

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at
Chairperson

3:30 ~~xxx~~ p.m. on March 15, 1988 in room 526-S of the Capitol.

All members were present except:

Representative Sifers (excused)

Committee staff present:

Raney Gilliland, Legislative Research
Laura Howard, Legislative Research
Arden Ensley, Revisor
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Stanley C. Grant, Secretary, Department of Health and Environment
Dennis Murphey, Director, Bureau of Waste Management,
Department of Health and Environment
Ron Hammerschmidt, Director, Bureau of Environmental Remediation,
Department of Health and Environment

The meeting began with briefings on Senate Bill 455--Environmental contamination response act; Re Proposal No. 12.

Dr. Stanley Grant, Secretary of the Department of Health and Environment (KDHE), made opening comments. He explained that Senate Bill 455 had been proposed as a Comprehensive Environmental Remediation Act which had grown from testimony provided by the KDHE staff to the interim committee on Energy and Natural Resources in 1987. He felt that passage of this bill was important as legislation for water plan disposals that are identified in the Governor's budget message. The small fiscal statement in the bill was covered in the Governor's message. Relative to concerns regarding the difference between the responsibilities of KDHE and the Kansas Corporation Commission (KCC), Dr. Grant said the Department was working on the final draft of a Memorandum of Understanding that they felt would resolve those problems.

Dr. Grant introduced Dennis Murphey who gave background information on the Environmental Remediation Program in Kansas. He distributed copies of his testimony, which was an abbreviated version of testimony given before the interim committee in the summer and fall of 1987. (Attachment 1) It was noted that the legislature had created the Hazardous Waste Cleanup Fund, also known as the Kansas Superfund, three years ago. Mr. Murphey commented that significant transitions had taken place since that time in both state and federal programs. He said that the Environmental Protection Agency (EPA) uses Cooperative Agreements to provide federal funds to states for their participation in the Superfund Program.

Ron Hammerschmidt provided further testimony for the Department of Health and Environment. He noted that the expected federal Superfund funding for the Environmental Remediation program in the state fiscal year 1989 would be approximately \$500,000. Dr. Hammerschmidt said that these funds could only be used for activities directly related to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA). The Federal Leaking Underground Storage Tank (LUST) program provides federal funds for the investigation of leaking underground petroleum tanks; this program will provide approximately \$360,000 to the state. However, there are severe limitations on the use of all of these funds. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
room 526-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 15, 1988

During discussion, Representative Patrick requested the Department of Health and Environment to provide orally and in writing to the committee a legal explanation of a number of sections of Senate Bill 455. (Attachment 3) Other members of the committee asked a number of questions relative to various sections of the bill.

Patricia Casey, Legal Counsel for KDHE, was in the audience. She was requested by the Chairman to provide the committee with a legal brief which would address the areas of concern expressed by committee members.

In response to questions relative to the registry of contaminated sites, Mr. Murphey said that the Department had requested that section of the bill to be deleted because of the significant fiscal impact involved. The fiscal note was \$187,000 to implement the registry. Mr. Murphey was requested to provide all committee members with copies of the informal site list currently kept by the Department. He agreed to provide them with the most recent list, as well as an updated one due to be completed early in the summer. Lengthy discussion followed.

The minutes of March 1, 2 and 3 were distributed.

The meeting was adjourned at 5:05 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held at 3:30 p.m. on March 16, 1988 in Room 526-S.

