

Approved April 4, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

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

3:30 a.m./p.m. on March 28, 1988 in room 526-S of the Capitol.

All members were present except:

Representative Holmes (excused)
Representative Charlton (excused)
Representative Sutter (excused)

Committee staff present:

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

Conferees appearing before the committee:

James Power, Director of Environment
Department of Health and Environment
Patricia Casey, J.D., Senior Counsel
Department of Health and Environment
Dennis Murphey, Bureau Manager, Bureau of Waste Management
Department of Health and Environment

The meeting began with a hearing on House Bill 3027--Water pollution; discharge of sewage into waters of the state.

James Power told the committee that he had a conversation with Morris Kay, Regional Administrator of the Environmental Protection Agency (EPA) following the initial hearing on this legislation. He listed the three issues involved in the bill:

- (1) Discharge of sewage into private ponds
- (2) Rights of citizens to intervene in lawsuits
- (3) Lack of funds

Mr. Power noted that the Department had agreed to delete the provisions dealing with farm ponds.

Pat Casey discussed section by section the revised Substitute for House Bill 3027, which dealt strictly with the intervention and the funds. (Attachment 1) She noted that these amendments would bring Kansas law into compliance with the federal Clean Water Act. Responding to a question of the Chairman, Ms. Casey said that all reference to farm ponds had been removed and that no changes had been made in subsection (d) on pages 5 and 6--these were exactly the same as in current law. She said this preserved enough of the law to insure that the \$600,000 in federal matching funds would not be lost.

Senate Bill 455--Environmental contamination response act; Re Proposal No. 12.

Chairman Spaniol called the committee's attention to copies of proposed amendments to the bill. (Attachment 2) He asked for amendments or recommended changes from the committee.

Representative Patrick made a motion to strike line 536 and change the comma to a period at the end of line 535. He felt that this change was needed because line 536 was supplemental to the existing law and could be misinterpreted by the courts in the future. He noted that the purpose of Senate Bill 455 in part was not to get the Corporation Commission back in the business of regulating oil and gas, and he viewed the language in line 536 as a potential means of getting back to that in the future. The motion was seconded by Representative Guldner, who favored omitting line 536 because it was

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,

room 526-§ Statehouse, at 3:30 ~~am~~/p.m. on March 28, 1988

the intention in House Bill 3078 to draw the line of distinction between the Kansas Corporation Commission (KCC) and the Department of Health and Environment (KDHE). Staff was asked if this change would definitely spell out that KDHE would operate on an abandoned lease and the KCC on an active lease. Staff replied that this would save whatever the existing law is at the time it is passed.

A vote was taken on the amendment and it passed.

Representative Patrick was concerned with a potential definitional problem relative to changing the word "waste" to "substance" in section 65-3455 on page 6 of the balloon. A motion was made by Representative Patrick, seconded by Representative Sallee to substitute "waste" for "substances".

Responding to a question, Pat Casey said the definition for "hazardous waste" is not in this balloon--it is found in KSA 65-3431. This is the RICRA definition which essentially narrows the types of sites that can be cleaned up using state superfund money. Responding to another question, Ms. Casey said that due to time constraints, a definition of "substance" through the legislative process could not be made during this session. Staff noted that if this amendment should pass without a definition for "substance", a court would decide what the legislature was attempting to define.

Representative Patrick said he did not view the amendment as narrowing because the definition of "waste" was very broad. He noted that there is no definition of "substance" or a real definition of "contaminant." He had no objection to tying down a definition of "substance" to the federal superfund definition if this amendment should fail. Dennis Murphey commented that under federal law, the term "hazardous substance" is much broader than "hazardous waste."

Representative Roe was concerned that the amendment could possibly inhibit federal funds in such problems as the Smith County landfill. Dennis Murphey commented that materials that are generated from households are excluded from federal and state law as being hazardous waste, so unless you could prove that some hazardous waste had gone into that landfill, the contamination resulting from it would not necessarily fall under this bill and also would not be subject to the federal superfund.

In closing, Representative Patrick said that part of the problem with Senate Bill 455 had been with the definition of "contaminant" and he felt we were in the same position relative to the term "hazardous substance", since that has not been defined under state law. Should his amendment be rejected, he felt work should be done to define the word "substance." In a show of hands, the motion failed by a count of 8 to 7.

