

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 123-SS Statehouse, at 8:00 a.m./~~PM~~ on February 17, 1988

Discussion of the definition of "contaminated site":

Senator Daniels feels the language "contiguous land" gives authority that is too broad to the KDHE. Jim Power stated the intent of the language is only to be able to determine the geographic limits of contamination.

The Committee was still discussing the definition of "contaminated site" at the time of adjournment.

Meeting adjourned. The next meeting will be February 18, 1988.

2-17-88

Guest List

Pat Casey	KDAE
James Power	"
Stanley Grant	"
Ron Hammerschmidt	"
Dennis Murphy	KDAE
John Blythe	K.F.B.
Margaret Post Ahrens	Ks Chapter Sierra Club
Charlene A. Steward	KNRC
Mary Ann Bradford	League of Women Voters
Kathy Duncan	
Joe A. Morris	KLST
Brian Zinke	KCC/Mind-Link Board
Jerry Coenrod	KGSE
Ken Peterson	KS Petroleum Cncl
Dennis Markes	"
ALAN STEPPAT	PETE MCGILL & ASSOCIATES

Prepared by Kansas Department of Health & Environment Staff
for Senator Merrill Werts (CONFIDENTIAL)
February 3, 1988

Responses to Issues Raised Regarding
Senate Bill 455

Cleanup Standards

Despite the concern voiced regarding duplication of effort with the Environmental Protection Agency and extensive work hours required for the state to develop specific cleanup standards, much of the basic work has been done. Target cleanup criteria assembled by the Kansas Department of Health and Environment, based upon health and environmental criteria developed by the U.S. Environmental Protection Agency, have been utilized as guidelines of "how clean is clean" in the state's negotiation of consent agreements for remediation with numerous responsible parties. These criteria and the scientific evidence supporting them would serve as the nucleus for rule and regulation development of specific cleanup standards. No comparable listing of numerical cleanup standards exists at present under federal law.

Definition of Contaminant and Release

A concern was raised regarding "permitted releases." Language could be added which would exempt from liability those releases of contaminants which occur in compliance with permits for discharge of pollutants issued by the state or the U.S. Environmental Protection Agency.

It is important that the definition of contaminant be left intact as currently drafted. The provision of an exemption for substances harmful to public health or environment based upon the type of activity which caused the release would restrict KDHE's ability to require private parties to remediate such problems or to utilize state resources, even if the problem threatened or contaminated a public water supply. The inclusion of substances on the listing to be developed in accordance with Section 2(a) of Senate Bill 455 would not subject those substances to additional regulatory controls, such as the requirements for management of hazardous wastes. It would only require that corrective action be taken if those substances were found in the environment in concentrations and locations where they would constitute a present or potential hazard to human health or the environment.

Innocent Landowners

One conferee expressed concerns regarding an innocent landowner being held liable as a responsible party. However, beginning on line 0340 the bill provides an affirmative defense for a variety of circumstances, including the situation where the unilateral act of a third person resulted in the contamination. Unless a contractual relationship or other association existed between the landowner and the person whose actions resulted in the contamination, the landowner would not be liable. The department does not intend to further penalize victims of contamination problems.

Administrative/Judicial Review

A number of commenters have made general references to concerns regarding due process and opportunities for review and appeal of staff decisions. The provisions of Section 9 (beginning on line 0404) includes a right of administrative and judicial review broad enough to ensure due process for any party adversely affected by any decision or action of the secretary under this act.

Liability for Remediation Contractors

The current draft of Senate Bill 455 does not contain language that limits the liability of contractors performing remediation activities. The limitation of liability to a negligence standard for these contractors was proposed in the original bill draft. The absence of this limitation will cause serious problems for the state and responsible parties in obtaining remediation services.

Both the state and responsible parties will have a reduced number of contractors willing to perform remediation services and increased cost for all work performed.

2/16/8

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

M E M O R A N D U M

Date: February 16, 1988
To: Senator Merrill Werts
From: Stanley C. Grant *SCG*
Re: S.B. 455

Amendment to Section 5 (c) of S.B. 455

Line 0205 "Cleanup standard" means national health or environmental standard or modification thereof which (1) has been adopted and promulgated by a nationally recognized standards producing organization; (2) has been adopted by Kansas statute or regulation; or (3) has been designated a standard by the secretary, after consultation with appropriate state and federal agencies.

If you have any questions, you can reach Jim Power at X1535 or Ron Hammerschmidt at X1662.

ATTACH II
2-17-88