Date: March 15, 1988

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

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D Murphy	KDHE		296-1592
Mary Ann Bradford	League of Women Voters	Topeka	354-1646
Kathy Ann Duncan		~ Topeka	272-1341
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John Blythe	Ks Farm Bureau	Manhattan	539-6660
Nyla Romeiser	Close-up Kansas	Salina	827-6360
J.F.A. Menais	KLST	Topeka	232-8215
Rob Hodges	KCCI	Topeka	357-6321
Robert Lindner	Mil Cont O - 16 Jol	St. Louis	847-1734
Bill Fuller	Ks. Farm Bureau	Manhattan	537-2261
John Strickler	Governor's Office	Topeka	2584
Connie McInnes	KS Electric Coops	Topeka	272-8710
Don Schwanke	KIOGA	Topeka	232-7772

Background Information on the Environmental Remediation
Program in Kansas

Presented to the House Committee on Energy and Natural Resources

By: Dennis Murphey, Director
Bureau of Waste Management
Kansas Department of Health
and Environment

March 15, 1988

Background

It has been three years since the legislature created the Hazardous Waste Cleanup Fund, otherwise known as the Kansas Superfund. During that three year period both the state and federal programs for responding to environmental contamination problems have gone through significant transitions. I would like to take a few minutes today to review KDHE activities related to contaminated sites, to discuss the relationship of the state and federal Superfund programs, and to identify several issues appropriate for statutory resolution which have arisen during our implementation of the state superfund program.

Certainly the prevention of groundwater contamination and other forms of environmental contamination is the primary focus of our environmental regulation efforts. However, we recognize that numerous activities of society over the past few decades have created a legacy of environmental problems with which we are struggling today. Although in general we continue to be the fortunate beneficiaries of substantial quantities of good quality groundwater in Kansas, we have identified numerous local areas where the quality of groundwater has been degraded to such an extent that it is not usable for many beneficial uses such as human consumption and/or irrigation. As we have begun looking closer at the quality of our public water supply wells, private water wells, and groundwater near many facilities where activities have the potential to contaminate soil and groundwater, we have confirmed many of our suspicions and serious concerns. The operation of our sanitary landfills, the storage of petroleum products and chemicals in underground tanks, the poor design and operation of septic tank systems, the failure to take proper precautions in the production of oil and gas, the improper handling of hazardous wastes, the careless discarding of small quantities of cleaning solvents and degreasers, and the inappropriate management of agricultural chemicals and their residuals are but a sampling of the types of activities which have created substantial environmental contamination problems. In general such problems have occurred, not through malice or willful disregard for the law, but rather as a result of a lack of awareness of the consequences of certain activities. Over the past decade our understanding of the fragility of our groundwater resources and the level of care we must exercise as a society to protect them has grown substantially.

Unfortunately, we have found ourselves in a situation where we are identifying problems faster than we can resolve them, given current levels of federal, state, and private funding. That isn't to suggest that we should reduce our efforts to monitor public water supplies or the quality of groundwater near potential sources of contamination. It does mean that it is essential for us to critically review our efforts to ensure that we eliminate any obstacles which reduce our ability to respond as efficiently and timely as possible, that we maximize the results of every dollar spent to correct environmental problems, and that to the extent possible we allocate the cost of cleanup to the party(s) responsible for creating the contamination. These precepts have been a guiding philosophy of our state program. I hope to identify a number of areas where our experience has indicated that your actions can facilitate our efforts and provide us with a clearer indication of legislative intent. But first, let me discuss briefly the relationship of our state program with the federal Superfund.

The Federal Superfund Program

EPA uses Cooperative Agreements to provide federal funds to states for their participation in the Superfund Program. Support can be provided for preliminary investigation of sites to gather sufficient information to determine whether a site is eligible to be included on the National Priority List (NPL). It is clear that few Kansas sites will ever be eligible for cleanup using the federal Superfund. Of the last 14 sites investigated under a Cooperative Agreement only 3 of them scored high enough to even be considered for the NPL.

Once sites have been submitted as candidates for the NPL they can be designated as state-lead or EPA-lead. At state-lead sites, EPA can provide additional funding for the state to conduct a remedial investigation/feasibility study (RI/FS) to determine the full extent of the problem and to evaluate the alternative approaches to resolving it. If the site is an EPA-lead project, then a limited amount of funds can be provided to the state for its participation in the project through review of workplans, provision of comments to EPA, and assistance in public information activities.

