

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by _____ Senator Merrill Werts at _____
Chairperson

8:00 a.m./~~p.m.~~ on February 3, 19 88n room 123-S of the Capitol.

All members were present except:

Committee staff present:

- | | |
|-------------------------|----------------------------|
| Ramon Powers - Research | Laura Howard - Research |
| Nancy Jones - Secretary | Raney Gilliland - Research |

Conferees appearing before the committee:

- Stanley Grant, Secretary, KDHE
- Ron Hammerschmidt, Bureau of Environmental Remediation, KDHE
- Ross Martin, Kansas Petroleum Council
- Herman Fritschen, City Service Oil & Gas Corp., Tulsa, Okla.
- Larry Panning, Ellinwood, Ks.
- Don Schnacke, KIOGA
- Arthur Woodman, Wichita Chamber of Commerce, Water Resources, Chairman
- Dr. Doug Hahn, Director Sedgwick County Environmental Resources
- Vernon McKinzie, Kansas Termite & Test Control Asso., Emporia, Ks.

SB 455 - Enacting the Environmental Contamination Response Act.

Chairman Werts requested Secretary Grant to explain to the committee KDHE's proposed changes in the bill.

Secretary Grant stated that after due consideration and discussion with the Governor's staff and Chairman Werts, the Department is submitting an amended version of SB 455, which eliminates the portions dealing with the registry and fiscal considerations not included in the Governor's budget. A \$36,000 fiscal note will remain with the bill for additional staff.

Ron Hammerschmidt reviewed all amendments and changes proposed by KDHE followed by discussion with committee members. (Attachment I)

Ross Martin testified as supporting the remediation concept of SB 455. The cost effectiveness of the program as envisioned is questioned. Concerns were expressed regarding the wide discretionary authority granted KDHE and the fair application of some definitions as written in the bill. (Attachment II)

Herman Fritschen stated legislation of this type can become overly burdensome to the regulated community, also the bill contains provisions for needless and costly studies which have already been performed by the federal government. The broad definitions of "release", "remedial action" and "responsible parties" are particular concerns. Along with the registry, Mr. Fritschen suggested a hot line be implemented for reporting potential contamination problems. Conservative action was suggested in funding a state superfund as too much money could be detrimental as with the federal EPA program. (Attachment III)

Larry Paning stated he has no disagreement with the principle of SB 455, but has concern regarding the issue of ownership in Section 7, lines 312 to 322. It is felt any person or persons proven to be responsible for pollution should be required to fund cleanup costs regardless of ownership at the time of cleanup. The financial security of many innocent citizens could hinge on the definition of responsible party. (Attachment IV)

Arthur Woodman testifies as supporting the intent of SB 455 but shares concern about the bill in its present form and feels continued study is needed. Concerns summarized were the lack of a definition of the meaning of "notice" of access and liability. The provision on first mortgage rights will have a negative impact on mortgage lending and hamper business development. Mr.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 123-S, Statehouse, at 8:00 a.m./~~p.m.~~ on February 3, 1988

Woodman feels the implementation of a registry as written could give the State of Kansas control of private property without ownership. There is no mechanism for proper ultimate disposal of contaminates when cleanup commences. It is felt that SB 455 goes far beyond adequate authority and needs further review. (Attachment V)

Dr. Hahn briefly outlined concerns held with regard to SB 455. He feels the language is too broad, too much authority is given the regulators and standards should be established based on documented, scientific evidence for assessment of and action on contaminated sites. There should be inclusion of a system of benefit/cost methodology noting time, funding and manpower on projects. (Attachment VI)

Vernon McKinzie stated he perceives a conflict in the language of Section 2 (a) & (f) as regards the responsibility of those in the pesticide industry. Mr. McKinzie requested additional language in the bill for exempting application and use of chemicals when used according to label instructions. Mr. McKinzie feels the KDHE should be restricted in the selection of compounds listed as hazardous substance. (Attachment VII)

Don Schnacke stated his main concern is what SB 455 entails in relation to the recent history of hazardous waste regulation in Kansas. The oil & gas industry has worked closely with KDHE on contamination problems and SB 455 tends to ignore the desirability of continued collaboration among interested parties in addressing contamination problems. This legislation gives very broad powers and responsibility to KDHE and Mr. Schnacke believes this to be a very grave mistake and an advisory committee should be formed to assist in implementation of the program. (Attachment VIII).

Meeting adjourned. The next meeting will be February 4, 1988.

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Guest List

Robert Anderson	Midwest Oil Co	Ofc. of Kansas
Ross Martin	KPC	Topeka
LARRY PANNING		Rollinwood, KS
Spooky Grant		KDHE
James A. Power		"
Ron Hammerschmidt		"
Gary K. Hulet		KDHE
Dennis Murphy		KDHE
Dave Corliss		Lg. of Municipalities
Shelley Sutton		KES Topeka
Don Tannahill		Professional Lawn Care of Mid America
JIM YOUNG		CHEMICAL WASTE MANAGEMENT
Nick Otto		ChemLawn Services
Mary Kerkston	KCC	Lawn Care Inc.
Kenneth M. Wilke	KSBA	Topeka
Dale Lambley	"	"
W. L. Hawkins Jr.	"	"
NORMAN O. BESHEER		KS. TERMITES + PEST CONTROL ASSOC - KC
Vernon McKinzie		KS. Termites + P.C. Association - Topeka
Pat Cussey	KDHE	Topeka, KS
Bob Holjes	KCCI	Topeka
Ron Caches	Brac	Wichita
Rebecca Rice	Amoco	Topeka
Mike Beam	Ks. Pwch. Assn.	Topeka
Mary Ann Bradford	League of Women Voters of KS	Topeka
Joe A. Morris	KLSI	TOPEKA
Joe Lieber	Ks. Co-op Council	WV

Ken Peterson	Topeka	KS Petroleum Council
John Strickler	Topeka	Governor's Office
Margaret Per Ahrens	Topeka	Service Club - KS.
Jerry Conrad	"	KG&E
Joe Donald	"	KS. Corporation Commission
William Leonard	"	Comm. KS. Farm Org.
Leland E. Rolfe	"	DWR - KSBA
M. Haver	"	Capital Sources
A. Martin	Shelton	Seely. Co.

SENATE BILL No. 455

By Special Committee on Energy and Natural Resources

Re Proposal No. 12

12-16

0018 AN ACT enacting the environmental contamination response
 0019 act; prescribing authorities and duties for the secretary of
 0020 health and environment relating thereto; providing for crimes
 0021 and penalties for violations thereof; repealing K.S.A. 65-171w,
 0022 65-3452 to 65-3455, inclusive, and 65-3457 and K.S.A. 1987
 0023 Supp. 65-3456.

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 Section 1. This act shall be known and may be cited as the
 0026 Kansas environmental contamination response act.

0027 Sec. 2. As used in this act, unless the context clearly requires
 0028 otherwise, the following words and phrases shall have the
 0029 meaning respectively ascribed thereto:

0030 (a) "Contaminant" means a substance which because of its
 0031 presence in the environment and its quantity, concentration, or
 0032 physical, chemical or biological characteristics will cause or
 0033 significantly contribute to an increase in mortality or an increase
 0034 in serious irreversible or incapacitating illness, or pose a signifi-
 0035 cant present or potential hazard to human health or the environ-
 0036 ment. The secretary shall adopt rules and regulations for a listing
 0037 of each contaminant.

0038 (b) "Contaminated site" means all contiguous land, struc-
 0039 tures and other appurtenances and improvements on the land
 0040 wherein a release of a contaminant or contaminants has occurred.

0041 (c) "Department" means the Kansas department of health
 0042 and environment.

0043 (d) "Owner or operator" means any person owning a con-
 0044 taminated site or operating a facility at a contaminated site and,
 0045 in the case of any contaminated site, title or control of which was

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0046 conveyed due to bankruptcy, foreclosure, tax delinquency,
0047 abandonment or similar means to a unit of state or local govern-
0048 ment, any person who owned, operated or otherwise controlled
0049 activities at such site prior to any such conveyance.

0050 (e) "Person" means an individual, firm, corporation, associa-
0051 tion, partnership, consortium, joint venture, commercial entity,
0052 United States government, state, municipality, commission, po-
0053 litical subdivision of a state, or any interstate body.

0054 (f) "Release" means any spilling, leaking, pumping, pouring,
0055 emitting, emptying, discharging, injecting, escaping, leaching,
0056 dumping or disposing into the environment, including the
0057 abandonment or discarding of barrels, containers and other
0058 closed receptacles containing any contaminants.

0059 (g) "Remedial action" means all cleanup, containment or
0060 other corrective action measures necessary to mitigate, abate or
0061 eliminate the presence of contaminants in the surface water, soil,
0062 groundwater or air.