Representative Patrick, seconded by Representative Guldner, moved that Senate Bill 455 be amended by adopting the definition of "hazardous substance" used in the federal superfund law.

James Power read the definition as it appeared in the CIRCLA amendment. The term "hazardous waste" was not used in the definition section, but the term "pollutant or contaminant" was defined. Mr. Power noted that that particular definition was also used by the Congress to direct the Centers of Disease Control and others who are setting the cleanup standards. He commented that the Senate had debated whether to include this, but opted for the other definition.

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Mr. Power read a definition of "hazardous substance":

- (a) Any substance designated pursuant to Section 311B2A of the federal Water Pollution Control Act.
- (b) Any element compound mixture, solution or substance designated pursuant to Section 102 of this Act.
- (c) Any hazardous waste having the characteristics identified under the list pursuant to Section 3001 of the Solid Waste Act.
- (d) Any toxic pollutants listed under Section 307A of the federal Water Pollution Control Act.
- (e) Any hazardous air pollutants listed under Section 112 of the Clean Air Act.
- (f) Any immediate hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to Section 12 of the Toxic Substance Control Act.

Mr. Power felt that this definition was relatively broad and would be acceptable to staff.

Responding to a question, Dennis Murphey said that the definition of "contaminant" in the original Senate Bill 455 was broader than that in the federal superfund because it contains no exclusions. The petroleum exclusions would not apply under the definition included in Senate Bill 455 at the present time.

Representative Grotewiel commented that by adopting the EPA definition, this would no longer apply to pollution resulting from oil and gas activities in terms of using state funds for cleanup and he opposed the motion.

The Chairman expressed agreement with Representative Grotewiel, noting that much effort had been made to come up with a compromise bill and defining each word in the bill became very difficult. He hoped the bill could be supported in its present form.

In closing, Representative Patrick noted that the KCC has a cleanup fund which comes from fees paid by the oil and gas industry to clean up and plug abandoned gas wells, leases, etc. This fund contains a substantial amount of money. He expressed concern relative to legislation being passed with the key terms being undefined--this would only encourage litigation. By show of hands, the motion passed with a count of 8 to 6.

Representative Freeman made a motion to adopt the balloon amendments and incorporate the amendments that had just been passed. That motion was withdrawn and in its place, Representative Freeman made a motion to adopt Option 2, found on page 4 of the balloon. This was the language in the Senate version. Representative Sallee seconded the motion.

A vote was taken and the motion passed on a voice vote.

Representative Freeman, seconded by Representative Acheson, moved to incorporate Representative Patrick's amendments, Option 2 on page 4, and the remainder of the balloon. The motion passed on a voice vote.

Representative Freeman, seconded by Representative Sifers, moved to pass the Substitute for Senate Bill 455. The motion passed on a voice vote.

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room 526-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 28, 19 88

House Bill 3027--Water pollution; discharge of sewage into waters of the state.

Chairman Spaniol reviewed the amendments in the balloon in which all references to farm ponds had been stricken. (Attachment 1) He noted that essentially, the remainder of the balloon would bring Kansas law into compliance with the federal Clean Water Act. The fine had been increased from not less than \$1,000 to not more than \$10,000. The bill was needed to qualify for the \$600,000 in federal money.

A motion was made by Representative Freeman, seconded by Representative Grotewiel to adopt the balloon amendments. The motion passed by voice vote.

Representative Freeman, seconded by Representative Lacey, made a motion to report House Bill 3027 as amended favorably for passage. The motion passed on a voice vote.

Senate Bill 709--Public wholesale water supply district authorized to issue refunding general obligation bonds.

The Chairman explained that the committee had not held hearings on this bill, but it was the same as House Bill 3077 which this committee had passed out on March 23. These were both committee bills and Senate Bill 709 which had been passed by the Senate would be an easier vehicle to pass at this point in the session, since House Bill 3077 would have to go through both houses.

A motion was made by Representative Lacey, seconded by Representative Fry, to report Senate Bill 709 favorably. The motion carried.

There were no objections to the minutes of March 15, 16 and 17 and they were approved. The minutes of March 22 and 23 were distributed.