After completion of the RI/FS, a record of decision is prepared by the EPA Regional Administrator (with input from the state) and a public hearing is scheduled to discuss the proposed course of remedial action. Then a detailed remedial design is prepared and implemented.

If no responsible party is willing and able to implement the remedial action, then 90% of the cost for its implementation will be federally funded, contingent upon a state match of 10% of the total cost. If the site was owned and operated by the state or a local unit of government, then the cost share becomes 50%. In either case the state must also commit to operation and maintenance activities at the site after the first year (or after 10 years in the case of groundwater clean-ups).

In the past three years the federal Superfund program has matured considerably, partially as a result of the 1986 Superfund Amendments and partially due to lessons learned through trial and error. Over that same time span our relationship with the Region VII EPA Superfund program has likewise evolved. They are providing more financial support for state activities at NPL sites and have been more responsive to our input and recommendations.

A new source of federal resources to address contamination problems is the Leaking Underground Storage Tank (LUST) Trust Fund. Funding is available for state programs to investigate leaking tanks and to support enforcement and remedial activities. Within the past few months KDHE has begun receiving such funds from EPA.

The State Program

In January of last year KDHE submitted to you the 1987 Report on Contamination Sites in Kansas. It included a substantial amount of information regarding the inventory of known contaminated sites, a preliminary ranking system to aid in establishing priorities for departmental action, and a brief description of the

status at each site. At that time the inventory contained 332 sites. However, since the inventory is a dynamic document to which sites are continually being added or deleted, a number of additional sites have been identified through various means--the activities of KDHE's Bureaus of Water Protection and Waste Management, complaints from private citizens, and contacts from banks and other financial institutions regarding bankrupt commercial/industrial facilities, just to mention a few.

In the recent past the term contaminated sites might have brought to mind only the NIES site near Furley. However, as a result of the cessation of use of numerous public supply wells, the notification to many private well users that their water supply is contaminated to an extent that it is not recommended for long-term consumption without additional treatment, KDHE meetings with citizens and local officials to discuss contamination problems, KDHE staff presentations to the Kansas Water Office's Basin Advisory Committee meetings, and local media focus upon environmental issues, the public's level of awareness regarding contamination sites has grown considerably. From Galena to Menlo, from Coffeyville to Fairview, from Kansas City to Wichita, Kansans are being personally confronted with the impacts of environmental contamination on a daily basis. By its very nature, the remediation program brings KDHE into contact with people who are directly affected by environmental problems. Through personal experience many Kansans are becoming more knowledgeable of the consequences of mishandling chemicals and products which allow us to enjoy our high standard of living.

Although I would like to see our efforts to prevent environmental contamination sites be so successful that a comprehensive waste management strategy could be developed for Kansas that would identify no need for a remedial program at KDHE, the unfortunate reality is that it will be many years before the remedial staff can work themselves out of a job. The cleanup and disposal of waste materials and contaminated soil can be completed within reasonably short time periods. But groundwater cleanup projects can take many years, even decades, to reduce the contaminant concentrations to levels that are acceptable for human consumption.

Our approach to contaminated sites has been simple and straight forward in theory: 1) conduct a preliminary investigation sufficient to identify any responsible parties and to determine whether any short-term risks require immediate resolution, 2) work with the responsible parties to eliminate all sources of contamination, to assure that the full extent of the problem is identified, and to ensure that a satisfactory remediation plan is developed and implemented, 3) failing to identify a responsible party or one who is willing and capable of correcting the problem, utilize federal resources such as the Superfund and the new LUST Trust Fund, and 4) failing to achieve a response by either of the above methods, utilize state resources to respond to those situations which are critical due to the present risk or where prompt action can provide a cost-effective resolution.

Unfortunately, in practice the situations are not nearly so simple and direct. While we have been fortunate in achieving a high level of cooperation from parties who have been identified as the source of a contamination problem, in many cases it is virtually impossible to identify responsible parties. In

other cases the responsible parties may be bankrupt, unwilling to accept responsibility for corrective action, or incapable of providing the remedy.

