

Approved 3/16/88
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./p.m. on March 4, 1988n room 123-S of the Capitol.

All members were present except:
Senator Vidricksen - Absent
Senator Yost - Absent

Committee staff present:
Don Hayward - Revisor
Nancy Jones - Secretary
Laura Howard - Research
Raney Gilliland - Research

Conferees appearing before the committee:

Discussion continued on:

SB 455 - Enacting the Environmental Response Act

Chairman Werts asked committee members to give their attention to a balloon copy of SB 455 with amendments made to date as prepared by Don Hayward. (Attachment I)

A motion was made by Senator Theissen to further amend the definition of "releases" as follows: "those releases of contaminants which occur in compliance with permits for discharge of pollutants issued by the State or the Environmental Protection Agency"; seconded by Senator Langworthy. Motion carried.

Discussion of Section 8 - penalties. The committee offered no amendments.

Discussion of Section 9 - liens

Pat Casey of KDHE stated language used in this section is based on Massachusetts law. (Attachment II) The broad language of this section providing for liens on any real and personal property of responsible parties, is used to insure recovery of cleanup costs. Concern was expressed by the committee regarding this grant of authority to place a lien on the homes of responsible persons.

A conceptual motion was made by Senator Kerr to add "other than real property" in line 399; seconded by Senator Feleciano.

The intent of the Committee is to protect the home of any responsible persons. KDHE has no lien authority at this time and court action is necessary to get a judgement lien for cleanup costs if remedial action has not been taken by the responsible person. Such a lien does not supercede prior liens.

A substitute motion was made by Senator Martin to strike Section 9 of SB 455; seconded by Senator Thiessen.

Concern was expressed by the Committee regarding the authority granted KDHE in lines 401 through 403 as prior lien holders would be superceded by KDHE and present procedures leading to court action to force remedial action could be followed. KDHE stated the placing of a lien would be the last step to recover cleanup costs, and landowners will still retain the right of due process. This legislation would not grant authority to file a lien against property if the fact of contamination was not known before title was taken. Foreclosure action could be taken by KDHE as a last recourse to recover cleanup costs.

Senator Martin reworded his motion to strike lines 401 through 403 of Section 9; seconded by Senator Thiessen. Motion carried by a hand count of 5 to 4.

In response to previous discussion regarding a Memorandum of Understanding between KDHE & KCC, Chairman Werts asked members to note the new language

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 March 4, 1988

in Section 10.

Senator Daniels proposed language should be added to SB 455 which clearly and strongly states the intent of this bill. (Attachment III)

A motion was made by Senator Daniels to add language of intent as Section 1(a); seconded by Senator Feleciano. Motion carried.

A motion was made by Senator Feleciano to recommend SB 455 favorably as amended; seconded by Senator Martin. Motion carried.

Meeting adjourned.

3/4/88
Quest List

Dennis Murphy	KDHE	Topelia	913-296-2517
Ron Hamwerschmidt	"	"	296-1662
Rob Hodges	KCCI	"	
Ron Gaches	Boeing	WICHITA	316 526-3537
Bernie Koch	Wichita Chamber	Wichita	316-265-7971
Charlene Stinard	KNRE	Topoka	233-6707
Margaret Ahrens	Series	Topoka	233-6707
Bert Bryson	KCC	Topoka	296-5113
Don Carliss	LKM	"	
John Strickler	Gov. Office	Topoka	2584
Joe A. Morris	KLS	Topoka	

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 (b)
 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. (c)

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.

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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.

(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.

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.

c
d
e

0083 provide necessary investigation and remedial action;

0084 (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 (h) expend and authorize the expenditure of moneys from the
 0090 environmental contamination response fund;

0091 (i) issue investigation and remedial action orders to any per-
 0092 son, including any person responsible for environmental con-
 0093 tamination;

0094 (j) recover from any responsible person moneys expended
 0095 from the environmental contamination response fund;

0096 (k) adopt any rules and regulations necessary to carry out the
 0097 provisions of this act; and

0098 (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 and
 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

0120 ~~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
0155 the property, the reason for suspecting that contamination may
0156 ~~exist and the nature of the investigation to be conducted.~~