0063 (h) "Secretary" means the secretary of the department of
0064 health and environment.

0065 Sec. 3. The secretary shall have the power to:

0066 (a) Require the submission of information by any person,
0067 including any person potentially responsible for a contaminated
0068 site, as necessary to identify any responsible person, to inves-
0069 tigate the extent of any contamination, and to determine whether
0070 remedial action will be necessary;

0071 (b) determine that remedial action is necessary at a contami-
0072 nated site in order to protect public health or the environment;

0073 ~~(c) access known or suspected contaminated sites, as well as~~
0074 ~~contiguous lands, at all reasonable times for purposes of con-~~
0075 ~~ducting investigations and, where necessary, performing reme-~~
0076 ~~dial action;~~

0077 c (d) restrict or deny entry to a contaminated site during reme-
0078 dial action in order to protect the public health or the environ-
0079 ment;

0080 (e) assign personnel and equipment necessary to carry out
0081 the purposes of this act;

0082 e (f) enter into contracts or agreements with any person to

0083 provide necessary investigation and remedial action;
0084 f (g) enter into contracts or agreements with any person to
0085 provide long-term operation and maintenance for a state-funded
0086 or federally-funded remedial action, including groundwater
0087 cleanup, except that no funding may be obligated by the secre-
0088 tary beyond the amount appropriated in the current fiscal year;
0089 g (h) expend and authorize the expenditure of moneys from the
0090 environmental contamination response fund;
0091 h (i) issue investigation and remedial action orders to any per-
0092 son, including any person responsible for environmental con-
0093 tamination;
0094 i (j) recover from any responsible person moneys expended
0095 from the environmental contamination response fund;
0096 j (k) adopt any rules and regulations necessary to carry out the
0097 provisions of this act; and
0098 k (l) assess penalties for the failure to comply with the provi-
0099 sions of this act.

0100 ~~Sec. 4. (a) (1) The department shall compile and maintain a~~
0101 registry of contaminated sites where documentation of environ-
0102 mental contamination exists and shall publish the registry at
0103 any amendments to the registry as a notice in the Kansas register.
0104 (2) Any person may petition the department to add a site to
0105 the registry, to exclude a site from the registry, or to remove a site
0106 from the registry. The department shall review all relevant
0107 information and make its decision based upon documented in-
0108 formation regarding any contamination at the site. Within 10
0109 working days of making a decision regarding the listing of a site
0110 on the registry, the department shall notify the petitioner and the
0111 property owner of its decision.
0112 (3) After a site is listed on the registry, the department shall
0113 file a notice with the county recorder of deeds in the county
0114 wherein the site is located, so that until appropriate remedial
0115 action has been taken to resolve the contamination, any pro-
0116 spective purchaser will be given adequate notice that it is on the
0117 state registry of contaminated sites. When the department deter-
0118 mines that adequate remedial action has been completed at a site
0119 ~~the appropriate county recorder of deeds shall be notified by the~~

~~20 department that such site has been removed from the registry.~~
0121 (b) (1) Within six months of the effective date of this act, the
0122 department shall prepare a proposed registry of contaminated
0123 sites, publish it in the Kansas register, and make it available to
0124 the governing body of each city and county in which there is
0125 located one or more contaminated sites, and to all other inter-
0126 ested persons.

0127 (2) Within eight months of the effective date of this act, the
0128 department shall conduct public hearings in several geographic
0129 areas of the state to receive comments on the proposed registry.
0130 Notice of these hearings shall be published at least 30 days in
0131 advance of the hearings in the Kansas register and in a newspa-
0132 per of local circulation in the communities in which the hearings
0133 are to be conducted.

0134 (3) The department shall consider all testimony presented at
0135 the public hearings, make such revisions to the proposed registry
0136 as it deems necessary or appropriate, and make a recommenda-
0137 tion to the secretary regarding the adoption of the registry.
0138 Within 12 months of the effective date of this act the secretary
0139 shall adopt the registry.

0140 (c) Any person adversely affected by adoption of the registry
0141 or subsequent amendments to the registry shall have the right to
0142 appeal such action in accordance with the Kansas administrative
0143 procedure act. Any person affected by any action of the secretary
0144 pursuant to this section may obtain review of such action in
0145 accordance with the act for judicial review and civil enforcement
0146 of agency actions.

0147 (d) The department shall investigate suspected contaminated
0148 sites and determine whether each site should be included on the
0149 registry. In the investigation of suspected sites the department
0150 shall have the power to enter upon private property and to
0151 collect sufficient environmental samples for analyses as are nec-
0152 essary to adequately characterize the contamination which may
0153 exist at the site. In all cases the department shall make reason-
0154 able efforts to notify the property owner of its intention to enter
the property, the reason for suspecting that contamination may
exist and the nature of the investigation to be conducted.

157 ~~(e) The department shall on or before January 1, 1990, and~~
 158 ~~annually thereafter by January 1 of each succeeding year trans-~~
 159 ~~mit a report to the legislature and the governor identifying the~~
 160 ~~status of all contaminated sites on the registry. A copy of the~~
 161 ~~report shall also be provided to the governing body of each city~~
 162 ~~and county in which one or more contaminated sites are located,~~
 163 ~~and to any interested person. The report shall contain at a~~
 164 ~~minimum:~~

- 165 (1) A general description of the site;
- 166 (2) a summary of any contamination problem at and near the
- 167 site;
- 168 (3) the status of any investigation, monitoring or remedial
- 169 action in progress or proposed at the site; and
- 170 (4) the status of any pending legal actions associated with the
- 171 contamination at the site.

172 (f) After the department has determined that the remedial
 173 action taken at a given site has resolved the contamination
 174 problem, the department shall remove that site from the registry
 175 ~~of contaminated sites and all subsequent annual reports.~~

176 Sec. 5.4(a) The department shall investigate all suspected
 177 contaminated sites to gather data regarding whether remedial
 178 action is necessary to protect public health or the environmen
 179 and to identify any responsible person. The department, any
 180 authorized officer, employee or agent of the department or any
 181 person under contract with the department may enter onto any
 182 property or premises, at reasonable times, and upon notice to the
 183 owner or occupant, to take action under this subsection. Notice
 184 to the owner or occupant is not required if the delay to provide
 185 such notice is likely to result in an imminent risk to public health
 186 or the environment.

187 c (b) (1) In any case where the department can identify any
 188 person responsible for contamination, it shall be the duty of the
 189 responsible person to determine the extent of the contamination,
 190 to develop an appropriate remedial action plan, and upon ap-
 191 proval of the department to implement the approved plan.

192 (2) In any case where no responsible person can be iden-
 193 tified or where the responsible person is unwilling or incapable

(b) In determining the sequence for taking remedial action under this Act, the depart-
 ment shall consider the hazard ranking of each site or facility, the willingness
 and ability of an owner, operator or other responsible party to undertake or assist
 in remedial action, the availability of federal funds under the Comprehensive
 Environmental Response, Compensation, and Liability Act of 1980 (PL 96-510) and as
 amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499),
 and other relevant factors.

0194 of performing the necessary investigation and/or remedial action,
0195 the department may proceed to carry out those actions needed to
0196 protect the public health or the environment.

0197 (3) In any case where the secretary finds that a contaminated
0198 site presents an imminent and substantial endangerment to the
0199 public health or the environment and the responsible person
0200 cannot be contacted in a reasonable amount of time, the depart-
0201 ment may take those actions needed to abate the imminent and
0202 substantial endangerment.

0203 d (c) Within one year of the effective date of this act, the
0204 secretary shall adopt rules and regulations establishing site
0205 cleanup standards for the state of Kansas.

0206 e (d) When a person has taken remedial action with the de-
0207 partment's approval, such action shall not be admissible in
0208 evidence to establish that person's responsibility for the con-
0209 tamination.

0210 ~~(e) (1) Any authorized officer, employee or agent of the de-~~
0211 ~~partment may enter onto any property or premises, at reasonable~~
0212 ~~times and upon notice to the owner or occupant, to oversee and~~
0213 ~~monitor the investigation or remedial action efforts of a respon-~~
0214 ~~sible person. Notice to the owner or occupant is not required if~~
0215 ~~the delay to provide such notice is likely to result in an imminent~~
0216 ~~risk to public health or the environment.~~

0217 f (2) Any authorized officer, employee or agent of the depart-
0218 ment or any person under contract with the department may
0219 enter onto any property or premises, at reasonable times and
0220 upon notice to the owner or occupant, to take remedial action
0221 where the secretary determines that such action is necessary to
0222 protect the public health or the environment. The secretary may
0223 provide reasonable compensation for any taking of property or
0224 damage done in the process of performing such remedial action.

