

Council opposes waste site

Transfer facility is planned near Fresno city limits

By John Ellis

[Fresno Bee, Wednesday, April 13, 2005](#)

The Fresno City Council on Tuesday voted unanimously to ask the county supervisors to overturn a use permit for a solid-waste transfer facility just beyond the city limits in southwest Fresno.

In addition, the council directed City Attorney Hilda Cantu Montoy to explore other potential legal options in opposing the facility.

"I'm not opposed to a transfer station in Fresno, but let's put it in one of our industrial areas," said Council Member Cynthia Sterling, who proposed the council action and whose district covers areas near the proposed facility.

Mike Kochergen wants to build a transfer facility that would primarily handle construction debris and green waste. It is proposed for the east side of Brawley Avenue north of Nielsen Avenue, just outside Fresno's current city limits, but within its "sphere of influence."

On April 26, the Fresno County Board of Supervisors is scheduled to hear the appeal of its Planning Commission's 5-2 vote last month to approve the use permit. Tuesday's City Council meeting brought out many of the same people who asked the county Planning Commission to reject the proposal.

Among them were nearby residents who don't want another waste transfer station in the area and fear a fire like the one two years ago at Archie Crippen Excavation, located less than a mile east of the Kochergen site.

Also stating their opposition was Running Horse, a master-planned community of 780 homes set around a golf course about a mile from the transfer station, and several veterans who said the proposal could jeopardize funding for a California Veterans Home, slated to be built at the southeast corner of California and Marks avenues.

But consultant Dirk Poeschel, who spoke Tuesday on Kochergen's behalf, said the area wasn't a residential neighborhood and has long been part of an industrial corridor planned by the city.

Poeschel's main concern, however, was that he only found out about the city's proposed action on Monday.

He said the short notice put Kochergen at a "distinct disadvantage."

Poeschel said Kochergen has worked more than two years and spent \$500,000 on studies and consultants, but was unable to present any of the findings Tuesday.

Ultimately, the city will have to make its case to the supervisors.

On Tuesday, Supervisor Phil Larson said the proposed transfer station is inside Fresno's sphere of influence, but the city hasn't said anything in opposition until now. "Why didn't they take a stand?" Larson asked.

Supervisor Susan B. Anderson said she welcomed the city's input. "Their constituents are our constituents," she said. "I want to know what they think."

In other action, the City Council:

Took the first steps toward donating an east-central Fresno home to Comprehensive Youth Services, which for three decades has used it for visits between foster children and their biological parents.

The vote was 5-1, with Council Member Tom Boyajian voting no. Council Member Brian Calhoun abstained. For years, the agency has leased the single-family home from the city for \$1 a year. Calhoun questioned why Comprehensive Youth Services got such a deal from the city.

Voted 6-1 to approve a rezone from rural residential to single-family residential for an approximate 45-acre northwest Fresno property.

Developer Robert McCaffrey's Ciao Properties plans 123 homes on the L-shaped tract that wraps around five existing homes on the southwest corner of Bullard and Grantland avenues in northwest Fresno.

Boyajian voted no because he said the city is not making developers pay their fair share for infrastructure projects.

DeLay Challenged on MTBE Liability Bill

By H. JOSEF HEBERT, Associated Press Writer

[S.F. Chronicle, Tuesday, April 12, 2005](#)

WASHINGTON (AP) -- Embattled House Majority Leader Tom DeLay is being challenged by Democrats on one of his top priorities - protecting makers of the gasoline additive MTBE from liability lawsuits, an issue that blocked energy legislation two years ago.

A draft Republican energy bill would protect MTBE makers, including several major oil and refinery companies in Texas, from lawsuits that contend the manufacturers knew the additive would contaminate drinking water, but pushed to have it widely used anyway.

DeLay, joined by Rep. Joe Barton, a fellow Texas Republican, has been the primary force behind the MTBE provision. It cleared the House two years ago, but prompted such an uproar in the Senate that it scuttled a massive energy bill that was nearing approval.

Democrats said they will try on Wednesday to strip the MTBE provision from a revised energy bill being worked on by Barton's Energy and Commerce Committee. Supporters of the measure said they are confident they can beat back the challenge.