- For every situation such as Boeing Military Airplane Company in Wichita where a private party discovers trichlorethylene in groundwater, promptly reports it to KDHE, proceeds to rapidly investigate the extent of the problem, and works cooperatively with the department to implement a cleanup program, there is a situation such as the High Plains Chemical site in Menlo where the toxic remains of a bankrupt aerial applicator of pesticides lies exposed to the environment and unsuspecting passersby, with no viable party to clean up the mess and secure the area.
- In contrast to an area such as 29th and Mead in north Wichita where a collection of industries has begun a process which holds the prospect of a voluntary, cooperative effort to resolve a regional groundwater contamination problem, there is a Pester refinery site in El Dorado where corrective action awaits the resolution of disputes regarding the status of environmental cleanup costs vs. secured creditor claims in a bankruptcy court in Iowa. In addition disputes are ongoing among various previous owners of the site regarding who is truly "responsible" for the problems, with no site work in progress.
- While at the Kansas State Penitentiary former waste lagoons have been properly closed and groundwater monitoring has identified no further problems requiring action, at Cherokee County none of the mining companies which are responsible for creation of the region's groundwater and surface water quality problems have taken any corrective action.
- Although Sherwin Williams has made a major resource commitment in cleaning up problems at their Coffeyville facility resulting from decades of operating a lead smelter and pigment manufacturing operation, in Fairview it appears that the organic chemical contamination which has rendered some private wells unsafe for long-term consumption and has the potential to affect the Rural Water District wells if not resolved, may have been the result of parties unidentifiable or no longer financially viable.
- Even though Riley County officials have agreed to provide alternate water to residents whose private wells have been contaminated or are threatened by the leachate from the county's sanitary landfill and are moving forward to develop a remedial action plan and new system for managing the county's solid waste, there are communities such as Galva and Abilene where public water supply wells have been taken out of service due to contamination with no immediate resolution available to the communities.

The point of using these specific examples is merely to illustrate that the remedial program has been a mixture of successes and frustrations. It has been very satisfying to participate in the projects which lead to the resolution of contamination problems which are causing or threaten to cause harm to Kansas citizens and our irreplaceable natural resources. However, the problems which lead to protracted litigation, impasses between the department and responsible parties regarding the appropriate remedy, or a decision that no resolution of the problem is technically or economically possible, provide an equally intense sense of dissatisfaction. It is our sincere hope that through an open discussion of various issues related to the program you as the policy making body and KDHE as the executive agency responsible for implementation of public policy can enhance the operation of the remedial program and make it more responsive to the needs of Kansas.

I will identify critical issues, cite specific examples to illustrate the particular points and suggest statutory remedies which have been implemented in other states or which seem appropriate to our situation in Kansas.

I. Responsible Parties. A statutory definition of responsible parties would provide clarification to the department and the private sector regarding responsibility for remediation of contaminated sites. At present we are dependent upon virtually non-existent case law on this point in Kansas. Within the past year the department settled a cost recovery action involving the Mark IV Fiberglass site in Stanley. Rather than litigate for the full amount with a considerable degree of uncertainty regarding the court's perspective as to responsibility in the absence of clear legislative intent, we accepted \$50,000 of a total state expense of \$99,126 from a party who is the current site owner but whose actions did not directly result in the abandonment of the wastes on site. We hope to initiate action against previous site owners or operators for the remainder of the state's expense from the Hazardous Waste Cleanup Fund to remove and dispose of the hazardous wastes on site. This issue comes up time and time again with no clear answer as to who is a responsible party in Kansas.

A statement in our statutes that strict liability will apply in Kansas for environmental contamination would enhance our prospects for obtaining private party cleanups and would provide the state with a stronger basis for cost recovery actions where state funds are used for remedial action.