0225 g (f) The department may enter into agreements with the
0226 United States environmental protection agency to implement the
0227 federal Comprehensive, Environmental Response, Compensa-
0228 tion, and Liability Act of 1980 (P.L. 96-510) as amended by The
0229 Superfund Amendments and Reauthorization Act of 1986 (P.L.
0230 99-499) and to obtain financial resources from the federal haz-

gather data, conduct investigations, or take

0231 arduous substance superfund and leaking underground storage
0232 tank trust fund. The department may advise, consult, assist and
0233 contract with other persons to take action in its implementation
0234 of the federal act.

0235 h (g) The department and any person may enter into an agree-
0236 ment regarding actions which are necessary to resolve the con-
0237 tamination problem. In the agreement the department may
0238 specify those actions which the person must take. As part of the
0239 agreement, the department may reduce the amount which the
0240 state is entitled to recover, or waive part or all of the liability to
0241 the state which the person may have under this act.

0242 Sec. 6.5(a) (1) There is hereby created the environmental
0243 contamination response fund. All moneys received by the secre-
0244 tary as grants, gifts, bequests or state or federal appropriations to
0245 carry out remedial action at contaminated sites shall be depos-
0246 ited in such fund. All expenditures from the environmental
0247 contamination response fund shall be made in accordance with
0248 appropriations acts and upon warrants of the director of accounts
0249 and reports issued pursuant to vouchers approved by the secre-
0250 tary.

0251 (2) The secretary is authorized to receive from the federal
0252 government or any of its agencies or from any private or govern-
0253 mental source any funds made available under laws, rules and
0254 regulations for contaminated site cleanup or other remedial
0255 action where environmental contamination is or threatens to
0256 create a health or environmental hazard.

0257 (b) The environmental contamination response fund shall be
0258 maintained as individual subaccounts, as follows:

0259 (1) State appropriations or funds from other sources desig-
0260 nated for remedial activities at specific state-lead contaminated
0261 sites shall be maintained in a separate account. Disbursement of
0262 funds from this account shall be made only for activities related
0263 to the sites at which the appropriating or donating person has
0264 designated.

0265 (2) State appropriations or funds from other sources desig-
0266 nated as state match for remedial activities at federal national
0267 priority list sites shall be maintained in a separate account.

0268 Disbursement of funds from this account shall be made only for
 0269 remedial design and remedial action at the national priority list
 0270 sites for which the appropriating or donating person has desig-
 0271 nated.

0272 (3) State appropriations or funds from other sources desig-
 0273 nated for emergency response activities or environmental re-
 0274 sponse at nonspecific sites shall be maintained in a separate
 0275 account. Disbursement of funds from this account shall be made
 0276 for activities at any contaminated sites where remedial action is
 0277 necessary to protect public health or the environment.

0278 (4) State appropriations of funds from other sources desig-
 0279 nated as state match for federal leaking underground storage tank
 0280 trust fund resources used to conduct remedial action to reduce or
 0281 eliminate environmental contamination from leaking under-
 0282 ground storage tanks of petroleum or hazardous substances shall
 0283 be maintained in a separate account. Disbursements of funds
 0284 from this account shall be made only for remedial action to
 0285 reduce or eliminate environmental contamination from leaking
 0286 underground petroleum or hazardous substance storage tanks.

0287 (c) Subject to the limitations in subsection (b), the secretary
 0288 is authorized to use funds from the environmental contamination
 0289 response fund to pay the cost of:

0290 (1) The design and review of remedial action plans;

0291 (2) contracting for services needed to supplement the de-
 0292 partment's staff expertise in site investigations;

0293 (3) consultation needed concerning remedial action;

0294 (4) mitigation of adverse environmental impacts;

0295 (5) emergency or long-term remedial activities;

0296 (6) legal costs, including expert witnesses, incurred in re-
 0297 covery of fund expenditures;

0298 (7) state matching costs for remedial action funded with the
 0299 federal hazardous substance superfund established by section
 0300 9507 of the Internal Revenue Code of 1986;

0301 (8) state matching costs for remedial action funded with the
 0302 federal leaking underground storage tank trust fund established
 0303 by section 9508 of the Internal Revenue Code of 1986; and

0304 (9) compensation to any person provided pursuant to section

← Monies recovered from any responsible person for remediation to reduce or eliminate environmental contamination shall be returned to the environmental response fund provided however, a proportional share may be returned to the source from which it came.

0305 5.

0306 (d) On the effective date of this act, the director of accounts
0307 and reports shall transfer all moneys in the pollutant discharge
0308 cleanup fund and the hazardous waste cleanup fund to the
0309 environmental contamination response fund, and the pollutant
0310 discharge cleanup fund and the hazardous waste cleanup fund
0311 are hereby abolished.

0312 Sec. 7.6(a) (1) An owner or operator is responsible for the
0313 conditions at a contaminated site if the person knew or should
0314 have known at the time the release occurred that the release was
0315 likely to threaten public health or the environment. A subse-
0316 quent owner or operator of a contaminated site is responsible for
0317 the conditions at the site only if such owner or operator knew of
0318 the contamination at the time of purchase of the site.

0319 (2) Any person, including an owner or operator or a subsidi-
0320 ary or parent corporation of the owner or operator is responsible
0321 for the conditions at a contaminated site which present a threat to
0322 public health or to the environment if:

0323 (A) The person violated any applicable statutes, rule and
0324 regulation, plan approval, or order in effect at the time the
0325 contamination occurred, and the violation caused or contributed
0326 to the contamination at the site, or

0327 (B) the person's action caused or contributed to the contami-
0328 nation at the site.

0329 (b)(3) (A) Any person responsible for environmental contami-
0330 nation at a site, whether it occurred before or after the effective
0331 date of this act, shall be liable to the state of Kansas and to any
0332 other person for all response costs incurred by the state or other
0333 person in the process of providing remedial action after the
0334 effective date of this act. Such person shall also be liable to the
0335 state for whatever damage the contamination does or has done to
0336 natural resources in the state. Damage to natural resources in-
0337 cludes damage to waters of the state, including but not limited to
0338 groundwater resources, fish, animals, other wildlife, vegetation,
0339 other biota or soil.

0340 2 (B) Liability for response costs and natural resource damages
0341 under this section shall be strict. A defendant may show by way

0342 of affirmative defense that the contamination resulted solely
0343 from an act of God, an act of war, or a unilateral act of a third
0344 person who is not an employee, partner, relative, or associate of
0345 the defendant and who is not and has not been contractually or
0346 otherwise related to the defendant.

0347 c (4) Any responsible person may seek contribution from an-
0348 other responsible person under this act.

0349 d (5) If remedial action is required to protect the public health
0350 or the environment, the costs of that remedial action shall be
0351 borne by the responsible person in proportion to such person's
0352 responsibility for contamination at a site. If the department
0353 incurs costs or expends funds for such activities, the department
0354 may take action as is appropriate to recover such cost, including
0355 all legal costs of any recovery action. If any person who is
0356 responsible for a contaminated site fails without sufficient cause
0357 to properly provide remedial action upon order by the secretary,
0358 such person may be liable to the state for punitive damages in an
0359 amount at least equal to, and not more than three times, the
0360 amount of any costs incurred by the environmental contamina-
0361 tion response fund as a result of such failure to take proper
0362 action. If the responsible person fails to pay for such costs, such
0363 payment or repayment shall be recoverable in an action brought
0364 by the secretary in the district court of Shawnee county. Any
0365 money recovered for response cost or natural resource damages
0366 shall be deposited in the environmental contamination response
0367 fund.

0368 Sec. 8. 7(a) Intentional or knowing violation of the provisions
0369 of this act or of any rule and regulation or order issued thereun-
0370 der in a manner that causes or is likely to cause groundwater or
0371 surface water contamination of a drinking water supply or usable
0372 aquifer by any person is a class E felony. Intentional or knowing
0373 violation of this act or of any rule and regulation or order issued
0374 thereunder in a manner that does not cause or is not likely to
0375 cause groundwater or surface water contamination of drinking
0376 water or a usable aquifer by any person is a class B misdemeanor.

0377 (b) If the secretary, on the basis of information available to
0378 the secretary, has reason to believe that any person has violated

0379 or is violating this act or any rule and regulation or order issued
0380 thereunder, the secretary may request the attorney general of the
0381 state of Kansas to bring criminal or civil proceedings against such
0382 person or shall assess civil penalties against such person. The
0383 secretary or a court may assess against any person found to have
0384 intentionally or knowingly violated any provision of the act or
0385 any rule and regulation or order issued thereunder a penalty up
0386 to \$5,000 per day of violation or the amount necessary to recover
0387 from such person the economic savings that such person realized
0388 by noncompliance, whichever is greater. The secretary or a court
0389 may assess against any person found to have violated any provi-
0390 sion of this act or of any rule and regulation or order issued
0391 thereunder, notwithstanding that such violation may have been
0392 inadvertent or negligent, a penalty up to \$2,000 per day of
0393 violation or the amount necessary to recover from such person
0394 the economic savings that such person realized by noncom-
0395 pliance, whichever is greater.

