



Testimony on House Bill 2192
presented to
House Energy and Environment Committee
by
Leo G. Henning, Director
Bureau of Environmental Remediation

February 16, 2015

The Kansas Department of Health and Environment (KDHE) appreciates this opportunity to provide testimony in support of House Bill 2192 related to establishment of a dedicated fee fund for the Bureau of Environmental Remediation (BER). The BER is responsible for the protection of human health and environment from releases of hazardous substances, petroleum and other pollutants. BER administers most of the federal and state environmental cleanup programs.

Providing funding for BER to manage contaminated orphan sites is a top priority of KDHE. An orphan site is a contaminated site that does not have a responsible party to clean up the site. KDHE has always strived to have the entity that created the environmental contamination clean it up. Unfortunately, many of the entities that created the contamination are no longer viable. BER has orphan sites in the Orphan Site Program, Drycleaning Program, Site Assessment Program and the EPA Superfund Program.

Historically, BER has tried to meet its financial responsibility to fund the orphan sites remedial activities through State General Funds, State Water Plan appropriations and from the Drycleaning Release Trust Fund for drycleaning sites. BER has experienced reductions to all these funds and revenues continue their downward trend. Figure 1 below is provided to show these recent revenue changes and to illustrate the flat or downward trend. Looking to the future, BER does not see this trend of reduced resources changing.

As revenues have reduced, the demand for funding has increased. Here are a few examples of sites that require additional state funding:

- The Cherokee County Superfund Site requires a 10% state match for the remedial actions and the state is required to pay for the long-term operation and maintenance of the remedy. Currently, KDHE owes the EPA \$1,300,000 for the 10% match requirements and is estimating the long-term operation and maintenance costs to be approximately \$50,000 - \$100,000 per year. BER anticipates before all the remedial actions are completed in Cherokee County, the state will owe EPA an additional \$7,800,000 and KDHE's annual operation and maintenance cost will be approximately \$150,000 per year.

- The Ace Chrome Plating site in Colby is an EPA Superfund site that has completed the remedial action and the state is now required to pay for the operation and maintenance of the groundwater treatment facility. BER has entered into a contract with the city of Colby to operate the facility to reduce state costs but BER is estimating a \$400,000 per year cost to operate the facility.
- The city of Iola will be undergoing a residential yard removal as part of a Superfund action for the elevated lead concentrations in soil caused by old lead and zinc smelters that operated around the city from 1896 to 1925. BER is estimating the state share of that action to be \$1,000,000.
- The Drycleaning Program responded to a recently discovered groundwater contaminated site in Wichita. The highly contaminated groundwater was located in a portion of west Wichita that did not have city drinking water service so the residents were drinking the highly contaminated groundwater. The Drycleaning Program provided funding to the city of Wichita to install new drinking water mains in the contaminated areas and the program connected the affected residents to the drinking water lines. The drinking water action and some initial groundwater assessments have cost the Drycleaning Program \$2,500,000. The Drycleaning Program has shut down most of the other remedial efforts in the state since the fund is nearly depleted.

To remedy this situation, BER is proposing to establish a funding mechanism and a new fee fund to help finance cleanup activities at orphan sites. BER is requesting to establish the Environmental Stewardship Fund (ESF) through HB 2192 and the proposed funding mechanism for the ESF will be the environmental assurance fee as established in 65-34,117. The environmental assurance fee is a \$0.01 per gallon fee that is already being assessed on petroleum products, other than aviation fuel, and this fee is paid by the manufacturer or the importer of the product. The \$0.01 per gallon fee cycles on and off based on the reserves in the underground, aboveground, and UST redevelopment fund. Usually, the fee is collected eight or nine months a year. BER is proposing to keep the \$0.01 per gallon fee on until the Environmental Stewardship Fund is also fully funded, then the fee will cycle off as is the current procedure. BER is estimating an additional \$5,000,000 per year could be generated if the fee is on the entire year. The additional revenues would be deposited in the new Environmental Stewardship Fund to address the revenue shortfalls for orphaned sites.

BER is requesting the new ESF be established and operated like the aboveground, underground and UST redevelopment funds. These funds have an operating range that allows revenues to be added to them as they are depleted and stopped when they reach their maximum. BER is proposing the new ESF have an operating minimum of \$2,000,000 and a maximum of \$5,000,000. As the statute is currently written, priority is given to the three existing aboveground, underground and UST redevelopment funds. These 3 funds will receive revenue first, but if all 3 funds are fully funded, any additional revenue will be deposited in the newly formed ESF. If all 4 funds are fully funded, the fee will be turned off.

KDHE sees this legislation as solving a difficult fiscal problem. BER has needed this additional funding resource for several years but has not presented this solution because we had hoped the state budget constraints would improve. KDHE sees this solution as providing a long-term solution without impacting state general funds. KDHE is not requesting additional staff to implement the work associated with this new funding source, existing staff will absorb the work.

Also included in this bill is an incentive program for owners of single-wall underground petroleum tanks. The incentive program provides \$50,000 per facility from the UST redevelopment fund to replace old single-wall tanks with a new secondary containment tank system. We have proposed to make this program retroactive to August 8, 2005, which is when the federal requirement was passed, to June 30, 2020. This allows owners who may have recently replaced their single-wall tanks the same incentive as other owners will have for the next five years to replace their existing single-wall tanks with the new secondary containment tank system. The incentive program does not cover new facilities, only facilities that replace existing single-wall tanks with the new secondary containment tank system. BER has limited the amount of reimbursement to \$3,000,000 per fiscal year.

As part of this incentive program, BER is proposing to waive the first costs of corrective action if petroleum releases are discovered during the tank replacement. The new tank system is more environmentally protective and should prevent future petroleum releases to the environment. For this reason, BER supports this incentive to tank owners to replace the old single-wall tanks with the new secondary containment tank system.

Thank you for allowing me to explain the benefits of this bill and KDHE asks your approval of HB 2192. I would be happy to answer any questions.

Figure 1. Funding History

