

Approved \_\_\_\_\_  
Date 2-11-86

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Senator Werts at  
Chairperson

8:00 a.m./~~p.m.~~ on February 4, 1986 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Ramon Powers - Research  
Don Hayward - Revisor  
Nancy Jones - Secretary

Conferees appearing before the committee:

Barbara Sabol, Secretary, Kansas Department of Health & Environment  
Chip Wheelen, Waste Management, Inc.  
Rob Hodges, Kansas Chamber of Commerce & Industry

Motion was made by Senator Gordon that minutes of the meetings on January 28 and 30, 1986 be approved, second by Senator Kerr. Motion carried.

SB 483 - Establishing the contamination cleanup fund.

Testimony was given by Secretary Sabol as a proponent of SB 483. One of the primary responsibilities of KDHE is protection of the state's natural resources. Environmental control programs administered by KDHE relate to the protection of the environment and natural resources. The department regularly inspects, monitors and regulates over 100,000 potential sources of pollution and over the past two years, federal initiatives for groundwater protection have increased greatly. Secretary Sabol discussed the State Superfund referring to the major accomplishments and projects encumbered for FY 85 and 86, the Volatile Organic Chemical Program and the Pollution Discharge Cleanup Fund. Secretary Sabol urged the committee to consider, in a positive way, combining the Hazardous Waste Cleanup Fund and Pollution Discharge Cleanup Fund as a means of a more coordinated response to cleanup when indicated. (Attachment A)

Secretary Sabol further stated during discussion, the definition language in lines 54-57 is broad and intentionally so to provide maximum flexibility in protecting the environment and to move expeditiously in implementation of cleanup.

Chip Wheelen testified that Waste Management, Inc. has concerns regarding the need for Section 5 of SB 483. Mr. Wheelen submitted that KSA 65-3440 should be amended to provide that all appeals to the District Court be de novo. This would guarantee appellants the right to a trial conducted by an unbiased judge with the knowledge of evidentiary standards. The recommendation was made that SB 483 be amended to exclude Section 5, if the bill is to be recommended favorably by the committee. This would require that Section 6 be amended also. (Attachment B)

Rob Hodges testified that KCC&I feels Section 5 of SB 483 should not be changed. Concerns were expressed about the definition of "contaminant" in the bill. Mr. Hodges stated the KCC&I is opposed to the arbitrary blanket coverage as provided in lines 54-57 of the bill. Further concern was expressed regarding the power of the Secretary of KDHE to come on site without benefit of a court order and the possibility of harassment of a business by other entities through the Department, if this power is given to the Secretary.

Meeting was adjourned. The next meeting will be on February 5, 1986.

2-4-86

# Guest List

Chip Wheelen	Topeka	Waste Management, Inc.
CHARLES BELT	WICHITA	CHAMBER OF COMMERCE
Jim R. Jinnell	Hutchinson	Kansas Fert. & Chem. Assn.
Chris Wilson	Hutchinson	KS Grain & Fed Assn.
Ken Ressler	Topeka	KS L.P. Gas Assn.
Connie Trebbe	Topeka	KNRC.
Leo Peterson	Topeka	KS Petroleum Council
Rob Hodges	Topeka	KCCI
Dan Schmuck	Topeka	KIUGA-
Joe Hodges	Tulsa	Cities Service Oil Gas
Dennis Murphey	Topeka	KDHE

Kansas Department of Health and Environment

State Contamination Cleanup Fund  
by  
Barbara J. Sabol  
Secretary of Health and Environment

Presented to the  
Energy and Natural Resources Committee

The Kansas Department of Health and Environment considers the protection of the state's natural resources as one of its primary responsibilities. These natural resources include our water, land and air. Chemical substances enter the environment - and man himself - through complex and interrelated paths. In many instances these chemical substances enter the environment through or over our land. The most effective way to control the flow of harmful substances throughout the environment is naturally to minimize or prevent their production and release.

Essentially all of the environmental control programs administered by KDHE in the water, wastewater, solid waste, hazardous waste, and environmental geology areas relate to the environment or natural resource protection in some manner. Federally-mandated environmental programs for which the department is responsible also relate in many ways to protection of groundwater and surface water quality and the integrity of the environment. Considerable staff effort is regularly directed in the environmental and laboratory programs toward investigation and resolution of water quality problems and potential problems. The department regularly inspects, monitors, and regulates over 100,000 potential sources of pollution, some of which can have an immediate contamination effect and others which can have a residual effect not detected for several years.

Over the last two years, federal initiatives in the area of groundwater protection have increased greatly. Significant new groundwater protection features have already been added to the federal solid and hazardous waste laws and Congress is presently considering groundwater-related amendments to the Clean Water Act and the Safe Drinking Water Act. Major additions to the national Primary Drinking Water Standards and associated new monitoring requirements have been published for comment. Congress has spent considerable amount of time debating the merits of the federal Superfund legislation (CERCLA) to cleanup the hazardous waste sites across the nation. These federal changes will have significant impacts on states, municipalities, and various potential pollution sources.