0396 Sec. 8 Any liability to the state shall constitute a debt to the
0397 state. Any such debt, together with interest as specified in K.S.A.
0398 16-204, and amendments thereto, from the date such debt be-
0399 comes due, shall constitute a lien on all property owned by any
0400 person liable under this act when a statement of claim nam-
0401 ing such person is recorded or filed. Any lien recorded, re-
0402 corded or filed pursuant to this section shall have priority over a
0403 encumbrance theretofore recorded, registered or filed.

0404 Sec. 10.9(a) Any person adversely affected by any order or
0405 decision of the secretary may, within 15 days of service of the
0406 order or decision, request in writing a hearing. Hearings under
0407 this section shall be conducted in accordance with the provisions
0408 of the Kansas administrative procedure act.

0409 (b) Any person adversely affected by any action of the secre-
0410 tary pursuant to this act may obtain review of such action in
0411 accordance with the act for judicial review and civil enforcement
0412 of agency actions.

0413 Sec. 11.1 K.S.A. 65-171w, 65-3452 to 65-3455, inclusive, and
0414 65-3457 and K.S.A. 1987 Supp. 65-3456 are hereby repealed.

0415 Sec. 12.1 This act shall take effect and be in force from and

Testimony on SB 455

For Senate Energy and Natural Resources Committee

By the Kansas Petroleum Council

February 3, 1988

I am Ross Martin, executive director of the Kansas Petroleum Council. I'm here this morning to address SB 455, the Environmental Contamination Response Act.

Although this hearing is scheduled for opponents of the bill, I want you note the Petroleum Council should not be labeled as totally opposed. We support the remediation concept; we are concerned about the mechanics of the bill you now have before you.

With your permission, Mr. Chairman, I would like to very briefly state what are our overall concerns are and then have you meet Mr. Herman Fritschen, General Manager, Safety, Environmental & Health Services for one of our member companies, Cities Service Oil and Gas Corporation. Mr. Fritschen has a great deal of expertise in the environmental field. He is here at our invitation to speak to the specific concerns of our industry and to answer any questions you may have.

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One of our concerns is whether the program envisioned by SB455 will prove to be cost-effective, for the state as well as those who will be held responsible for cleanups. We are also concerned about some of the definitions which are either confusing or too broadly stated to be applied fairly. We think there needs to be more consistency in state laws which are generated by laws passed by the Congress. Unnecessary duplication ought to be avoided wherever possible. And, finally, we are concerned about the wide discretionary authority the bill gives to the Secretary. It should be evident that our particular industry is already heavily regulated by both the federal and state governments. We are doing our best to operate all of our facilities in compliance with many complex and costly controls. We intend to cooperate with the state in making remediation work in Kansas.

With that, I would like to bring Mr. Fritschen forward to elaborate on those provisions in the bill that are of primary concern to our industry.

REMARKS ON KANSAS SENATE BILL 455

PRESENTED BEFORE THE KANSAS SENATE ENERGY COMMITTEE
ON WEDNESDAY, FEBRUARY 3, 1988

BY

CITIES SERVICE OIL & GAS CORPORATION

GOOD MORNING, LADIES AND GENTLEMEN, MY NAME IS HERMAN FRITSCHEN. I AM THE GENERAL MANAGER FOR SAFETY, ENVIRONMENT AND HEALTH FOR CITIES SERVICE OIL AND GAS CORPORATION, A MAJOR PRODUCER OF OIL AND GAS HERE IN KANSAS. OUR COMPANY AND ITS SUBSIDIARIES EMPLOY 270 KANSAS CITIZENS AT 21 FACILITIES IN 15 COMMUNITIES THROUGHOUT THE STATE. CITIES SERVICE AND ITS AFFILIATES HAVE BEEN CORPORATE CITIZENS IN KANSAS FOR OVER 70 YEARS. AS A MATTER OF FACT, THE COMPANY'S FIRST DECADE IN BUSINESS WAS MARKED BY SEVERAL NOTABLE OIL DISCOVERIES HERE. CITIES SERVICE PLACES GREAT IMPORTANCE ON KANSAS AND EXPECTS TO MAKE CONSIDERABLE CONTRIBUTIONS TO ITS ECONOMY AND CULTURAL RESOURCES FOR YEARS TO COME.

I APPRECIATE THIS OPPORTUNITY TO OFFER SOME REMARKS ON SENATE BILL 455, WHICH WOULD AUTHORIZE THE ADMINISTRATION OF SEVERAL ENVIRONMENTAL CLEANUP FUNDS FOR KANSAS. CITIES SERVICE IS NOT OPPOSED TO THE ESTABLISHMENT OR THE FUNDING OF A STATE SUPERFUND.

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WE CONSIDER OURSELVES A GOOD CORPORATE CITIZEN AND TRY TO ACT RESPONSIBLY IN THE 34 STATES IN WHICH WE OPERATE. WE ARE CONCERNED, HOWEVER, WITH THE GREAT VARIETY OF LEGISLATIVE AND REGULATORY APPROACHES THAT CAN BE TAKEN TOWARDS ENVIRONMENTAL CLEANUP FUNDS. WE HAVE STUDIED SENATE BILL 455 TO ENSURE THAT WE CAN COMPLY WITH ITS PROPOSED PROVISIONS, SHOULD IT SOMEDAY BE NECESSARY FOR US TO DO SO.

ONE OF OUR PRIMARY CONCERNS WITH LEGISLATION OF THIS TYPE IS THAT IT NOT BECOME OVERLY BURDENSOME TO THE STATE OR THE REGULATED COMMUNITY. ALL OF US WHO OPERATE IN A MULTI-STATE ENVIRONMENT REALIZE THE IMPORTANCE OF CONSISTENCY IN LAWS AND REGULATIONS WHICH INTERFACE AT THE STATE AND FEDERAL LEVELS. FOR THE APPROPRIATE HANDLING OF OPERATIONS, ADMINISTRATIVE EASE AND FASTER RESPONSE TIME, WE BELIEVE THAT CONSISTENCY IS VERY SIGNIFICANT. IN THIS REGARD, I WOULD LIKE TO EMPHASIZE THAT A STATE'S PRACTICAL TREATMENT OF ENVIRONMENTAL ISSUES MUST BE CONSIDERED AN INTEGRAL PART OF ITS EFFORTS TO PROVIDE ITS CITIZENS WITH A CLEAN, HEALTHY ENVIRONMENT AND TO CREATE AN ATTRACTIVE BUSINESS CLIMATE.

WITH THIS IN MIND, I WOULD LIKE TO SUGGEST SOME ALTERNATIVES TO A FEW KEY ELEMENTS OF SENATE BILL 455.

A NOTABLE FEATURE OF THIS LEGISLATION IS THAT IT CONTAINS SEVERAL PROVISIONS WHICH WOULD FORCE KANSAS TO UNDERTAKE NEEDLESS AND COSTLY STUDIES WHICH HAVE ALREADY BEEN PERFORMED BY THE FEDERAL GOVERNMENT.

FOR EXAMPLE, SECTION 2, PART (a) PROVIDES A VERY BROAD AND VAGUE DEFINITION FOR "CONTAMINANT". IT FURTHER PROVIDES THAT KDHE, AND I QUOTE, "...SHALL ADOPT RULES AND REGULATIONS FOR A LISTING OF EACH CONTAMINANT...", UNQUOTE. THIS PROVISION CONJURES UP THE SPECTER OF HUNDREDS -- IF NOT THOUSANDS -- OF MANHOURS TO BE SPENT IN IDENTIFYING, DEBATING, LISTING AND REGULATING POTENTIALLY HAZARDOUS SUBSTANCES. THIS WORK IS ALREADY BEING DONE BY FEDERAL ENVIRONMENTAL EXPERTS; THE RESULTING LIST OF CONTAMINANTS MEETS THE CRITERIA ESTABLISHED BY SECTION 101, SUBPARAGRAPH (14) OF THE FEDERAL SUPERFUND STATUTE. I RESPECTFULLY SUGGEST THAT KANSAS COULD SAVE CONSIDERABLE TIME AND MONEY BY SIMPLY ADOPTING THE SAME COMPREHENSIVE LIST.

