

Approved 3/1/88
Date

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./~~pm~~ on February 25, 1988 in room 123-S of the Capitol.

All members were present except:
Senator Yost - Excused

Committee staff present:

Don Hayward - Revisor
Nancy Jones - Secretary
Laura Howard - Research
Raney Gilliland - Research

Conferees appearing before the committee:

A motion was made by Senator Gordon to approve minutes of the February 23 meeting, seconded by Senator Hayden. Minutes approved.

Discussion continued on:

SB 455 - Enacting the Environmental Response Act

Chairman Werts requested committee members to direct attention to a balloon copy of definitions discussed in previous meetings. No further additions or changes were made. (Attachment i)

Discussion of the definition of "contaminant" was continued. In response to a question from Chairman Werts, Jim Powers stated radon, a natural occurring contaminant, is included in the definition of contaminant and when located in harmful concentration, the Department offers their expertise and technology for cleanup, but does not enforce cleanup. Mr. Powers does not feel radon can be excluded from the list of contaminants as exclusion of other natural occurring contaminants could be requested and challenged.

A motion was made by Senator Langworthy to exclude responsibility for cleanup of a natural occurring contaminant; seconded by Senator Gordon. Motion carried.

During discussion of waste from oil & gas operations and how it relates to this legislation, Mr. Powers stated the memorandum of understanding between KDHE and KCC supercedes SB 455 and there is no conflict with present statute. Language will be added by the Revisor to SB 455 to clarify that the memorandum of understanding prevails.

Discussion of Section 3; power of the Secretary, KDHE:

KDHE has suggested deletion of Section 3(c) regarding access authority.

A motion was made by Senator Hayden to strike lines 73 through 76 in Section 3(c); seconded by Senator Vidricksen. Motion carried.

Discussion of Section 4, pertaining to the registry.

KDHE is recommending this section be stricken at this time.

A motion was made by Senator Feleciano to strike lines 179 at "The department" through line 186; seconded by Senator Vidricksen. Motion carried.

KDHE is requesting a new sub section in Section 5 establishing priorities.

A motion was made by Senator Hayden to amend sub section (b), Section 5; seconded by Senator Gordon. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 123-S Statehouse, at 8:00 a.m./~~a.m.~~ on February 25, 1988

Concerns were expressed by the committee regarding authority granted in Section 5, sub section (3). Mr. Powers stated this bill is designed to allow more effective and efficient cleanup of contamination and to clarify problems in order that recalcitrant and responsible parties take remedial action. The language "endangerment" is used specifically for emergency situations.

A motion was made by Senator Hayden to delete subsection 3 of Section 5; seconded by Senator Thiessen. Motion carried.

Sub section (2) of Section 5 grants access authority to KDHE and concerns were expressed by committee members about the legality of such authority. More clarification is needed as to the intent and action by the Department when notice is given.

A motion was made by Senator Feleciano to add "upon written notice" after may in line 218, add "and gather data, conduct investigations or take," before remedial in line 220, and strike "and upon notice" after time in line 219; seconded by Senator Langworthy. Motion carried.

Chairman Werts expressed concern that KDHE will have authority to enter private property after written notice has been issued, without a warrant. KDHE feels the means to investigate and collect data is necessary as stated in this legislation and authority for remedial action must be addressed in this section. Pat Casey of KDHE will research language which might be more appropriate.

Discussion of SB 455 will be continued at meetings scheduled next week.

Meeting adjourned. The next meeting will be March 1, 1988.

2/25/88

Guest List

James Power	KDHE
Ron Hamerschmidt	"
Dennis Murphey	"
Bruce LaRue	KCC/Mined-Land Board
Alan Hawkins	Cities Sewer Dept & Gas
Mary Ann Bradford	League of Women Voters
Margaret Per Ahrens	Ks Chapter Senior Club
Joseph Byer	KNRC
Ross Martin	KPC
Bill Bryson	KCC
Ellie Devine	Ks State Board of Agriculture
Chris Wilson	RFCA
Rich McKee	Kansas Livestock Assoc.
DEA. Morris	KANSAS LEAGUE OF WOMEN/NOT.
Janet Stubbs	HBAK
Bill Tuller	KFB

SENATE BILL No. 455

Committee

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. (b)

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

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

0043 [(d)] "Owner or operator" means any person owning a con- (e)
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

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

ATTACH I
2-25-88

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. (f)

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. (g)

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. (h)

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. (h)

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

Such term shall not include the application or use of any agricultural chemical, as defined by K.S.A. 2-2202, and amendments thereto, commercial fertilizer, as defined by K.S.A. 2-1201, and amendments thereto, pesticide, as defined by K.S.A. 2-2438a, and amendments thereto, or soil amendment, as defined by K.S.A. 2-2803, and amendments thereto, in accordance with the directions for application or use thereof displayed on the substance container label registered pursuant to state law or approved by the federal environmental protection agency.

(i) "Responsible person" means: (1) Any owner or operator who knew or should have known at the time a release occurred that the release was likely to threaten public health or the environment; (2) any person, whose act or omission whether occurring before or after the effective date of this act, knew or should have known that such act or omission would contribute to a contaminated site or threat of contamination requiring remedial action to protect public health or the environment; (3) an owner who purchases the land where a contaminated site is located only if such owner knew or should have known of the existence of the contaminated site at the time of purchase; (4) any person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged for transportation of the contaminants to the contaminated site; (5) any person who accepts or accepted materials which such person knew or should have known would lead to contamination at the contaminated site; (6) any person violating any applicable statute, rule and regulation, plan approval or order in effect at the time the contamination occurred, and the violation caused or contributed to the contamination at the site; or (7) any subsidiary or parent corporation of an owner or operator meeting the criteria in any of the other paragraphs of this subsection.

(j)