you will inspect as needed or how will that work going forward? [LB30]

MIKE LINDER: As needed. You know, we may well get out to facilities twice a year. But to have the requirement that we do so is...we just think more...you know, it's more frequent than always necessary and probably more frequent than a lot of other solid waste facilities we regulate. [LB30]

SENATOR SCHILZ: Right. And then let's say if somebody would call and complain. [LB30]

MIKE LINDER: We'd be out. Yeah, we...our policy for any complaint is to respond within five days and if it's something that needs to be responded to immediately, we get out as soon as we can. [LB30]

SENATOR SCHILZ: So none of that is changing? [LB30]

MIKE LINDER: None of that will change, no. [LB30]

SENATOR SCHILZ: Okay. Thank you. Anyone else? Thank you, Mr. Linder, appreciate it. [LB30]

MIKE LINDER: Thank you. [LB30]

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SENATOR SCHILZ: Any other proponents to LB30? Seeing none. Opponents for LB30? Okay. Any neutral testimony? Seeing none. Senator Langemeier waives closing. And that will end the hearing on LB30. So thanks everybody for coming in. It's almost a record. Thanks everybody for coming in; we really appreciate the hearing. Thank you. (See also Exhibits 3 and 4) [LB30]