The meeting was adjourned at 4:20 p.m.

Date: March 28, 1988

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Mary Ann Bradford	League of Women Voters	Topeka	354-1646
Mary Erickson	Ks. Corp. Comm.	Topeka	296-5052
Mike Peters	Kans. Elec. Coop.	Topeka	272-8740
Lester Mumpley	KEC	Topeka	272-8740
J.D. Janett	Doriphen Electric Coop	Froy	985-3523
Michael D. Amzien	Brown-Atchison Elec. Coop.	Horton	486-2117
J. Bob Barnett	OF Research Labs.	Chanute	431-2650
Margaret P. Ahnes	Ks Chap Sierra Club	Topeka	273-7346
Kathy Duncan		Topeka	272-1341
WALTER THURM	EKOGA	✓	272-5674
Janet Stubbs	NBAK	"	233-9853
Charlene Stinera	Ks Natural Resource Council	Topeka	233-6707
Bruce GRAHAM	KEPCO	Topeka	273-7010
Ken Peterson	KEPC	Topeka	234-0589
Dea Warton	"	"	"
Nick Pearce	EKOGA	E/DORADO	321-3800
Leland E. Rolp	DWR-KSBA	Topeka	296-3717
Joe Harbus	RWD	TOPEKA	296-3185

PROPOSED SUBSTITUTE FOR
HOUSE BILL No. 3027

By Committee on Energy and Natural Resources

2-24

0017 AN ACT concerning water; relating to the protection of water
0018 from pollution; amending K.S.A. 65-165, 65-167,
0019 and 65-170e and K.S.A. 1987 Supp.
0020 65-171d and repealing the existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 65-165 is hereby amended to read as follows:
. 65-165.

. Upon application made to the secretary of health and environment by the public authorities having by law the charge of the sewer system of any municipality, township, county, or legally constituted sewer district, or any person, company, corporation, institution, municipality or federal agency, the secretary of health and environment shall consider the case of such a sewage discharge or sewer system, otherwise prohibited by this act from discharging sewage into any of the waters of the state, or the extension of a sewer system and whenever it is the secretary's opinion that the general interests of the public health would be served thereby, or that the discharge of such sewage would not detract from the quality of the waters of the state for their beneficial uses for domestic or public water supply, agricultural

needs, industrial needs, recreational needs or other beneficial use and that such discharge meets or will meet all applicable state water quality standards and applicable federal water quality and effluent standards under the provisions of the federal water pollution control act and amendments thereto as in effect on January 1, ~~1984~~, the secretary of health and environment shall issue a permit for the extension of a sewer system or for the discharge of sewage, or both, and shall stipulate in the permit the conditions on which such discharge will be permitted and shall require such treatment of the sewage as determined necessary to protect beneficial uses of the waters of the state in accordance with the statutes and rules and regulations defining the quality of the water affected by such discharge and may require treatment of the sewage in accordance with rules and regulations predicated upon technologically based effluent limitations. Indirect dischargers shall comply with all applicable pretreatment regulations and water quality standards.

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Every such permit for the discharge of sewage shall be revocable, or subject to modification and change, by the secretary of health and environment, upon notice having been served on the public authorities having, by law, the charge of the sewer system any municipality, township, county or legally constituted sewer district or on the person, company, corporation, institution, municipality or federal agency owning, maintaining or using the sewage system. The length of time after receipt of the notice within which the discharge of sewage shall be discontinued may be stated in the permit, but in no case shall it be less than 30 days or exceed two years, and if the length of time is not specified in the permit it shall be 30 days. On the expiration of the period of time prescribed, after the service of notice of revocation, modification or change from the secretary of health and environment, the right to discharge sewage

into any of the waters of the state shall cease and terminate, and the prohibition of this act against such discharge shall be in full force, as though no permit had been granted, but a new permit may thereafter again be granted, as hereinbefore provided.

Sec. 2.