Besides the product liability shield, the draft GOP bill calls for phasing out MTBE use by the end of 2014 and giving manufacturers \$1.75 billion in transition assistance. The legislation also calls for expanding an existing federal program that deals with leaking gasoline storage tanks and funneling more of that money into MTBE cleanup. Democrats say those funds are inadequate to deal with a cleanup task that could eventually affect thousands of communities.

In 2003, Bush administration officials at one point tried to get the MTBE measure out of the energy bill, but were rebuffed by DeLay. House Republicans say they're as determined as ever to keep it in this year's legislation.

MTBE, or methyl tertiary-butyl ether, is an oxygenate widely used in gasoline to reduce air pollution. But it also has been found to contaminate drinking water supplies, sometimes leaving communities with expensive cleanup bills. Traces of MTBE have been found in water in almost every state, with levels high enough for potential cleanup problems in about half the states.

A number of lawsuits have been filed - and more are expected - that target the MTBE manufacturer and not just the fuel companies and gas stations that cause the MTBE to leak into groundwater. These lawsuits claim the MTBE makers knew the additive could cause pollution problems before it was widely used, and should have withdrawn it.

But DeLay has argued forcefully that the government essentially mandated MTBE use when it passed a 1990 law requiring gasoline to contain 2 percent oxygen, and that Congress should now help manufacturers transition away from making MTBE and protect them against product liability lawsuits.

"It was something that the government had pushed on these companies," Dan Allen, a DeLay spokesman, said Tuesday, adding that the draft legislation also provides additional money to address MTBE cleanup.

Democrats argue the Congress never required MTBE, only an oxygenate.

"These provisions represent a direct assault on the nation's safe drinking water supply," said Rep. John Dingell, D-Mich., "MTBE producers have known for years that MTBE was a problem. They should not be asking the taxpayers to now pay for cleanup or for (a) corporate handout."

Many Democrats say the measure amounts to a massive bailout for an industry close to DeLay.

One of the biggest MTBE makers, Lyondell Chemical, is based in Houston - also DeLay's district - and gave DeLay \$16,000 in campaign contributions in the 2003-04 election cycle, while another MTBE maker, Valero Energy, also based in Texas, gave DeLay \$10,000 in that cycle, according to the Center for Responsive Politics.

Opponents of the proposed MTBE liability waiver include groups representing mayors, cities, counties and various water districts and agencies as well as environmentalists. They argue the GOP bill would leave communities and water agencies stuck with cleanup costs.

Some estimates have put those eventual costs as high as \$29 billion, a figure the industry disputes.

"There's no reality to the \$29 billion number," said Bob Slaughter, president of the National Petrochemical and Refiners Association, whose members include MTBE makers. "It's been inflated wildly to leave the impression that this MTBE problem is a lot more pervasive than it is."

On the Net:

DeLay's office:

Center for Responsive Politics:

National Petrochemical and Refiners Association:

www.majorityleader.gov <<http://www.majorityleader.gov>>

www.crp.org <<http://www.crp.org>>

www.npradc.org <<http://www.npradc.org>>

House Panel Working on Energy Bill

By H. JOSEF HEBERT, Associated Press Writer

S.F. Chronicle, Tuesday, April 12, 2005

WASHINGTON (AP) -- House Republicans made clear their support late Tuesday for reinforcing the federal government's final authority over the siting of liquefied natural gas import terminals, even if states or local communities object.

An attempt by Rep. Ed Markey, D-Mass., to remove the provision from proposed energy legislation failed 35-18 in the House Energy and Commerce Committee. Supporters of the bill said the authority of federal regulators over LNG terminals needed to be clarified as the demand for LNG imports increases in coming years.

The panel was expected to finish work on its portion of a massive energy bill on Wednesday but not before a Democratic challenge to another controversial provision that would provide makers of the gasoline additive MTBE protection against product liability lawsuits.

Embattled House Majority Leader Tom DeLay of Texas has been the primary force behind the MTBE provision. It cleared the House two years ago but prompted such an uproar in the Senate that it scuttled an energy bill as it neared approval.

The draft GOP energy bill would protect MTBE makers, including several major oil and refinery companies in Texas, from lawsuits that contend the manufacturers knew the additive would contaminate drinking water but pushed to have it widely used anyway.