I would like to briefly discuss the state superfund program, volatile organic screening being done by the department, the pollution discharge cleanup fund, and finally the logic which led Governor Carlin to recommend establishment of a state contamination cleanup fund.

2/4/86  
S. ENR

(A)

## State Superfund Program

Emphasis in the first eighteen months of the state Superfund program has been on the prevention of soil and water contamination by the removal of hazardous substances from potential hazardous waste sites. The current master potential problem sites list contains 316 sites. Thirty-three remedial actions are either completed or under way by responsible parties, and 9 projects were initiated with funds provided by the Kansas Legislature through the Hazardous Waste Cleanup Fund (state Superfund). In addition, there are twenty sites which are being considered for removal or delisting from the master list. The following table provides a brief summary of the major accomplishments in the last eighteen months.

TABLE 1

### Major Accomplishments State Superfund Program

July 1984 - December 1985

1. Responsible Party Remedial Action Completed/Initiated	- 33
2. State Superfund Cleanups Completed/Initiated	- 9
3. Sites Proposed for Purposes of Delisting	- 20
4. Various Site Inspections From 1983 - 1985*	- 130 (approximately)
5. Sites Currently Being Monitored	- 52
6. Secured Grant From EPA to Conduct Pre-NPL Investigation at 14 Sites	- 14
7. Proposed 3 Sites for Potential NPL Candidates	- 3
8. Enforcement Actions (Administrative Orders) Initiated	- 26

\*An individual site may have been involved in more than one site investigation.

Table 2 lists the nine projects undertaken utilizing the state hazardous waste cleanup fund during the last eighteen months. In FY 1985 the legislature made available \$200,000. All except \$679 was expended or encumbered on eight projects. Hazardous substance has been removed from a number of the sites listed under FY 1985. Payment has not been made since the material is to be incinerated and a backlog exists at these incinerator sites. With half of the year completed on FY 1986, \$283,014 of the \$350,000 provided by the legislature for the hazardous waste cleanup fund has been encumbered for specific contracted cleanup activities. This leaves an unencumbered balance of \$66,986 for work that stills needs to be accomplished. A number of projects are being considered for the remaining unencumbered funds.

TABLE 2

Hazardous Waste Cleanup Fund

<u>Project</u>	<u>Fiscal Year 1985</u>		<u>Fiscal Year 1986</u>	
	<u>Payments</u>	<u>Encumbered</u>	<u>Payments</u>	<u>Encumbered</u>
Mack's Drum Site	0	\$ 14,548		
City of Assaria	0	1,410		
Diel Farm	0	7,150		
Saline Co. Shop	108	0		
Hi Plains Chem., Menlo	0	139,686	0	\$ 36,564
Nelson Machine Shop	0	9,870		
Andover Drum Site	0	8,400		
Mark IV Fiberglass, Stanley			0	102,000
Fairfax Levee, Kansas City			0	144,450
<u>Contractual Services</u>				
NIES, Furley	\$14,791			
<u>Supplies</u>				
Well Casing and Well Screen	\$ 3,358			
TOTALS	\$18,257	\$181,064	0	\$283,014

As previously pointed out the current potential problem site list contains 316 sites. To simplify the process it contains four separate steps.

- (1) A "desk top" preliminary assessment based on known information for priorities on subsequent action.
- (2) A site investigation to define the extent, degree and source(s) of contamination.
- (3) Design of a plan to confine or dispose of the site contamination.
- (4) Implementing the plan.

During the last year we completed Step 1 and part of Step 2 on 44 sites with the cooperation of a number of agencies. The total cost was slightly under

\$400,000 of which \$126,570 was made available through the Kansas Department of Economic Development. About \$100,000 was from department resources and the remainder from U.S. EPA.

#### Volatile Organic Chemical Screening Program

The department initiated a volatile organic chemical (VOC) screening of public water supply wells last March. In the department's budget for FY 1985, the Kansas Legislature granted funding for two positions to work on a VOC screening program. Since the inception of the sampling program, 530 wells from 147 public water supplies have been tested. Levels of VOC's greater than the department's notice level, were detected in 23 wells in 15 of these supplies. Levels of VOC's greater than the department action level were detected in 16 wells in 13 communities. The VOC's discovered most frequently are tetrachloromethane (carbon tetrachloride), benzene, toluene, 1,2-dichloroethane, and xylene compounds. When the action level for these chemicals was exceeded, the department recommended appropriate action to protect public health.

#### Pollution Discharge Cleanup Fund

The Kansas Legislature in 1977 and 1979 amended the statutes to broaden KDHE authority to set penalties for violations, to provide injunctive relief, to establish liability for damage to the environment and to create a cleanup fund. Examining Chapter 65 and particularly Articles 165 through 171w, one concludes these newest additions cover "all streams and springs, and all bodies of surface and subsurface water" of the state. Thus by legislative definition, waters of the state include groundwater.