I ALSO SUGGEST THAT SECTION 5, PART (c), WHICH MANDATES KDHE TO ADOPT, AND I QUOTE AGAIN, "...RULES AND REGULATIONS ESTABLISHING SITE CLEANUP STANDARDS FOR THE STATE OF KANSAS...", UNQUOTE, SHOULD CONTAIN A STRONG REFERENCE TO SECTION 121 OF THE FEDERAL SUPERFUND STATUTE, WHICH PROVIDES GUIDELINES FOR CLEANUP STANDARDS. KANSAS TAXPAYERS -- ALONG WITH TAXPAYERS FROM THE OTHER 49 STATES -- HAVE ALREADY PAID FOR THE ESTABLISHMENT OF THESE STRINGENT CLEANUP STANDARDS. TO ME, IT WOULD BE UNWISE TO INCORPORATE IN SENATE BILL 455 A PROVISION WHICH WOULD SIMPLY REINVENT THE WHEEL AT THE STATE LEVEL.

I WOULD LIKE TO TAKE A MOMENT TO FOCUS ON A FEW PROVISIONS OF SENATE BILL 455 WHICH, IN MY OPINION, ARE TOO BROAD FROM A PRACTICAL POINT OF VIEW.

A CASE IN POINT IS SECTION 2, PART (f), WHICH ATTEMPTS TO DEFINE THE TERM "RELEASE" AS IT PERTAINS TO THE ESCAPING OF CONTAMINANTS. I SAY THIS SECTION "ATTEMPTS TO DEFINE", BECAUSE IT PLACES NO REAL LIMITS ON THE WORD "RELEASE". IT MUST BE REALIZED THAT SOME SUBSTANCES ARE HAZARDOUS ONLY WHEN THEY EXIST AT CERTAIN CONCENTRATED LEVELS. IN ORDER TO DISTINGUISH BETWEEN A RELATIVELY INNOCUOUS LEVEL OF A SUBSTANCE AND A POTENTIALLY HAZARDOUS CONCENTRATION OF THE SAME SUBSTANCE, SENATE BILL 455 SHOULD DEFINE REPORTABLE RELEASES. WITHOUT THIS DISTINCTION, KANSANS COULD FIND THEMSELVES NEEDLESSLY REPORTING AND RECEIVING INFORMATION ON RELEASES THAT ARE BELOW SCIENTIFICALLY-RECOGNIZED THRESHOLDS OF DANGER, SUCH ACTIVITY WOULD ONLY DETRACT FROM THE OVERRIDING VALUE OF THIS LEGISLATION -- THE PROMPT CLEANUP OF SITES WHICH POSE A REAL AND IMMINENT DANGER TO THE PUBLIC HEALTH AND ENVIRONMENT. AGAIN, I REFER YOU TO SECTION 102 OF THE FEDERAL SUPERFUND STATUTE, WHICH PROVIDES FOR REPORTABLE RELEASES.

SECTION 2, PART (g) OF THE BILL BEFORE US PROPOSES A VERY BROAD DEFINITION FOR "REMEDIAL ACTION". WE HAVE NO QUARREL WITH ITS INTENT, BUT BELIEVE THAT THIS LANGUAGE COULD BE GREATLY IMPROVED BY INCORPORATING THE PRACTICE OF COST/BENEFIT ANALYSIS INTO THE SELECTION OF AN APPROPRIATE CLEANUP OR REMEDIAL ACTION EFFORT. THIS WOULD ALSO TRACK WITH SECTION 121 OF THE FEDERAL SUPERFUND ACT. THEN THE ULTIMATE SELECTION OF THE CLEANUP METHOD FOR A PARTICULAR SITE WOULD MORE LIKELY BE ONE WHICH PROVIDES THE GREATEST PROTECTION FOR KANSAS WITHOUT UNNECESSARY AND UNJUSTIFIED ECONOMIC STRAIN UPON A NO-FAULT PARTY.

IT WOULD BE IMPOSSIBLE TO CONDUCT AN EFFICIENT AND EFFECTIVE STATE CLEANUP PROGRAM WITHOUT A MASTER LIST OF POTENTIAL PROBLEMS, THEREFORE SENATE BILL 455 CALLS FOR THE PREPARATION OF A REGISTRY OF SITES. HOWEVER, PARTS (b)(2) AND (b)(3), CALL FOR PUBLIC HEARINGS THROUGHOUT THE STATE TO RECEIVE COMMENTS ON THE SITE REGISTRY. THIS COULD BE A VERY COSTLY INVESTMENT OF TIME AND MONEY THAT PROMISES NO REAL RETURN. SINCE THIS IS ONLY A FIRST STEP IN A NOMINATION PROCESS WHICH WILL ULTIMATELY DEPEND UPON TECHNICAL MATTERS, I SUGGEST THAT YOU CONSIDER ALTERNATIVES SUCH AS A WELL-PUBLICIZED, ONGOING HOTLINE SERVICE THAT CITIZENS MAY USE TO REPORT POTENTIAL PROBLEMS.

IN SECTION 7 OF THE BILL, PART (3)(A) WOULD MAKE A PERSON RESPONSIBLE FOR ENVIRONMENTAL CONTAMINATION LIABLE, AND I QUOTE, "...FOR WHATEVER DAMAGE THE CONTAMINATION DOES OR HAS DONE TO NATURAL RESOURCES IN THE STATE", UNQUOTE. THIS WOULD BE IMPOSED IN ADDITION TO THE LIABILITY FOR COSTS ASSOCIATED WITH THE CLEANUP ACTION. ON WHAT BASIS WILL THIS LIABILITY FOR "WHATEVER DAMAGE" BE DETERMINED? APPROPRIATE DAMAGE MEASUREMENT GUIDELINES SHOULD BE ADOPTED SO THAT ALL AFFECTED PARTIES MAY BE FULLY APPRISED OF THEIR POSSIBLE LIABILITY. AGAIN I REFER YOU TO THE WORK BEING DONE IN THIS AREA ON THE FEDERAL LEVEL.

WHILE THE LIABILITY OF A RESPONSIBLE PARTY IS SET FORTH AT LENGTH IN SENATE BILL 455, I DO NOT FIND A CLEAR DEFINITION OF SUCH A PARTY IN THE LEGISLATION. AS I READ IT, IT IS PROBABLY LIMITED TO PERSONS WHO ARE OR WERE OWNERS OF THE PROPERTY FROM WHICH THERE HAS BEEN A RELEASE. HEREIN LIES ONE MAJOR DEVIATION FROM THE FEDERAL

ACT WHICH I WOULD LIKE TO PROPOSE: WHERE A CLEANUP OBLIGATION EXISTS, WHICH IS NOT BASED UPON THE NEGLIGENCE OR FAULT OF THE LEGALLY RESPONSIBLE PARTIES, I STRONGLY URGE THAT TRANSACTION COSTS BE BORNE BY THE BENEFITING PARTIES -- THE CITIZENS AND TAXPAYERS OF KANSAS. I FURTHERMORE SUGGEST THAT, IN THESE CASES, THE PROPOSED STATE FUND BEAR THE MAJORITY OF THE CLEANUP COSTS.

IT MUST BE RECOGNIZED THAT BUSINESSES TODAY ARE FINDING IT VIRTUALLY IMPOSSIBLE TO SECURE APPROPRIATE INSURANCE COVERAGE SINCE STATES ARE HOLDING THEM LIABLE FOR ACTIONS WHICH WERE LAWFULLY CONDUCTED DURING YEARS PAST AND WHICH WERE PERMITTED BY STATE GOVERNMENTS. SENATE BILL 455'S CONCEPT OF JOINT AND SEVERAL LIABILITY FOLLOWS FEDERAL SUPERFUND LAW, BUT WE MUST REMEMBER THAT CONGRESS WAS FORCED TO RECONSIDER THE APPLICATION OF THIS CONCEPT WITH RESPECT TO DE MINIMUS CONTRIBUTORS AND SETTLING PARTIES. WITH THIS IN MIND, I URGE KANSAS TO DEVELOP QUICK AND EFFICIENT RELEASE MECHANISMS FOR THESE TYPES OF PARTIES.

A FINAL POINT TO BRING OUT IS THAT SENATE BILL 455 SHOULD SPECIFICALLY INDICATE THAT RELEASES WHICH ARE PERMITTED IN ACCORDANCE WITH STATE OR FEDERAL LAW OR REGULATION ARE NOT SUBJECT TO THIS BILL. PERMITS FOR SUCH RELEASES ARE GIVEN IN RECOGNITION OF THEIR INNOCUOUS NATURE OR THE CONTROL TECHNOLOGIES EMPLOYED TO RENDER THEM INNOCUOUS. LET'S NOT UNDO THE YEARS OF SUBSTANTIAL SCIENTIFIC AND REGULATORY WORK THAT HAVE GONE INTO CRAFTING EXISTING PERMITS AND THE PERMITTING PROCESS.