K.S.A. 65-167 is hereby amended to read as follows:

Upon conviction, the penalty for the willful or negligent discharge of sewage into or from the sewer system of any municipality, township, county or legally constituted sewer district by the public authorities having, by law, charge thereof or by any person, company, corporation, institution, municipality or federal agency, into

any of the waters of the state without a permit, as required by this act, or in violation of any term or condition of a permit issued by the secretary of health and environment, or in violation of any requirements made pursuant to K.S.A. 65-164, 65-165 or 65-166, and amendments thereto, shall be not less than \$2,500 and not more than \$25,000, and a further penalty of not more than \$25,000 per day for each day the offense is maintained. The penalty for the discharge of sewage into or from any sewerage system into any waters of the state without filing a report, in any case in which a report is required by this act to be filed shall be ~~\$1,000~~ per day for each day the offense is maintained.

not less than \$ 1,000 and not more than \$ 10,000

Sec. 3. K.S.A. 65-170e is hereby amended to read as follows:

65-170e. (a) The attorney general, upon the request of the secretary of health and environment, may bring an action in the name of the state of Kansas in the district court of the county in which any person who violates any of the provisions of this act may do business, to recover penalties or damages as provided by this act.

(b) Any citizen having an interest which is or may be adversely affected shall have the right to intervene in any civil actions brought under this section or any administrative actions brought under K.S.A. 65-170d, and amendments thereto, which seek:

(1) Restraint of persons from engaging in unauthorized activity which is endangering or causing damage to public health or the environment;

(2) injunction of threatened or continuing violations of this act, regulations promulgated thereunder, and permit conditions;

(3) assessment of civil penalties for violations of the act, regulations promulgated thereunder, permit conditions or orders of the director of environment or secretary of health and environment.

Sec. 4. K.S.A. 1987 Supp. 65-171d is hereby amended to read as follows: 65-171d. (a) For the purpose of preventing

surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect beneficial uses of the

waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgment be necessary to: (1) Clean up pollution resulting from oil and gas activities regulated by the state corporation commission; (2) protect the soil and waters of the state from pollution resulting from (A) oil and gas activities not regulated by the state corporation com-

mission or (B) underground storage reservoirs of hydrocarbons, natural gas and liquid petroleum gas; (3) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164 and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or facilities owned or operated, or both, by them; and (4) establish water quality standards for the waters of the state to protect their beneficial uses.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act and the ~~1981~~ amendments thereto, which the secretary is otherwise authorized by law to adopt.

as in effect on January 1, 1988

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h and amendments thereto, pollution means: (1) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated beneficial uses; or (2) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(d) In adopting rules and regulations, the secretary of health and environment, taking into account the varying conditions that are probable for each source of sewage and its possible place of disposal, discharge or escape, may provide for varying the control measures required in each case to those the secretary finds to be necessary to prevent pollution. If a freshwater reservoir or

farm pond is privately owned and where complete ownership of land bordering the reservoir is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards except as it relates to water discharge or seepage from the reservoir to waters of the state, either surface or groundwater, or as it relates to the public health of persons using the reservoir or pond or waters therefrom.

(e) (1) Whenever the secretary of health and environment or the secretary's duly authorized agents find that the soil or waters of the state are not being protected from pollution resulting from oil and gas activities not regulated by the state corporation commission or from underground storage reservoirs of hydrocarbons, natural gas and liquid petroleum gas or that storage or disposal of salt water or oil not regulated by the state corporation commission or refuse in any surface pond is causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary's duly authorized agents shall issue an order prohibiting such activity, underground storage reservoir or surface pond. Such order shall take effect 10 days after service upon the owner, operator, contractor or agents thereof. Any person aggrieved by such order may within 10 days of service of the order request a hearing on the order.

(2) Hearings may be conducted by the secretary or hearing officers appointed by the secretary. Such hearing officers shall have the power and authority to conduct such hearings in the name of the secretary at any time and place and a record of the proceedings of such hearings shall be taken and filed with the secretary together with findings of fact. On the basis of the evidence produced at the hearing, the secretary shall make findings of fact and conclusions of law and shall give written notice of such findings and conclusions to the alleged violator. The order of the secretary shall be final unless review is sought under paragraph (4) of this subsection.

(3) Any notice, order or instrument issued by or with the authority of the secretary may be made by mailing a copy of the notice, order or other instrument by registered or certified mail directly to the person affected at such person's last known post

office address as shown by the files or records of the secretary.