II. Triple Cost Recovery. In the federal Superfund program, a major incentive for voluntary cleanup by responsible parties is the potential for EPA to obtain from the responsible parties three times its costs in a federally-funded cleanup. Since we only have a reimbursement level cost recovery provision in our state law, there is little incentive for a recalcitrant responsible party to initiate a cleanup. He can defer any action to the state, take his chances on successfully defending himself against a cost-recovery action, and at the very worst, be liable only for the actual cost of cleanup (plus legal expenses). Although most responsible parties are willing to work with the state to clean up their sites, a triple cost recovery provision would be a valuable tool to utilize for responsible parties who, without good cause, refuse to implement a necessary cleanup. It would be applied only where without sufficient cause a responsible person failed to provide remedial action upon order by the Secretary.

III. Access. In most cases, businesses and private individuals have been willing to provide KDHE with access to their property for purposes of investigation or cleanup. However, there have been cases, such as High Plains Chemical, where the property owner resisted departmental attempts to gain access to the site to collect samples of soil and groundwater. In other cases, such as Vulcan Materials Company and Cessna Aircraft Company in Wichita, adjacent landowners delayed the investigations for considerable time periods by refusing to grant access for drilling monitor wells. Statutory language granting KDHE the clear right of access to private property for purposes of site investigation or cleanup would streamline our efforts and improve the efficiency of the program. Adequate protection of the rights of property owners can be assured by including due process provisions in the Department's right of access.

IV. Cleanup Standards. The issue of "how clean is clean?" continues to be a difficult one for state and federal programs. A number of different approaches have been used for soil and groundwater media to establish a non-zero concentration which triggers the requirement for a cleanup to be performed and establishes the cut-off point at which the cleanup is deemed complete. A few state with sizeable staffs involved in their remedial programs have utilized an individual risk assessment approach--that is, they evaluate the type of risk associated with the contaminant(s) at the site, the type of receptor that may be susceptible to harm by the contaminant(s), and the pathways of exposure. Then, on a case-by-case basis, they establish site specific cleanup levels. While in theory this is perhaps the most ideal approach--matching the cleanup level to each individual site based upon a prescribed acceptable level of risk--in practice it is technically difficult to do. It is rather subjective, it can result in considerable controversy over the risk assessment methodology used, and it is very resource intensive. Therefore, some states with smaller staffs responsible for overseeing many sites have simplified the process by adopting a multiplier approach for soil contaminants. That is, they identify a cleanup standard of 3 or 5 or some other multiplier times the normal background level for naturally occurring contaminants. For synthetic compounds not naturally existing in soils, they apply a multiplier based upon water quality criteria: drinking water standards, aquatic toxicity levels, etc. This approach does not directly correlate with the health or environmental risks associated with a particular contamination site, but it is a much simpler and objectively measurable approach for the regulatory agency, the responsible party(s) and the public. With respect to groundwater, the comparable approach is to establish numerical groundwater standards similar to surface water standards.

At present, our remediation program has utilized target cleanup concentrations for groundwater which have been reasonably well received by the private sector. While the numbers are quite low for many constituents, they provide an objective criteria which allows for selection of technology for cleanup and provides a basis through groundwater flow modelling for projecting the time frame required to complete a satisfactory remedial program. The two factors can them be combined to allow a cost projection to be made by the responsible party, so that they are not committing to an open-ended process with no finite conclusion.

With respect to soil cleanup criteria, we have thus far utilized a best-judgement mixture of approaches embodying elements of both the multiplier method and a simplistic, informal risk assessment approach. For example, in Coffeyville off-site soil sampling around the former Sherwin Williams facility has indicated substantially elevated levels of lead, cadmium, arsenic and barium in the soil of private residences, an elementary school, a hospital and a municipal park. After consulting with the Center for Disease Control (CDC) and Agency for Toxic Substances Disease Registry (ATSDR) in Atlanta--two agencies who consult with EPA and state agencies on health risks posed by environmental contamination problems--and being advised that there was no short-term health risk posed by the observed levels, KDHE and representatives of Sherwin Williams met with interested members of the community to discuss the results and explain the follow-up actions to be taken. A medical evaluation plan has been developed which involves measurement of blood lead levels to determine if any long-term health impacts have resulted from the elevated soil contamination levels. This data, in combination with analytical results of cadmium concentrations in locally grown garden produce, will be factored into the decision upon soil remediation methods and acceptable cleanup levels.