YOU MAY NOW HAVE DOUBTS ABOUT MY EARLIER STATEMENT THAT CITIES SERVICE IS NOT OPPOSED TO A STATE SUPERFUND FOR KANSAS.

CITIES SERVICE SUPPORTS THE ESTABLISHMENT AND FUNDING OF STATE SUPERFUNDS WHEN CIRCUMSTANCES FORCE A STATE TO TAKE CLEANUP ACTION BECAUSE THE FEDERAL GOVERNMENT IS SLOW TO RESPOND TO LOCAL PROBLEMS. OUR COMPANY ALSO SUPPORTS THE USE OF GENERAL REVENUES AS THE FUNDING MECHANISM FOR STATE CONTRIBUTIONS UNDER SENTE BILL 455. I DO CAUTION THE STATE, HOWEVER, TO PROCEED CONSERVATIVELY IN ASSIGNING MONIES TO THE PROPOSED STATE SUPERFUND.

ORGANIZING AND INITIATING AN EFFECTIVE, RESPONSIVE PROGRAM REQUIRES MONEY, BUT TOO MUCH MONEY AT ONCE CAN BE DETRIMENTAL TO THE PROGRAM'S ULTIMATE GOALS. THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY HAS SUFFERED CONSIDERABLE PROBLEMS -- FROM BOTH A TECHNICAL AND A PUBLIC RELATIONS POINT OF VIEW -- BECAUSE IT HAS HAD MORE MONEY THAN IT COULD EFFECTIVELY MANAGE TO USE IN A GIVEN TIMEFRAME. AS A RESULT, THE PUBLIC IS OUTRAGED OVER WHAT APPEARS TO BE A RELATIVE LACK OF ACTION AND EFFECTIVE REMEDIATION BY THE EPA.

THE MOST APPROPRIATE FUNDING SHOULD BE MODEST FOR THE ORGANIZATIONAL AND INVESTIGATION PHASES OF YOUR PROGRAM. INCREASED FUNDING ADEQUATE TO UNDERTAKE NEEDED CLEANUP ACTIVITIES WILL UNDOUBTEDLY BE NECESSARY IN FUTURE YEARS. AFTER MAJOR SITE PROBLEMS HAVE BEEN ABATED, MITIGATED OR REMEDIATED, FUNDING COULD BE DECREASED TO DEAL WITH A SMALLER UNIVERSE OF PROBLEMS. THE COMMITTEE MAY EVEN WISH TO CONSIDER A SUNSET PROVISION SO THAT THE PROPOSED PROGRAM DOES NOT BECOME A SELF-FULFILLING PROPHECY.

THIS CONCLUDES MY PREPARED REMARKS ON THE LEGISLATION BEFORE THE COMMITTEE. I WILL BE HAPPY TO ANSWER ANY QUESTIONS THAT YOU MAY HAVE AT THIS TIME. THANK YOU.

On January 20, Mr. James Power, Dir. of the Environmental Div. of the Dept of Health and Environment, introduced SB 455 to the Kansas Water Authority. We reviewed the bill, section by section, and discussed the various aspects of administering such an act.

There was no dissension to the principle of such a law, but I raised the issue of ownership as described in Sec. 7 on page 8, line 312 to line 322. And in order to best explain my concern, let me describe to you a personal experience.

On April 24, 1959, a spectacular phenomenon occurred on my fathers property three miles East of Ellinwood. At approximately 9 AM, my father and I witnessed the beginning of a cave-in that in 24 hours encompassed approximately four acres of prime, gently sloping, farm land, creating a hole that ended up being 100ft deep and containing 85ft of water. And all because of an irregular drilling procedure by a major oil company that you would think would have known better.

After going through the court system, it was declared that the oil company that drilled the well in 1938 was liable and granted my father compensation for damages caused by their malpractice. The settlement was for only the surface area that encompassed the hole itself at that particular point in time. Nothing was mentioned about the possibility of contamination of the water supply below or the additional damage caused by eroding activities both below and above the surface at a future date.

We have sampled the water numerous times and the chlorides have been above the limits allowed for irrigation purposes established by Kansas State University. KDHE monitored the activity of the "Hole" in the first few months after the initial cave-in, but I have never seen or heard of them in the area in the past twenty years.

The topography is constantly changing. The soil under the surface is continually shifting, allowing the level of the surface to slope towards the center of the hole which in turn allows more and more drainage into the hole, farther and farther away from the center.

Now to the issue of Sec. 7 of this bill. I became aware of the potential hazardous condition of this location on the day of the cave-in. At the same time as the oil company who created the problem. Therefore as I interpret the language of this bill, if the oil company or any subsequent company that may have had ownership should abandon this lease or should become defunct, then the present owner of the land shall become the responsible party for cleaning up the site.

Any person or persons that are proven to be the responsible party for polluting our environment, should be required to fund the task of a clean-up, regardless of the ownership at the time of the clean-up or regardless of the name of the company at the time of the infraction. Many individuals who made those irresponsible decisions could still be living at the time of the clean-up but not be involved in an active business. Yet they should not be relieved of the cost of correcting their mistakes simply because they are no longer actively involved in the business world or may have changed professions.

Please Ladies & Gentlemen, don't misunderstand my concern about pollution just because I am listed as the owner of one of the 332 potential pollution sites presented by KDHE. I do agree with the concept of this bill. I do agree with the penalties and enforcement procedures. My concern centers on how the decision is made as to the responsible party at the time of clean-up. Again, as I interpret section 7 of SB 455, the owner of the land of the site at the time of clean-up shall be the responsible party for financing of that project. That means there could be literally hundreds of innocent citizens falsely accused of being responsible for cleaning up a site simply because they are unaware of the potential pollution of the property they own. And what about the bureaucrats that refused to take seriously their responsibilities as watch dog for the citizens of this State! In some cases, they should be held as liable as the people who created the physical damage to our environment because of their permissiveness.

I know the Special Committee put many hours of study into this bill and tried to cover every avenue for a fair and equitable approach to a very serious problem, but I would ask that you reconsider the wording of Section 7. The financial security of thousands of innocent Kansas citizens could hinge on your wisdom.

Thank you!

THE CHAMBER

TESTIMONY REGARDING

SB 455: Kansas Environmental Contamination Response Act



Presented to the:
Senate Energy and Natural Resources Committee

By

Arthur T. Woodman
Chairman
Water Resources Committee

February 3, 1988

Wichita Area Chamber of Commerce
350 West Douglas Avenue
Wichita, Kansas 67202-2970
316 265-7771

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Testimony Regarding SB 455
Presented By
Arthur T. Woodman, Chairman
Water Resources Committee
Wichita Area Chamber of Commerce

The Wichita Area Chamber of Commerce, through the Water Resources Committee, has been very active in water and environmental matters. We were involved in the development of the State Water Plan and remain active to ensure needed resources are available and properly protected.

Since its inception, I have had the privilege of serving on the Lower Arkansas Basin Advisory Committee, as called for in the State Water Plan. Currently, and for the past two years, I serve as chairman. As we have developed an action plan for water resources within the Lower Ark basin, our committee has identified water quality as a top priority.

Environmental protection and remediation, which is the intent of SB 455, is most important as we look to future growth and development and to the growing needs for water resources. We, too, are working to protect our natural resources and environment for future generations. While we support the intent of the bill, we share concerns with others about the bill in its present form. Since this is such an important issue, we believe the best action is to hold SB 455 over for continued study to allow sufficient time for review, analysis and redraft as appropriate.

Following is a brief summary of several of our concerns with SB 455 in its present form. We ask that you seriously consider these matters as they are fundamental to our form of government and rights to property ownership.

1. Access to private property including contiguous lands would be available to the Secretary of Kansas Department of Health and Environment or his designee, virtually at will and apparently before any judicial review. A notice before entry is required under most circumstances, but a definition of the meaning of "notice" is lacking.
2. A person responsible for environmental contamination at a site, would also be responsible for any and all damage to natural resources because of that contamination. While liability should be strict, it is not clearly defined in the bill. Environmental contamination, damage to natural resources, assessment of liability, the matter of responsibility, related and unrelated parties, etc. are enormously complex issues and are left open-ended in the bill.
3. First mortgage rights would become available to the State of Kansas for any liability, together with interest. This provision will negatively impact lenders which are otherwise innocent, has the potential of severely hampering business development resulting in lost jobs for many Kansans, and could result in governmental ownership and control over what would otherwise be tax producing property. The bill substantially changes our long-standing system of property ownership and rights.
4. Publishing a registry of contaminated sites together with filing a notice with the appropriate county recorder of deeds without full

documented evidence which is complete through the judicial system can become equivalent to the State of Kansas taking control of private property without ownership. While the registry concept is sound, the ease with which sites can be petitioned for inclusion in the registry, by any person, followed by unilateral decision of only "the department," is seriously deficient.