(4) Any action of the secretary pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(f) The secretary may adopt rules and regulations establishing fees for the following services:

(1) Plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place;

(2) permitting, monitoring and inspecting salt solution mining operators, for which the annual fee shall not exceed \$1,950 per company; and

(3) permitting, monitoring and inspecting hydrocarbon storage wells and well systems, for which the annual fee shall not exceed \$1,875 per company.

(g) Agents of the secretary shall have the right of ingress and egress upon any lands to clean up pollution resulting from oil and gas activities. Such agents shall have the power to occupy such land if necessary to investigate and clean up such pollution. Any agent entering upon any land to conduct cleanup activities shall not be liable for any damages necessarily resulting therefrom except damages to growing crops, livestock or improvements on the land.

Sec. 5. K.S.A. 65-165, 65-167, and 65-170e and K.S.A. 1987 Supp. 65-171d are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Environmental response fund established

~~65-3452. Hazardous waste clean-up fund established; receipt of federal funds.~~

~~(a) There is hereby created the hazardous waste clean-up fund. All moneys received by the secretary of the department of health and environment as grants, gifts, bequests or state or federal appropriations to carry out the provisions of this act shall be deposited in such fund. All expenditures from the hazardous waste clean-up fund shall be made in accordance with appropriations acts and upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of health and environment.~~

~~(b) The secretary is authorized to receive from the federal government or any of its agencies or from any private or governmental source any funds made available under laws, rules or regulations for hazardous waste clean-up or other response to health and environmental situations where any hazardous waste is or threatens to create health or environmental hazard.~~

History: L. 1984, ch. 219, § 1; July 1.

0339 ~~Sec. 6-5-A~~ (a) (1) There is hereby created the environmental
0340 ~~contamination~~ response fund. All moneys received by the secre-
0341 tary as grants, gifts, bequests or state or federal appropriations to
0342 carry out remedial action at ~~contaminated~~ sites shall be depos-
0343 ited in such fund. All expenditures from the environmental
0344 ~~contamination~~ response fund shall be made in accordance with
0345 appropriations acts and upon warrants of the director of accounts
0346 and reports issued pursuant to vouchers approved by the secre-
0347 tary.

0348 (2) The secretary is authorized to receive from the federal
0349 government or any of its agencies or from any private or govern-
0350 mental source any funds made available under laws, rules and
0351 regulations for ~~contaminated~~ site cleanup or other remedial
0352 action where environmental ~~contamination~~ is or threatens to
0353 create a health or environmental hazard.

0354 (b) The environmental ~~contamination~~ response fund shall be
0355 maintained as individual subaccounts, as follows:

0356 (1) State appropriations or funds from other sources desig-
0357 nated for remedial activities at specific state-lead ~~contaminated~~
0358 sites shall be maintained in a separate account. Disbursement of
0359 funds from this account shall be made only for activities related
0360 to the sites at which the appropriating or donating person has
0361 designated.

0362 (2) State appropriations or funds from other sources desig-
0363 nated as state match for remedial activities at federal national
0364 priority list sites shall be maintained in a separate account.
0365 Disbursement of funds from this account shall be made only for
0366 remedial design and remedial action at the national priority list
0367 sites for which the appropriating or donating person has desig-
0368 nated.

0369 (3) State appropriations or funds from other sources desig-
0370 nated for emergency response activities or environmental re-
0371 sponse at nonspecific sites shall be maintained in a separate
0372 account. Disbursement of funds from this account shall be made
0373 for activities at any ~~contaminated~~ sites where remedial action is
0374 necessary to protect public health or the environment.

polluted by hazardous substances

pollution

polluted by hazardous substances

0375 (4) State appropriations of funds from other sources desig-
0376 nated as state match for federal leaking underground storage tank
0377 trust fund resources used to conduct remedial action to reduce or
0378 eliminate environmental ~~contamination~~ [from leaking under- pollution
0379 ground storage tanks of petroleum or hazardous substances shall
0380 be maintained in a separate account. Disbursements of funds
0381 from this account shall be made only for remedial action to
0382 reduce or eliminate environmental ~~contamination~~ [from leaking pollution
0383 underground petroleum or hazardous substance storage tanks.
0384 Moneys recovered from any responsible person for remediation pollution
0385 to reduce or eliminate environmental ~~contamination~~ [shall be
0386 deposited to the credit of the environmental ~~contamination~~
0387 response fund except that a proportional share may be returned
0388 to the federal source from which it came.