0157 ~~(c) The department shall on or before January 1, 1990, and~~
 0158 ~~annually thereafter by January 1 of each succeeding year trans-~~
 0159 ~~mit a report to the legislature and the governor identifying the~~
 0160 ~~status of all contaminated sites on the registry. A copy of the~~
 0161 ~~report shall also be provided to the governing body of each city~~
 0162 ~~and county in which one or more contaminated sites are located,~~
 0163 ~~and to any interested person. The report shall contain at a~~
 0164 ~~minimum:~~

0165 (1) A general description of the site;

0166 (2) a summary of any contamination problem at and near the
 0167 site;

0168 (3) the status of any investigation, monitoring or remedial
 0169 action in progress or proposed at the site; and

0170 (4) the status of any pending legal actions associated with the
 0171 contamination at the site.

0172 (f) After the department has determined that the remedial
 0173 action taken at a given site has resolved the contamination
 0174 problem, the department shall remove that site from the registry
 0175 ~~of contaminated sites and all subsequent annual reports.~~

0176 Sec. 5 (a) The department shall investigate all suspected
 0177 contaminated sites to gather data regarding whether remedial
 0178 action is necessary to protect public health or the environment,
 0179 and to identify any responsible person. The department, any
 0180 authorized officer, employee or agent of the department or any
 0181 person under contract with the department may enter onto any
 0182 property or premises, at reasonable times, and upon notice to the
 0183 owner or occupant, to take action under this subsection. Notice
 0184 to the owner or occupant is not required if the delay to provide
 0185 such notice is likely to result in an imminent risk to public health
 0186 or the environment.

0187 (b) (1) In any case where the department can identify any
 0188 person responsible for contamination, it shall be the duty of the
 0189 responsible person to determine the extent of the contamination,
 0190 to develop an appropriate remedial action plan, and upon ap-
 0191 proval of the department to implement the approved plan.

0192 (2) In any case where no responsible person can be iden-
 0193 tified or where the responsible person is unwilling or incapable

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(b) In determining the sequence for taking remedial action under this act, the department 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.

(c)

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 [(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 [(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 (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 [(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-

(d)

(e)

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

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

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

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

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

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

(g)

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.

(h)

0235 ~~(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.

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0242 Sec. ~~(g)~~ (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
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

Moneys recovered from any responsible person for remediation to reduce or eliminate environmental contamination shall be deposited to the credit of the environmental contamination response fund except that a proportional share may be returned to the federal 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]~~ ~~(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 ~~(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 ~~(B)~~ Liability for response costs and natural resource damages
0341 under this section shall be strict. A defendant may show by way

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(a)

(b)

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.

(c)

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

(d)

0349 [(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.

(e) No person shall be liable for any costs or damages under this section for environmental contamination caused by the natural occurrence of a contaminant.

(f) The liability of any person performing environmental contamination mitigation or cleanup services in accordance with procedures established pursuant to state or federal law for any injury to a person or property caused by or related to these services shall be limited to acts or omissions of the person during the course of performing these services which can be shown, based on a preponderance of the evidence, to have been negligent. For the purposes of this act, the demonstration that acts or omissions of a person performing mitigation or cleanup services were in accordance with generally accepted practice and state-of-the-art scientific knowledge, and utilized the best technology reasonably available to the person at the time the mitigation or cleanup services were performed shall create a rebuttable presumption that the acts or omissions were not negligent.

(7)

0368 Sec. [8] (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. [9] 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 naming
0401 any such person is recorded or filed. Any lien recorded, regis-
0402 tered or filed pursuant to this section shall have priority over any
0403 encumbrance theretofore recorded, registered or filed.

0404 Sec. [10] (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. 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. This act shall take effect and be in force from and
0416 after its publication in the statute book.

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Sec. 10. Nothing in this act shall be construed to affect any existing laws concerning activities relating to the protection of surface water and groundwater from oil and gas activities, but shall be deemed to be supplemental to such laws.

Chapter 77.—STATUTES; ADMINISTRATIVE RULES AND REGULATIONS AND PROCEDURE

Articles

1. STATUTES.
2. STATUTORY CONSTRUCTION.
4. RULES AND REGULATIONS.
5. ADMINISTRATIVE PROCEDURE ACT.
6. ACT FOR JUDICIAL REVIEW AND CIVIL ENFORCEMENT OF AGENCY ACTIONS.