Therefore it is appropriate to enact statutory language authorizing the Secretary to adopt cleanup standards for the state. Such standards would be subject to a public participation process to ensure that all interested parties could provide their comments. In any case, it would be necessary to ensure that some flexibility was incorporated into the application of such standards so that the department and responsible parties are not locked into specific numerical values in cases where there is good cause to vary from them. It is important to understand that cleanup will not be technically or financially feasible at all sites. In some cases, containment or institutional controls may be the best or only viable approach. We will coordinate our efforts with the Division of Water Resources where it is appropriate to restrict water use in certain areas due to contamination.

An additional benefit to the state from the adoption of cleanup standards is the presumption that such standards will apply at federal Superfund sites in Kansas. Under the 1986 Superfund Amendments and Reauthorization Act (SARA), EPA must consult with the states to determine the "applicable, relevant and appropriate requirements" (ARARs) for cleanup at Superfund sites. If cleanup standards have been adopted as formal regulations by the state, EPA must either apply them at federal sites or justify why they should not be applied. In the event that a state does not have adopted standards, EPA may apply criteria of its own choosing and any more stringent criteria must be enforced by the state. Since EPA gives no recognition to the fact that under Kansas water law all groundwater belongs to the state and is held in trust for the citizens, they may allow significantly higher contaminant levels to remain in some groundwater if there is no present use of that water which would be adversely impacted. This is the case at the NIES site near Furley where KDHE will apply more stringent groundwater cleanup standards than those imposed by EPA.

V. Use of the Hazardous Waste Cleanup Fund. Over the past two years, the legislature has provided the department with flexibility to use the HWCF for hazardous waste cleanup and for the activities eligible for funding from the Pollutant Discharge Cleanup Fund. This has enabled us to utilize funds for

environmental contamination problems other than those strictly related to materials meeting the statutory definition of hazardous waste. If we are limited to hazardous waste sites, we cannot utilize the fund to respond to problems related to PCBs, saltwater, petroleum or many other chemical products which constitute a majority of our known contaminated sites. If the current Hazardous Waste Cleanup Fund and Pollutant Discharge Cleanup Fund are combined into a single Environmental Contamination Response Fund with authority to utilize it for a number of activities including design and implementation of remedial action and contractual service necessary to supplement our staff expertise, it will allow us to be responsive to a wider array of contamination problems which constitute a risk to our citizens and natural resources.

VI. Liability. In several of our requests for bids from contractors to perform state-funded remedial work, we have experienced difficulties because of concerns regarding the absence of statutory language limiting the liability of contractors to negligent acts or omissions. In order to increase the potential bidders for state-funded and private party work and to protect state employees from undue potential liability in their work, a statutory amendment limiting the liability of persons performing environmental remediation work to negligence would be desirable. This would also reduce the exorbitant costs of cleanup for the state and responsible persons.

VII. LUST Trust Fund. In order to remain eligible to receive federal funds for remediation of contamination problems resulting from underground tanks, the state must have statutory authority to do cost recovery from responsible parties. In addition, the recovered funds must be returned to EPA for subsequent award to the state for additional remedial activities related to underground tanks. Since these funds are an important resource to the state, we are recommending that the legislature adopt such provisions.

These are several significant issues which have arisen during our efforts to implement an effective remedial program, and we believe they are amenable to legislative action. Certainly they have generated substantial public discussion and have proven to be of considerable interest to a variety of parties including local units of government, industry, bankers/mortgage companies, environmental interest groups and citizens who have been directly impacted by environmental contamination problems.