The bill's supporters said they are confident they will defeat attempts to remove the MTBE provision as they were Tuesday evening in the case of federal jurisdiction over LNG import terminals.

Rep. Joe Barton, R-Texas, the committee chairman, said it was "imperative" that the authority of the Federal Energy Regulatory Commission over approval of LNG import sites be clarified.

FERC regulates natural gas transmission and maintains it has the final say over LNG terminals as well. But California in a lawsuit has challenged the agency's authority in connection with a proposed LNG import facility in Long Beach.

Markey, sponsor of the amendment that would have stripped the LNG provision from the bill, said the legislation will essentially block California's court challenge and reduce the ability of other states to be involved in LNG siting decisions.

"It's going to pre-empt the states for the purpose of taking care of the natural gas industry," said Markey, warning that the provision will increase the likelihood that an LNG facility will be put in a populated areas over the objections of local residents.

The full House was expected to take up the energy bill - now being crafted by three committees - possibly as early as next week. The Senate is expected to begin considered of an energy package later this year.

Besides the MTBE product liability shield, the draft GOP bill calls for phasing out MTBE use by the end of 2014 and giving manufacturers \$1.75 billion in transition assistance. The legislation also calls for expanding an existing federal program that deals with leaking gasoline storage tanks and funneling more of that money into MTBE cleanup. Democrats say those funds are inadequate to deal with a cleanup task that could eventually affect thousands of communities.

In 2003, Bush administration officials at one point tried to get the MTBE measure out of the energy bill but were rebuffed by DeLay. House Republicans say they're as determined as ever to keep it in this year's legislation.

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Asbestos deal seems close

By Greg Gordon -- Bee Washington Bureau

[Sacramento Bee, Wednesday, April 13, 2005](#)

WASHINGTON - Republicans and key Democrats on the Senate Judiciary Committee were on the brink of a deal Tuesday on a bipartisan bill to end the nation's asbestos injury suits and create a \$140 billion, industry-financed trust fund, aides in both parties said.

The fund would compensate up to 2 million disease victims over the next 30 years, voiding all court injury suits stemming from the nation's worst workplace disaster except those in which lawyers have begun presenting evidence.

"I think we're close to a deal," said Sen. Arlen Specter, R-Pa., the committee chairman. "There was a tremendous amount of negotiations to come to the specifics on the bill, and the bill now is in written form and has been circulated.

"I still do not have the final results until senators take a look at it, but I'm more than hopeful. I'm optimistic we'll have a bill which will get out of committee and beyond."

An accord would culminate more than three years of often intense negotiations among businesses, insurers, trial lawyers, labor unions and members of Congress aimed at resolving complaints about inequities in the way asbestos claims are handled in the court system.

Even before assuming the chairmanship, Specter brought in a retired federal appeals court judge to mediate 39 of those sessions.

The bill, which could be introduced as early as next Tuesday, still could face a perilous path on the Senate floor or in the House because of opposition from some businesses and insurers and from trial lawyers who have represented the victims for decades. The tentative deal would cap fees for plaintiffs' lawyers at 5 percent of a victim's compensation; fees in court cases have ranged up to 50 percent.

The breakthrough was made possible by a raft of late compromises, including a controversial decision in which some Democrats agreed to bar compensation for smokers with lung cancer who were exposed to asbestos but have no signs of it on their chest X-rays. Insurers argued the exclusion was necessary to prevent the trust fund from becoming a "smokers' fund," while some public health experts criticized the decision as unjust, citing research showing that smokers who breathe asbestos fibers face a far higher lung cancer risk.

In return for the concession on smokers, compensation was increased for some others among 10 disease categories. Compensation would range from \$25,000 for modest lung impairments to \$1.1 million for deadly mesothelioma, although administrators could give more money to mesothelioma victims age 50 and below with children.

The sides also agreed that businesses and insurers would put up \$42.6 billion in the first five years to reduce chances of the fund becoming insolvent - up from \$32.4 billion in a bill that narrowly passed the committee in 2003. That bill, whose lone supporter among committee Democrats was California Sen. Dianne Feinstein, died on the Senate floor in a Democratic filibuster.