0389 (c) Subject to the limitations in subsection (b), the secretary
0390 is authorized to use funds from the environmental ~~contamination~~
0391 response fund to pay the cost of:

- 0392 (1) The design and review of remedial action plans;
- 0393 (2) contracting for services needed to supplement the de-
0394 partment's staff expertise in site investigations;
- 0395 (3) consultation needed concerning remedial action;
- 0396 (4) mitigation of adverse environmental impacts;
- 0397 (5) emergency or long-term remedial activities;
- 0398 (6) legal costs, including expert witnesses, incurred in re-
0399 covery of fund expenditures;
- 0400 (7) state matching costs for remedial action funded with the
0401 federal hazardous substance superfund established by section
0402 9507 of the Internal Revenue Code of 1986;
- 0403 (8) state matching costs for remedial action funded with the
0404 federal leaking underground storage tank trust fund established
0405 by section 9508 of the Internal Revenue Code of 1986; and
0406 ~~(9) compensation to any person provided pursuant to section~~
0407 ~~5.~~

0408 (d) On the effective date of this act, the director of accounts
0409 and reports shall transfer all moneys in the pollutant discharge
0410 cleanup fund and the hazardous waste cleanup fund to the
0411 environmental ~~contamination~~ response fund, and the pollutant
0412 discharge cleanup fund and the hazardous waste cleanup fund
0413 are hereby abolished.

65-3453. Authority of secretary concerning clean-up activities. The secretary shall have the power to: (a) Determine that the clean-up of a ~~hazardous waste~~ site is necessary to protect the public health ~~and safety~~ or the environment; (b) expend and authorize the expenditure of moneys from the ~~hazardous waste clean-up fund~~; (c) issue clean-up orders to persons responsible for the health or environmental hazard created by the ~~hazardous waste~~; (d) recover moneys from persons responsible for the health or environmental hazard created by the ~~hazardous waste~~; (e) assign personnel and equipment necessary to carry out the purpose of this act; (f) enter into contracts or agreements with any person or company to conduct the necessary clean-up operations; and ~~(g)~~ adopt any rules and regulations necessary to carry out the provisions of this act.

History: L. 1984, ch. 219, § 2; July 1.

environmental response

substance

substance

Agents of
the secretary

(g) collect samples, require information and copy records or data as may be necessary, (h) enter upon any lands to clean up pollution. ~~Such agents~~ shall have the power to occupy such land if necessary to investigate and clean up such pollution. Any agent entering upon any land to conduct clean up activities shall not be liable for any damages necessarily resulting therefrom except damages to growing crops, livestock or improvements on the land. (i) issue written notices or orders. All written notices or orders issued hereunder shall be subject to the provisions of K.S.A. 65-3456.

65-3453. Authority of secretary concerning clean-up activities. The secretary shall have the power to: (a) Determine that the clean-up of a hazardous waste site is necessary to protect the public health and safety or the environment; (b) expend and authorize the expenditure of moneys from the hazardous waste clean-up fund; (c) issue clean-up orders to persons responsible for the health or environmental hazard created by the hazardous waste; (d) recover moneys from persons responsible for the health or environmental hazard created by the hazardous waste; (e) assign personnel and equipment necessary to carry out the purpose of this act; (f) enter into contracts or agreements with any person or company to conduct the necessary clean-up operations; and (g) adopt any rules and regulations necessary to carry out the provisions of this act.

History: L. 1984, ch. 219, § 2; July 1.

environmental response

substance

substance

0285 (f) Any authorized officer, employee or agent of the department
 0286 or any person under contract with the department may
 0287 enter onto any property or premises, at reasonable times and
 0288 upon written notice to the owner or occupant, to gather data,
 0289 conduct investigations, or take remedial action where the secretary
 0290 determines that such action is necessary to protect the
 0291 public health or environment:

0292 (1) If consent is not granted by the person in control of a
 0293 contaminated site or suspected contaminated site regarding any
 0294 request made by any employee or agent of the secretary under
 0295 the provisions of this section, the secretary may issue an order
 0296 directing compliance with the request. The order may be issued
 0297 after such notice and opportunity for consultation as is reasonably
 0298 appropriate under the circumstances.