Article 1.—STATUTES

77-109.

CASE ANNOTATIONS

42. Cited in holding Kansas probate code does not abrogate common law in state; presumption of revocation recognized. *In re Estate of Mettee*, 10 K.A.2d 184, 186, 694 P.2d 1325 (1985).

43. Cited; absent legislation, suppliers of alcohol not liable to victims of intoxicated persons; declaration of public policy normally legislative function. *Ling v. Jan's Liquors*, 237 K. 629, 640, 703 P.2d 731 (1985).

44. Cited; common-law history recognizes right of minor to change name (60-1401 *et seq.*). *In re Application to Change Name*, 10 K.A.2d 625, 626, 706 P.2d 480 (1985).

Article 2.—STATUTORY CONSTRUCTION

77-201. Rules of construction. In the construction of the statutes of this state the following rules shall be observed, unless the construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the statute:

First. The repeal of a statute does not revive a statute previously repealed, nor does the repeal affect any right which accrued, any duty imposed, any penalty incurred or any proceeding commenced, under or by virtue of the statute repealed. The provisions of any statute, so far as they are the same as those of any prior statute, shall be construed as a continuation of the prior provisions and not as a new enactment.

Second. Words and phrases shall be construed according to the context and the approved usage of the language, but technical words and phrases, and other words and phrases that have acquired a peculiar and appropriate meaning in law, shall be construed according to their peculiar and appropriate meanings.

Third. Words importing the singular

number only may be extended to several persons or things, and words importing the plural number only may be applied to one person or thing. Words importing the masculine gender only may be extended to females.

Fourth. Words giving a joint authority to three or more public officers or other persons shall be construed as given that authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

Fifth. "Highway" and "road" include public bridges and may be construed to be equivalent to "county way," "county road," "common road," "state road" and "territorial road."

Sixth. "Incompetent person" includes disabled person as defined in K.S.A. 59-3002 and amendments thereto.

Seventh. "Issue," as applied to the descent of estates, includes all the lawful lineal descendants of the ancestor.

Eighth. "Land," "real estate" and "real property" include lands, tenements and hereditaments, and all rights to them and interest in them, equitable as well as legal.

Ninth. "Personal property" includes money, goods, chattels, evidences of debt and things in action.

Tenth. "Property" includes personal and real property.

Eleventh. "Month" means a calendar month, unless otherwise expressed. "Year" alone, and also the abbreviation "A.D.," is equivalent to the expression "year of our Lord."

Twelfth. "Oath" includes an affirmation in all cases where an affirmation may be substituted for an oath, and in similar cases "swear" includes affirm.

Thirteenth. "Person" may be extended to bodies politic and corporate.

liminary mandatory injunction to prevent, correct, or reduce effects of polluting cases. 49 ALR3d 1239.

State regulation of nuclear power plants. 82 ALR3d 751.

When statute of limitations begins to run as to cause of action for nuisance based on air pollution. 19 ALR4th 456.

Damages compensable under Federal Maritime Law for injuries caused by discharge of oil into navigable waters. 26 ALR Fed 346.

Federal common law of nuisances as basis for relief in environmental pollution cases. 29 ALR Fed 137.

Law Review References—

Caginalp, The Fifth Amendment Privilege Against Self-Incrimination and Compulsory Self-Disclosure Under the Clean Air and Clean Water Acts. 9 Boston College Environment Affairs L Rev 359.

§ 12. Confidentiality of Information or Record Obtained by Department; Trade Secrets; Exception.

Notwithstanding the provisions of any law to the contrary, any information, record, or particular part thereof, obtained by the department, its personnel or contractors pursuant to the provisions of this chapter, upon request shall be confidential and shall not be considered to be a public record when it is determined by the commissioner that such information, record or report relates to secret processes, methods of manufacture, or production, or that such information, record or report, if made public, would divulge a trade secret. This section shall not prevent disclosure of any information necessary for an enforcement or cost recovery action or to comply with CERCLA or FWPCA. (Added by 1983, 7, § 5, approved, with emergency preamble, March 24, 1983.)

Federal Aspects—

Federal Insecticide, Fungicide, and Rodenticide Act, 7 USCS §§ 136 et seq.

Federal Water Pollution Control Act (Clean Water Act), 33 USCS §§ 1251 et seq.