The resolution of environmental contamination problems is an inherently complex and complicated business. It is clear that only four options exist for contaminated sites: 1) remedial action performed by responsible persons, 2) remedial action using federal funds such as Superfund or LUST Trust Fund (although a very small number of known sites in Kansas will ever be eligible for such funding), 3) remedial action by the state at the expense of all state taxpayers, or 4) no action to be taken. Over the last three years, we have made considerable progress and have attempted to pursue an optimum mixture of the options described. With your assistance further improvements in program operation and efficiency are possible.

REM

STATE OF KANSAS



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Mike Hayden, *Governor*

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Testimony Presented to

House Energy and Natural Resources Committee

By

The Kansas Department of Health and Environment

Senate Bill 455

I. Introduction

Senate Bill 455 is a comprehensive measure which defines the power and authority of the state to address environmental contamination. This bill includes provisions which clearly define the authority of the Secretary of Health and Environment to investigate suspected contaminated sites, develop or approve plans to remediate a site and to implement the actual cleanup. Also included in the bill are provisions for the recovery of costs associated with cleanup projects and a number of important statutory definitions. Senate Bill 455 also delineates procedures to be used by the department in performing tasks associated with the remediation program such as site investigation which are not addressed in current statutes.

The most recent List of Contaminated Sites in Kansas contains more than 300 listings. These sites range from small soil contamination areas to very large regional groundwater contamination sites. A common feature of all sites is the presence of some chemical entity that does not naturally occur at that site. The contaminant may be a synthetic compound such as carbon tetrachloride, a refined product such as gasoline, or other materials such as saltwater brine, leachate from a landfill or other by-products of our society. The presence of this material detracts from the use of the site by current and future generations. Decisions on the need to address these sites must be made in the near future. Senate Bill 455 gives the department the authorities needed to address these sites.

II. Key Provisions:

Senate Bill 455 contains a number of key provisions which include:

- Definition of Contaminant, Release and Responsible Party
- Authorities of the secretary
- Duties of responsible persons
- Access to property and information
- Development of agreements
- Creation of a cleanup fund and its use
- Liability of responsible persons
- Criminal penalties, and
- Administrative process.

In order to conserve the committee's time, I will not provide detail on each provision. I would like to state however that all of these provisions and definitions have a significant impact. During previous legislative hearings by both the Interim Committee and the Senate Energy and Natural Resources Committee, a number of concerns were raised. These included: the liability of pesticide and herbicide applicators, the effect of the bill on current statutes relating to the regulation of oil and gas recovery, the notification and due process related to property and information access, liability of responsible parties and administrative due process. During the deliberations of both groups these concerns were discussed and addressed. Miss Howard has provided an overview of these discussions this afternoon.

There is one provision of the bill that addresses the liability of the contractors hired by either the state or the responsible party. This provision (Lines 473 through 486) limits the liability of these contractors to negligence. This provision is important in that there is an increasing reluctance on the part of contractors to work on cleanup projects without a clear statement of contractor liability. This provision parallels that found in the Federal Superfund Statutes.

III. Federal Programs

All of the provisions in this comprehensive bill are important for site investigation and remediation programs of the agency. As discussed earlier by Mr. Murphey, the Federal Superfund program will address a few of the larger contaminated sites in the state. The expected federal Superfund funding for the Environmental Remediation program in state fiscal year 1989 is approximately \$500,000. These funds can be used only for activities directly related to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and the Superfund Amendments and Reauthorization Act of 1986 (CERCLA and SARA). These sites typically require the expenditure of large amounts of time and money for investigation, engineering, planning and remedial action. At the Galena subsite of the Cherokee County site, it is estimated that the cost will be millions of dollars. Few of the sites on the Contaminated Sites List will ever qualify for Federal Superfund remediation. Therefore we cannot depend upon the Federal Superfund Program to address the bulk or even a small number of the environmental contamination problems within the state.