0299 (2) The secretary may ask the attorney general to commence
 0300 a civil action to compel compliance with a request or order
 0301 referred to in paragraph (1). Where there is a reasonable basis to
 0302 believe there may be a release of a contaminant, the court shall
 0303 take the following actions:

0304 (A) In the case of interference with entry or investigation,
 0305 the court shall enjoin such interference or direct compliance
 0306 with orders to prohibit interference with entry or investigation
 0307 unless under circumstances of the case the demand for entry or
 0308 investigation is arbitrary and capricious, an abuse of discretion,
 0309 or otherwise not in accordance with law.

0310 (B) In the case of information or document requests or
 0311 orders, the court shall enjoin interference with such information
 0312 or document requests or orders or direct compliance with the
 0313 requests or orders to provide such information or documents
 0314 unless under the circumstances of the case the demand for
 0315 information or documents is arbitrary and capricious, an abuse
 0316 of discretion, or otherwise not in accordance with law.

0317 (3) All orders issued hereunder shall be subject to the provisions
 0318 of section 9.

pollution

65-3454. Authorized uses of funds from hazardous waste clean-up fund. The secretary is authorized to use funds from the hazardous waste clean-up fund to pay the cost of: (a) contract for services; (b) clean-up plan, design and review; (c) any consultation needed concerning clean-up activities; (d) mitigation of adverse environmental impacts; (e) emergency or long term clean-up activities undertaken in accordance with this act; (f) legal costs incurred in recouping fund expenditures from responsible parties; and (g) providing matching moneys available from the federal government under the comprehensive environmental response, compensation and liability act of 1980 (Public Law 96-510), as in effect on July 1, 1984.

History: L. 1984, ch. 219, § 3; July 1.

Repeal. Duplicated in K.S.A. 65-3452(c).

65-3455. Responsibility for payment of clean-up costs; actions to recover costs. Any person responsible for the discharge, abandonment or disposal of hazardous waste which the secretary determines is necessary to be cleaned up pursuant to K.S.A. 65-3453 shall be responsible for the payment of the costs of investigation to determine whether remedial action is necessary at the site. If remedial action is required to protect the public health and environment, the costs of that remedial action shall be borne by the responsible party. If the secretary incurs costs or expends funds for such activities, the responsible person shall be notified of such costs and expenditures and shall make repayment of all costs incurred for response to the site in accordance with K.S.A. 65-3454. If the responsible person fails to pay for such costs, such payment or repayment shall be recoverable in an action brought by the secretary in the district court of Shawnee county. Any money recovered under this section shall be deposited in the ~~hazardous waste clean-up~~ fund.

_____ substances

_____ environmental response

History: L. 1984, ch. 219, § 4; July 1.

65-3-156. Judicial review of secretary's actions. Any action of the secretary pursuant to K.S.A. 65-3-152 through 65-3-155, and amendments thereto, is subject to review in accordance with K.S.A. 65-3-110 and amendments thereto.

History: L. 1984, ch. 219, § 5; L. 1986, ch. 318, § 106; July 1.

65-3-157. Act supplemental. The provisions of this act shall be supplemental to article 34 of chapter 65 of the Kansas Statutes Annotated.

History: L. 1984, ch. 219, § 6; July 1.

Repeal

0524 ~~See 10-9-18~~ (a) Any person adversely affected by any order
0525 or decision of the secretary may, within 15 days of service of the
0526 order or decision, request in writing a hearing. Hearings under
0527 this section shall be conducted in accordance with the provisions
0528 of the Kansas administrative procedure act.
0529 (b) Any person adversely affected by any action of the secre-
0530 tary pursuant to this act may obtain review of such action in
0531 accordance with the act for judicial review and civil enforcement
0532 of agency actions.
0533 ~~See 10-10~~ Nothing in this act shall be construed to affect
0534 any existing laws concerning activities relating to the protection
0535 of surface water and groundwater from oil and gas activities,
0536 but shall be deemed to be supplemental to such laws.