Atomic Energy Act of 1954, 42 USCS §§ 2011 et seq.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USCS §§ 9601 et seq.

Total Client-Service Library® References—

61 Am Jur 2d, Plant and Job Safety—OSHA and State Laws §§ 15, 25, 131-140.

61A Am Jur 2d, Pollution Control §§ 55 et seq., 153 et seq., 254, 267, 278, 299, 334 et seq., 451 et seq.

§ 13. Liability to Commonwealth as Debt; Interest; Debt as Constituting Lien on Property.

Any liability to the commonwealth under this chapter shall constitute a debt to the commonwealth. Any such debt, together with interest thereon at the rate of twelve per cent per annum from the date such debt becomes due, shall constitute a lien on all property owned by persons liable under this chapter when a statement of claim naming such persons is recorded or filed. If the site described in such statement comprises real property, the statement shall be recorded in each registry of deeds in the commonwealth; shall also be registered in each registry district in which any person named in such statement of claim holds record title to registered land as shown on the current index of registered land owners in such district. The land court certificate number of each such owner shall be noted on the

statement when presented for recording and each assistant recorder, upon receipt of such statement, shall note such statement on the owner's certificate of title. In the case of personal property, whether tangible or intangible, the statement shall be filed in accordance with the provisions of section 9-401 of chapter one hundred and six. Any lien recorded, registered or filed pursuant to this section shall have priority over any encumbrance theretofore recorded, registered or filed with respect to any site, other than real property the greater part of which is devoted to single or multi-family housing, described in such statement of claim, but as to all other real property shall be subject to encumbrances or other interests recorded, registered or filed prior to the record, registration or filing of such statement, and as to all other personal property shall be subject to the priority rules of said chapter one hundred and six. Such lien, other than a lien on real property the greater part of which is devoted to single or multi-family housing, shall continue in force with respect to any particular real or personal property until a release of the lien signed by the commissioner is recorded, registered or filed in the place where the statement of claim as to such property affected by the lien was recorded, registered or filed. In addition to discretionary releases of liens, the commissioner shall forthwith issue such a release in any case where the debt for which such lien attached, together with interest and costs thereon, has been paid or legally abated. This section shall not apply to any property, real or personal, tangible or intangible, any money, fees, charges, revenues or otherwise, owned, payable to or by, held in trust by or for, or otherwise owned, operated or managed by the Massachusetts Municipal Wholesale Electric Company established pursuant to chapter seven hundred and seventy-five of the acts of nineteen hundred and seventy-five, Massachusetts municipal light departments organized under chapter one hundred and sixty-four or any other special law, or with respect to any property real or personal whatsoever of municipal light departments administered pursuant to chapters forty-four and one hundred and sixty-four A. Notwithstanding the foregoing, the aforesaid Massachusetts Municipal Wholesale Electric Company and Municipal Light Departments shall use their authority as provided by applicable statutes to assess, contain, or remove any such oil or hazardous material release for which they are responsible under chapter twenty-one E. (Added by 1983, 7, § 5, approved, with emergency preamble, March 24, 1983; amended by 1983, 573, § 3, approved, with emergency preamble, December 15, 1983; by § 4, effective as of March 24, 1983.)

Editorial Note—

The 1983 amendment rewrote the entire section, to clarify statutory requirements as to debts, liens resulting therefrom, and exceptions to the dictates of the section.

Total Client-Service Library® References—

61 Am Jur 2d, Plant and Job Safety—OSHA and State Laws §§ 15, 25, 131-140.

61A Am Jur 2d, Pollution Control §§ 55 et seq., 153 et seq., 254, 267, 278, 299, 334 et seq., 451 et seq.

Texts—

Mendler, Massachusetts Conveyancers' Handbook with Forms §§ 6:1-6:10, Title Insurance.
Mendler, Massachusetts Conveyancers' Handbook with Forms, §§ 13:1-13:2, Environmental Controls.

In order to effectively and properly provide for the protection of the public health and environment from past, present and future contamination of the air, soil, surface water and groundwater in this state, and to provide for adequate response to past, present and future air, soil, surface water and groundwater contamination problems, the legislature hereby enacts the environmental contamination response act for the purpose of establishing an orderly and efficient methodology to enable the state to appropriately respond to such problems.