5. Subsequent landowners and persons otherwise innocent of contaminating sites would be treated the same as persons responsible for contaminating sites. Fair and reasonable judgement would not exist.

6. Expeditious cleanup of contaminated sites in order to protect the environment with the least amount of cleanup cost should be an objective of any final bill. Presently, however, the State of Kansas has minimal provision for properly disposing contaminated materials and through SB 455 would be requiring cleanup without providing the ultimate mechanism. Cleanup in an expeditious, cost-effective manner could not result. Accountability in cleanup procedures is needed including recognized and acceptable cost-benefit standards.

These concerns are major and require thorough discussion and opportunity for public comment before action. This is also the basis on which we believe SB 455 should be held over for continued study. As stated earlier, we support the intent of the bill. However, since it is a significant deviation

from our system of property rights and the rights of individuals, serious reconsideration is justified.

It is important that the State of Kansas have proper authority for environmental protection and remediation. SB 455, in its present form, does not clearly define and goes far beyond proper authority. Your considered review is essential on behalf of all citizens of the state of Kansas.

Thank you very much.



DEPARTMENT OF ENVIRONMENTAL RESOURCES

HISTORIC COURTHOUSE
510 NORTH MAIN
WICHITA KANSAS

TELEPHONE: (316) 268-7380

Testimony Regarding SB 455
Presented By
Dr. Douglas R. Hahn, Director
Sedgwick County Department of Environmental Resources

I am Dr. Douglas R. Hahn, Director, Sedgwick County Department of Environmental Resources, and appear here to testify regarding Senate Bill 455, otherwise known as the Environmental Contamination Response Act. In addition to my current position, I am a member of the Water Resources Committee of the Wichita Area Chamber of Commerce and a member of the Lower Arkansas River Basin Advisory Committee on the Kansas Water Plan. My professional memberships include the Water Pollution Control Federation, the American Fisheries Society, the Ecological Society of America, and the American Association for the Advancement of Science. My entire professional life has been directed toward dealing with environmental concerns including water contamination issues.

Preventing the degradation of water quality and remediating instances where contamination has occurred are key environmental issues in Kansas. I believe that steps should be taken to provide machinery and tools for appropriate officials to undertake the necessary actions to protect and improve water quality in the state of Kansas. The water resources of Kansas are critical to the needs of its citizens, to the natural environment, to business and industry, and to present and future economic development in

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the state. However, I believe that it is possible to develop programs to remediate water contamination without abridging the constitutional rights of citizens and without ignoring the rational, scientific, technical, and economic bases for decision making related to that issue. After reviewing Senate Bill 455, it is my opinion that the authors of the Act have laudible goals but have developed some flawed mechanisms with which to achieve those goals. Thus, I speak in opposition to SB 455 in its present formulation.

I hold numerous concerns and reservations regarding the bill. Time will not allow me to list those concerns; however, I am submitting a written critique of the bill which I believe addresses those matters. In summary, I make the following observations:

- 1) The language of the bill is too broad and too general, allowing interpretations which tread on citizen rights.
- 2) Instances of slight water contamination of water of naturally poor quality not used by anyone are treated exactly the same as contamination of a water supply affecting large numbers of people. A system of prioritization should be included recognizing that time, funding, and manpower will always be limited.
- 3) A system of benefit/cost methodology should be included again noting limitations on time, funding, and manpower. For example, if site A, which is a water supply, can be

decontaminated for "x" dollars per gallon and site B, which is not a water supply, can be decontaminated for "4x" dollars per gallon, we should direct efforts to decontaminate site A. The current bill doesn't do that. We should also recognize, unfortunate though it may be, that some instances of contamination can not be rectified technically or economically.

- 4) Documented, empirical, scientific evidence should be the criteria for assessing contaminated sites and taking action on them. The present bill does not impose such a standard.
- 5) All citizens and parties should be afforded due process and judicial review. Environmental remediation should not be an excuse to suspend the constitution and personal rights. Very few instances of water contamination are that time sensitive.
- 6) The bill grants far too much discretionary authority to the regulators. Legislative oversight is needed.
- 7) The bill should distinguish levels of contribution and responsibility for a given incident of contamination rather than always pursuing the "deep pockets" approach.

In summary, I support the concept of Senate Bill 455, but have serious and profound disagreements with the mechanisms of the bill. I oppose the bill in its present form.



DEPARTMENT OF ENVIRONMENTAL RESOURCES

HISTORIC COURTHOUSE
510 NORTH MAIN
WICHITA KANSAS

TELEPHONE: (316) 268-7380

January 22, 1988

TO: Willie Martin
Intergovernmental Coordinator

FROM: Dr. D. R. Hahn, Director *drh*
Sedgewick County Dept. of Environmental Resources

RE: Review and Critique of Senate Bill No. 455

As per your request, I have reviewed Senate Bill 455, otherwise known as the Environmental Contamination Response Act. Water quality concerns and responses to those concerns, preventing the degradation of water quality and remediating instances where contamination has occurred, are the principal water issues on the minds of Kansans as shown through public hearings and meetings on the Kansas Water Plan across the state of Kansas. I share those concerns and believe that steps should be taken to provide machinery and tools for appropriate officials to undertake the necessary actions to protect and improve water quality in the state of Kansas. The water resources of Kansas are critical to the needs of its citizens, to the natural environment, to business and industry, and to present and future economic development in the state. However, I believe that it is possible to develop programs to remediate water contamination without abridging the constitutional rights of citizens and without ignoring the rational and economic bases for decision making. After reviewing Senate Bill 455, it is my opinion that the authors of the Act have laudible goals but have developed some flawed mechanisms with which to achieve those goals. I would offer the following comments in that regard:

1. In general, a greater level of proof and evidence, both scientific and legal, should be required before actions are taken under the provisions of this bill. When such levels of evidence are provided, the bill should require stiffer penalties than are provided.
2. Lines 30-37 define the term "contaminant" under the provisions of the Act. The definition provided is

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too broad and too ambiguous. Essentially, under this definition, anything could be considered a contaminant including naturally occurring compounds and/or levels of materials so low as to pose either no harm or risk or an extremely minute harm or risk. In fact, the presence of virtually anything in levels above zero would meet this definition of contaminant and would provide a potential tool of harassment. Under the proposed definition, a "contaminant" which would increase a health risk by 1 in 2 would be classified in the same manner as a contaminant posing an increase in risk by 1 in 1 quadrillion. Furthermore, words such as "significant", "significantly", "serious", and "potential hazard" are used to define "contaminant"; who determines what such words mean?

3. The bill defines terms such as "owner or operator" (lines 43-49) and "person" (lines 50-53) but does not define terms such as "responsible person" or "responsible party" although these terms or variations of them are used throughout the bill. Further, the mechanism for determining a responsible party is not well defined.
4. Corresponding federal legislation provides for "innocent landowner" and "de minimis" contributor" defenses for site remediation situations. I believe there are valid reasons for those categories and corresponding language should be provided in a bill of this nature.
5. The term "remedial action" is defined in lines 59-62. This definition is flawed in at least two regards. First, it provides for all cleanup, containment, or corrective action measures whether or not such measures are needed, valid, or justified. In short, the language would cover unreasonable as well as reasonable costs and measures. Second, "remedial action" means to eliminate the presence of contaminants in any medium. Presumably, the term "eliminate" implies zero levels which in many cases are unattainable either technically or economically. Besides being unrealistic, the definition provides opportunity for use as a tool of harassment.
6. Section 3 (lines 65-99) provides broad powers to the Secretary to access sites, gather information, and provide for remediation activities prior to any type of judicial review or redress by the affected parties.

The granting of such powers seems unreasonable and unconstitutional. Further, while I am not an attorney, my reading of Item "a" under Section 3 (lines 66-70) appears to violate constitutional provisions against self-incrimination. I also find Item "i" (lines 91-93) absolutely mind-boggling in that it provides for the issuance of orders to any person regardless of their level of association with the contamination in question. Further, this section provides for the recovery of monies expended regardless of the validity of the expenditures. As if the provisions of Section 3 are not broad enough in nature, Item "k" allows the adoption of any rules and regulations necessary to carry out the Act.