If the fund ran out of money, all claims would revert to the state and federal court systems. Victims, however, could file state court suits only in states where they were exposed or where they live - a provision aimed at ending so-called forum shopping that has resulted in huge numbers of suits in counties in Mississippi, Illinois and elsewhere where juries have repeatedly delivered huge awards to plaintiffs.

"I think it is fairly safe to say there's never been a bill which has been subjected to this kind of analysis and this kind of scrutiny," said Specter, who was asked about the bill during a news conference on intelligence reform.

Specter has spent weeks shuttling between fellow Republicans on the committee and Sen. Patrick Leahy of Vermont, the panel's ranking Democrat, who in turn huddled with his minority colleagues. On Tuesday, Specter joined Leahy in briefing committee Democrats and Senate Minority Leader Harry Reid, D-Nev.

Leahy was expected to declare his support for the bill later this week.

Feinstein is still reviewing the bill but is "perhaps more optimistic than she's been before," said her spokesman, Howard Gantman.

Passing an asbestos settlement package has been a top priority for President Bush, who is seeking a sweeping overhaul of the nation's tort liability system. Businesses and insurers charge that plaintiffs' attorneys have swamped the courts with suits on behalf of workers who are not actually sick, driving more than 70 companies into bankruptcy.

But victims, mainly represented by the AFL-CIO, also have complained about the current system, in part because the bankruptcies have left many of them to collect pennies on the dollar.

Few of the thousands of companies that have faced asbestos injury suits and would bankroll the fund have been identified. Their names, and their likely contributions, would be published in the Federal Register within 60 days of the bill's enactment.

Dumping can be good citizenship

[Visalia Times-Delta, Editorial, Saturday, April 13, 2005](#)

Finding places for our junk might be the most difficult environmental challenge of our time. Whether as a household or as a community, we are all pressed to find places to get rid of our trash safely and efficiently.

City of Visalia residents get relief — as well as a free pass — this weekend with another in a series of Dump-On-Us days sponsored by the city's Solid Waste and Public Works departments. The city is accepting many kinds of difficult-to-dispose items, such as tires, appliances, trees, scrap metal, old building materials, cellphones and other stuff from 8 a.m. to noon Saturday at the city's Corporation Yard in Visalia. It's perfect for spring cleaning. And it's free.

Go early and be prepared to wait. The last Dump-On-Us day in February attracted 700 vehicles. City staff say they are preparing for up to 1,000 vehicles this time and have installed procedures so waiting times are minimized.

Dump days are popular because they're a good deal. They spare city residents a trip to the county landfill. They provide a safe, legal way to dispose of things that often aren't easy to get rid of, all without paying the dump fees.

Dump-On-Us days represent a significant public service in an area where people are too willing to use the nearest irrigation ditch or vacant lot as their personal dump. That is a crime in Tulare County (and elsewhere in our Valley) that won't be solved by a year's worth of Dump-On-Us days, but at least the city is providing an alternative.

Getting rid of trash isn't as simple as it used to be. A trip to the county landfill will clearly illustrate that: Different materials — metal, mattresses, wood, rubber — all have to be separately disposed of. That doesn't even count hazardous waste or such things as computer monitors, many kinds of auto parts, asbestos and other building materials.

While cleaning out the garage this weekend, take the extra step and include the old televisions and computer screens. Tulare County Recycling Management on Lovers Lane will take those. And bring household hazardous waste to the city's Corporation Yard, too. It just needs to be taken to a different place. If in doubt, ask at the Corporation Yard.

Our communities can be as aggressive about conservation of resources and [cleaning our air](#) and water as possible. Getting rid of our waste in a responsible way is a big part of the total picture. Saturday the city of Visalia makes it easy. Taking advantage of the opportunity is an exercise in good citizenship.

[Modesto Bee, Letter to the Editor, Wednesday, April 13, 2005:](#)

Air left dirty after libel suit

In response to "Consumer Reports clearing the air after libel lawsuit" (Work & Money, April 6), when I first read this article I was a little confused. The headline says Consumer Reports is "clearing the air" when in reality, the air is left dirtied. Sharper Image lawyer E. Robert Wallach claimed "millions of Americans who are satisfied with the performance of the Ionic Breeze products."

But Consumer Reports reported the Ionic Breeze was among the products that "failed ... the standard industry test for ozone generation." I would like to see more tests run on this product.

MIKE HOWELLS
Livingston