Similarly the Federal Leaking Underground Storage Tank or LUST program provides federal funds for the investigation of leaking underground petroleum storage tanks. This program will provide approximately \$360,000 to the state. Again there are severe limitations on the use of these funds.

In both the Federal Superfund and LUST programs there is a strong emphasis on the recovery of funds from responsible parties. Both of these Federal programs are important avenues for addressing specialized contamination problems within the state. Neither program will provide a means for addressing the majority of contamination problems within the state.

IV. Environmental Remediation

The current List of Contaminated Sites in Kansas contains over 300 identified sites. There are four options in addressing each of these sites. First, we can attempt to use the Federal Superfund. Second, we can use the Federal LUST program to address a few of the leaking petroleum tank problems in the state. Third, the state using a combination of State funds and Responsible Party projects can address the remaining sites in an attempt to decrease contamination in the state. Fourth, the state can make the decision not to address contamination at one or all of the sites.

As discussed earlier, the state cannot depend upon either the Federal Superfund or LUST programs to address many of the contaminated sites in the Kansas. Both of these programs provide effective support for the remediation of sites that are within the limitations of the program. A more comprehensive program is required for those sites not eligible for the National Priority List, or LUST funding.

The third option open to us is an aggressive program to identify the responsible party or parties for contaminated sites. And to work with these parties to perform the necessary cleanups. This approach allows the state to achieve the maximum level of effectiveness at the least expenditure of state general revenue funds. However in order to perform the tasks associated with an aggressive program, the agency needs a strong, comprehensive measure like Senate Bill 455. The provisions of SB455 will enable the agency to address each site in a consistent manner with the least amount of confusion on the part of the Responsible Parties, the agency or the citizens of the state.

The adoption of SB455 will give the agency a comprehensive authority to address contaminated sites throughout the state. This action will send a strong message that the state is serious about the remediation of environmental contamination in Kansas. The combination of this strong commitment to remediation and the authorities contained in SB455 will enable the Remediation program to operate in a more efficient and timely manner. This program can operate without the adoption of SB455. However, there are often delays related to the need to determine the authorities of the secretary as related to each site and site access. In some cases remediation at a site is delayed by a lack of clear authorities.

The fourth option available is to make a conscious decision not to address the problem of these contaminated sites at all. This decision will require Kansas to back away from its traditional role as a leader in Public Health and the Environment. In addition, this approach will require the agency to limit environmental remediation activities to those projects on the Federal Superfund List, the LUST program, cleanups by responsible parties and a few of the larger projects where there are no questions concerning the authorities of the secretary.

Conclusion and Recommendation:

- Senate Bill 455 provides a unique opportunity for the legislature to enact comprehensive and progressive legislation concerning the remediation of contaminated ground and surface water, and soil in the state.
- The authorities contained in Senate Bill 455 are similar to provisions in the CERCLA and SARA Federal statutes and the statutes of other states.
- The proposed legislation will however sufficiently increase the ability of the state to respond to the challenges posed by the contaminated sites throughout the state.
- The passage of Senate Bill 455 is necessary for the improvement of the environment of this state, and the protection of the public health of its citizens.
- The effects of the passage of SB455 will be felt by current and future generations.

Presented by:
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March 15, 1988

By explain: I exp the legal implications -
duties, obligations & liabilities exposed.

I. What legal powers AND Authority does SB 455
give RDE that it currently does not have?

II. A) Explain the meaning AND what it is contemplated
by laws 45-46

B) laws 80-89 - Why should this type of
pollution be exempt if this is truly a comprehensive
act?

C) Explain with hypotheticals of Definition of
Responsible person - each of 7 subsections

D) explain laws 119-121 & why compel such
process

E) explain ~~the~~ laws 249-253

F) explain "Search & Seizure" aspects of laws
285-318 AND how it complies with current
law for obtaining search warrants for individuals
suspected of committing felonies & 9. dues term

G) Explain liability standards of laws 431-469

H) Explain: laws 535-536: Does this NOT
give RDE regulatory powers over ~~the~~ an industry?