7. Section 4 (lines 100-175) of the Act provides for the compilation, maintenance, publication, and periodic updating of a registry of contaminated sites in Kansas. I support the concept contained in this section and believe it is necessary to protect prospective buyers of contaminated properties. However, I have grave concerns regarding the mechanisms to develop such a registry as described in this section. In particular, the process for nominating a site to the registry is not nearly rigorous enough and does not really follow due process. Nomination of a site to the registry should require rigorous scientific and legal evidence with appropriate judicial review before such a site is listed. The proposed process for placing a site on the registry is very simple and requires an unspecified level of documentation. Once again, the affected party or parties are helpless to do anything about the damage incurred to them, their reputation, and their property until after the procedure has run its course. There must be a mechanism to keep a government agency from capriciously filing cases.
8. The bill essentially provides an unrestricted hunting license to a state agency regarding "potentially" contaminated sites and areas. An assumption of the bill is that the state agency will always make wise judgments with such unrestricted powers. However, as we all know, people in agencies can and do make mistakes from time to time which subsequent evidence will reveal. There must be a mechanism for parties to recover damages should the state agency blight their property, impugn their reputation, and cause them financial losses in the event state allegations prove groundless or less than charged.

9. Lines 176 and 177 indicate that the Department shall investigate all suspected contaminated sites. Can the state financially afford to do that? How long will it take? Until such investigations are completed, is the site to remain on the registry until resolution occurs several years later and the affected parties have been severely inconvenienced?
10. I believe that Item "d" (lines 206-209) and Item "g" (lines 235-241) are highly desirable provisions in this Act and will aid in the expeditious cleanup of contaminated sites.
11. Section 5 (lines 176-241) once again allows unlimited powers of access without due process.
12. Throughout the Act, the Secretary of the Kansas Department of Health and Environment is presumed to be the objective arbiter in disputes between Kansas Department of Health and Environment staff and affected parties. Such an assumption hardly meets any notion of judicial fairness given the vested interests of the Secretary.
13. Lines 222-224 indicate that the Secretary may provide reasonable compensation for taking of property or damage done in the process of performing remedial action. That sentence suggests that the Secretary, who is responsible for taking the property or causing the damage, decides whether or not he should compensate the party for it and what the level of compensation should be. Again, this mechanism scarcely meets concepts of judicial review and fairness.
14. As has been noted previously relative to specific items, the Act continually provides for broad and extensive actions to be taken against parties without any opportunity for legal redress until after the episode is concluded, which may take years. This may be an indiscrete granting of power.
15. Section 7(a)(1) (lines 312-318) holds an owner or operator responsible if the person knew or should have known that the activities were likely to threaten the public health or the environment. Further, a party can also be held responsible if they knew of contamination at the time they purchased the property. This section holds a person liable even if the activities conducted were in compliance with the law at the time they were conducted. Further, the "should have known" provision holds a person accountable for "general knowledge" which may not be specific. The ramifications of this section are significant.

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16. Section (3)(A) (lines 329-339) provides for liability for a responsible party for contamination at a site regardless of time of occurrence or legality at the time of occurrence. One problem I have with this section and related sections on liability and compensation of damages or costs to the state is that efforts are not made to ascertain that the actions of the regulatory agency requiring compensation are held to any kind of standard of reasonableness and validity. In short, the Act gives a blank check to the regulatory agency to do anything it chooses. Further, effort is not made to apply a benefit-cost analysis either to the chosen methods for site remediation or to a determination as to whether a benefit would be realized by remediating a particular site.
17. The phrase "on the basis of information available to the Secretary" on lines 377 and 378 is far too loose. That phrase could refer to anything ranging from general gossip to quantified, detailed, scientific data.
18. In my opinion, the penalties provided on page 11 are not stringent enough.
19. The phrase "Secretary or a court" (e.g. line 383) is used in several places in the bill as if the two were equivalents. This situation should be rectified.

In summary, I support the concept of Senate Bill 455, but have serious and profound disagreements with the mechanisms provided therein. I believe that the bill requires a substantial and significant rewrite and a different philosophical approach. I strongly recommend advocating that the bill be sent to an interim committee or held over for a major revision. If you have any questions about my comments, please contact me.

cmh

TESTIMONY
to
Kansas Senate Committee
on
Energy and Natural Resources

Mr. Chairman and members of the Committee:

Thank you for this opportunity to present concerns about Senate Bill 455.

My name is Vernon McKinzie. I am a Registered Professional Entomologist and I have been in the structural pest control business in Emporia, Kansas since 1960. I am a past president of both my state and national trade associations. I am presently chairman of the legislative committee for the Kansas Termite and Pest Control Association and appear before you today representing that group. Our industry provides services that protect health and property.

We have concern for the environment and pride ourselves as environmental managers because we alter the environment by removing pests. We oppose the toxo-terrorists who would have the public believe any chemical in any amount in the environment is bad.

I am here today to call your attention to what we perceive as a conflict as printed in Section 2, (a) and (f). According to these sections and if we follow the pesticide labels as published by the United States Environmental Protection Agency when we perform services to protect health and property, we would be subject to penalty for violation of Sections 2 (a) and (f). We respectfully submit to the committee that you consider an additional statement to Section 2 (f) that would allow exemption for the use and application of chemicals when they are used and applied according to their label instructions. We further request that Section 2 (a) be amended to limit and restrict the secretary in the adoption of rules and regulations for listing contaminants to restrict the list to include only those compounds already published as hazardous substances by the United States Environmental Protection Agency.

We do not condone irresponsible use of chemicals and support sections of Senate Bill 455 dealing with conditions which may harm people.

Thank you for your consideration. Are there any questions?



KANSAS INDEPENDENT OIL & GAS ASSOCIATION

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Testimony of Donald P. Schnacke
Executive Vice President
Kansas Independent Oil & Gas Association
Before the Senate Energy & Natural Resources Committee
February 3, 1988

RE: SB 455 - Contamination Response Act

First of all, I want to express to the Committee that our industry is supportive of regulations that enforce and insist on good environmental practices. There are in place today many laws, rules and regulations that enforce environmental practices relating to our industry.

Therefore, we appear today, not as an opponent to good environmental practices, but as a friend of the Committee, to express our views and offer constructive comments relating to SB 455.

We note that SB 455 arose from Interim Study No. 12 without recommendations and without in-depth hearings this past summer.

The largest file I have in my office is one devoted to groundwater protection. This is an issue of national concern and one that continues to be of high interest in Kansas.

One of the many conferences I personally have participated in was for the development of the State of Kansas Groundwater Quality Protection Strategy. I was asked by then KDH&E Secretary Sabol to represent the oil and gas industry on the Task Force that developed that strategy. We were getting along pretty well together until the final report was written. The draft (November 1986) seemed to strike a reasonable definition of oil and gas production activities. When the final version was released (January 1987), that portion of the report was completely rewritten by KDH&E staff, inserted into the final report, and published. It was as though KDH&E had completely ignored many months of what we thought was a cooperative effort.

Additionally, we have examined the list of KDH&E groundwater contamination sites. Out of 209 sites, 55 were listed as petroleum or chloride related contamination sites. Upon closer examination, we found that, of the petroleum and chloride contamination sites some of the issues no longer exist; some never will be able to be remediated; many are very old issues; some are identified as low on chloride or may be neutral; some are already corrected; for some the responsible parties are being sought through existing legal channels for remediation; and much of this contamination falls under HB 3078 (1986) and SB 498 (1982)--the jurisdiction of the State Corporation Commission.

ATTACH VII
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Senate Energy & Natural Resources Committee
SB 455 - Contamination Response Act
Hearing: February 1, 1988

So it is with this extensive involvement and interest in this field that we approach SB 455 with some apprehension.

SB 455 would appear to give very broad powers to KDH&E in determining contamination sites and taking action to protect public health and environment. I can't speak for the various state agencies involved, but it would appear this Act conflicts with prior authority granted to the KCC which regulates and responds to the contamination on operating oil and gas leases throughout Kansas. What constitutes contamination seems to be vague. The standards adopted by KDH&E may or may not be standards recognized and followed by industry or other state agencies involved. SB 455 does not appear to speak to a standard that can be followed.

Our industry has been cooperating with other agencies and interested parties on several task forces to examine and determine what is the correct analysis and possible remedial activity. SB 455 would ignore this opportunity to collaborate with others. Your Committee created in 1982 the Oil and Gas Advisory Committee under the State Corporation Commission to advise the Commission on environmental issues. It gives all interested agencies, like KDH&E, KGS, GWMD, and many others, the opportunity to influence appropriate action.

We believe placing this entire responsibility with KDH&E without the input of other agencies, industries, etc. would be a mistake.

Since these are the first hearing on SB 455, we think this subject should be given long and deliberate consideration and should not be put in place without carefully examining the concerns and issues of all parties - both public and private.

Donald P. Schnacke