The Kansas Legislature approved three new statutes relating to damages to the natural resources of the state (K.S.A. 65-171u, 171v and 171w).

K.S.A. 65-171u requires persons who cause the injury or death of fish, animals, soils, vegetation or other resources or who cause a reduction in water quality if such person has violated provisions of the water quality laws or any order of the Secretary of Health and Environment, to pay damages to the state in an amount equal to the amount necessary to restock the damaged waters, replenish or replace damaged state resources and otherwise restore the water source to its condition prior to injury. If the person responsible for causing the damage fails to submit payment after notification by the Secretary, then the damage can be recovered in an action brought by the Attorney General on behalf of the people of the state (K.S.A. 65-171v). Any money recovered would be transferred to the agency having jurisdiction over the damaged resources and the agency would be required to utilize the money recovered on activities and projects to remedy the damaged resources.

Finally K.S.A. 65-171w authorizes the Secretary of Health and Environment to enter into an agreement to conduct necessary cleanup operations when damages occur and the responsible party refuses to undertake cleanup operations or the responsible party is unknown. The person responsible for causing damage to the environment would be responsible for the costs of the cleanup after notification by the Secretary and the repayment would be recoverable in an action brought by the Attorney General. Any money so recovered would be deposited in the Pollutant Discharge Cleanup Fund.

## State Contamination Cleanup Fund

In keeping with my strong commitment to protecting our natural resources, I urge the committee to carefully consider the merits of combining the existing Hazardous Waste Cleanup Fund and the Pollution Discharge Cleanup Fund. The merits of this action would allow the department to move expeditiously in assessing the magnitude and extent of environmental contamination, potentially responsible parties, determine the appropriate mitigation cleanup efforts, and implementing the mitigation plan. By adopting a coordinated program, the state will acquire the flexibility needed to meet the increasing demands of the environmental cleanup. The magnitude of the emerging groundwater contamination from volatile organic chemicals which may not meet the test of being hazardous but, are extremely toxic to humans led us to request funding under the Pollution Discharge Cleanup Fund in the department's budget. In subsequent staff discussion they recommended a single fund for contaminated site cleanup. Governor Carlin endorsed the concept in his message to the legislature.

The bill has been drafted to minimize change in blending the pollution discharge cleanup fund (K.S.A. 65-171v and K.S.A. 65-171w) into the Hazardous Waste Cleanup Act (K.S.A. 65-3452 through K.S.A. 65-3456). The important features include:

- The act must stand alone since volatile organic chemicals are not necessarily hazardous waste.
- A change in title of the cleanup fund to be contamination cleanup fund.
- The right of entry to carry out the responsibilities under the act.
- A new section to define the persons rights of appeal.
- If State Contamination Cleanup Fund is not adopted, each of the cleanup funds must be maintained or enhanced to minimize damage to the environment and allow the appropriate departmental response.

February 4, 1986

TESTIMONY TO

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Senate Bill 483

Mr. Chairman and members of the Committee, I am Pete McGill. I appear today on behalf of Chemical Waste Management, Inc. of Oak Brook, Illinois. The purpose of our testimony is to question the need for Section 5 of Senate Bill 483.

As you will note, K.S.A. 65-3456 currently prescribes that "any person aggrieved by an order under this act shall have the right of appeal in accordance with the provisions of K.S.A. 65-3440 and amendments thereto." If you were to examine the language in K.S.A. 65-3440 you would discover that the provisions are almost identical to the proposed new language contained in Section 5 of SB 483. There is, however, one very significant difference.

The proposed new language governing appeals by aggrieved persons would prescribe that "The review of any final order or determination of the secretary shall be conducted by the court based on the record and without a jury". If enacted, this would mean that the Secretary could appoint hearing officers who may or may not be trained in the field of jurisprudence. A hearing officer could then prescribe the rules of evidence governing the appeal and thereby restrict the rights of the alleged violator to introduce facts and other evidence into the record of

2/4/86  
S. ENR  
(B)



Page 2

Testimony SB 483

the appeal. Then the Secretary, who may or may not be trained as an attorney, would make "conclusions of law" based upon "evidence produced at the hearing as shown by the record".

If the alleged violator did not agree with the "conclusions of law" by the Secretary, that person could appeal to the district court but could not introduce any evidence that was not accepted by the hearing officer who conducted the administrative appeal. In other words, the appeal to district court would not be de novo. This could be construed as a denial of the appellant's right to due process in our judicial system.

In fact, we respectfully submit that perhaps K.S.A. 65-3440 should be amended to provide that all appeals to district court shall be de novo. This would guarantee appellants the right to a trial conducted by an unbiased judge with a knowledge of evidentiary standards.

For this reason, we respectfully request that if this Committee decides to recommend SB 483 favorable for passage, that the bill be amended to strike Section 5 altogether. Of course this would require that Section 6 also be amended in order not to repeal K.S.A. 65-3456.

Thank you for your time and consideration. We sincerely appreciate the opportunity to appear and express our concerns.