

Approved: 2-21-95  
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on February 16, 1995 in Room 254-E- of the Capitol.

All members were present except:  
Senator Phil Martin, Excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mike Corrigan, Revisor of Statutes  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:  
Larry Knoche, Director, Bureau of Environmental Remediation, Division of Environment, KDHE  
Whitney Damron, Pete McGill & Associates, on behalf of The Coastal Corporation and Colorado Interstate Gas Company  
Clark Duffy, Associate Director, Kansas Petroleum Council  
Patricia Casey, Bureau of Environmental Remediation, KDHE

Others attending: See attached list

**SB 284: Enacting the voluntary cleanup act; concerning remediation of contaminated property; defining terms**

Larry Knoche, Director, Bureau of Environmental Remediation, Division of Environment, KDHE, appeared to present testimony in support of **SB-284**. Mr. Knoche told the committee that KDHE had attempted to approach this problem in several different ways and the concepts of this bill afford an additional solution by allowing the owner of the contaminated facility/property to approach KDHE without fear of self-incrimination and clean up the contamination identified on their facility/property. (Attachment 1)

Discussion followed testimony. Concern was expressed about Section 8, (1) the department being asked to provide analysis statements of the reports received, (2) whether there would be any liability to the state in making determinations as to whether these sites had been sufficiently cleaned up, (3) what checks the state would have to make sure these reports are accurate and sufficient. Mr. Knoche stated that when cleanup was completed the department would go to the site, take a sample, run it through KDHE labs and base the decision on the lab results. He further commented he saw no more liability involved than in other operations. Patricia Casey, KDHE, stated the report from the department is based on information which is provided to them, therefore they would not be responsible if the information is faulty. She further stated the bill draft had followed the Missouri and Colorado statutes but they were amenable to change.

A member questioned whether there was any overlap with the federal programs. Mr. Knoche stated no federal money would be involved and any program that might overlap a federal program would not qualify for this voluntary procedure.

Whitney Damron, The Coastal Corporation and Colorado Interstate Gas Company, appeared in support of **SB 284** stating the bill would afford an additional solution to deal with environmental contamination of commercial facilities and real property, an ever increasing obstacle to property transfers, business financing, and general economic development. (Attachment 2)

A member requested clarification concerning the filing and license fees as well as the necessary deposit. The \$200 would go into a fund to pay KDHE expenses. The fund would be used as a parking place for required deposits of monies which KDHE would draw down to pay for expenses incurred to their department related to this program. Should expenses exceed the original deposit the funds would have to be replenished. It was stressed that this program could not be used as a shield from other regulatory programs. It was suggested that the bill read "this

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on February 16, 1995.

shall apply to all property except that listed in the bill”.

A member questioned what would not be exempt and was told that when property changes hands and contamination is an unknown factor this method could be used for remediation if problems existed.

KDHE stated there are industries that want to work with them and as plans are developed industry would pay costs of clean up. The fund is basically used only to pay cost of staff time doing review on the plan developed and to work with independent consultants. It was stated that if industry knows they have a problem and EPA has not yet found the problem, then this bill could provide a method for the industry to clean up the contamination before it is found by EPA.

Clark Duffy, Associate Director of the Kansas Petroleum Council, appeared and presented testimony in support of the concepts set forth in **SB 284**. Mr. Duffy told members the bill would provide KDHE with the resources and authority for oversight when a property owner voluntarily requests guidance in cleaning up a contaminated site. (Attachment 3) Mr. Duffy urged committee members to include oil and gas in this bill. He also commented that the Kansas Corporation Commission might need to have the same authority and this could be much more complicated.

The meeting adjourned at 8:45 a.m.

The next meeting is scheduled for February 21, 1995.



State of Kansas

Bill Graves



Governor

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Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

Senate Committee on Energy and Natural Resources

by

The Kansas Department of Health and Environment

Senate Bill 284

A bill which provides authority for voluntary cleanup of contaminated property, establishes a fee for application review and oversight of the cleanup activities by KDHE, and sets out guidelines for determining cleanup responsibility.

Over the past few years, environmental contamination of commercial facilities and real property in general has become an ever-increasing obstacle to property transfers, business financing, and general economic development. KDHE has attempted to approach this problem in several ways. The concepts in this bill afford an additional solution, by allowing the owner of the contaminated facility/property to approach KDHE without fear of self-incrimination and cleanup the contamination identified on their facility/property. This bill identifies the technical standards for such cleanup in advance. Combined, these concepts should encourage participation in voluntary cleanup of contamination, thereby improving the environment and protecting public health in a cost-effective and efficient manner.

While KDHE currently has authority for development of such a program for hazardous substances as defined in CERCLA, this bill expands the universe of contaminants which can be cleaned up in this manner. As such, KDHE as well as business and property owners benefit.

KDHE supports the concepts and proposals contained in SB 284 and we remain available to work with the committee and other interested parties; however, the bill's fiscal impact is not included in the Governor's budget.

Thank you for allowing me to speak today.

Testimony presented by: Larry Knoche, Director  
Bureau of Environmental Remediation  
Division of Environment  
February 16, 1995

Senate Energy & Nat'l Res.  
February 16, 1995  
Attachment 1

**TESTIMONY OF  
WHITNEY DAMRON  
OF  
PETE MCGILL & ASSOCIATES  
ON BEHALF OF  
THE COASTAL CORPORATION  
&  
COLORADO INTERSTATE GAS COMPANY  
TO THE  
SENATE COMMITTEE  
ON  
ENERGY & NATURAL RESOURCES  
SB 284  
FEBRUARY 16, 1995**

*Senate Energy & Nat'l Res.  
February 16, 1995  
Attachment 2*

Good morning Chairman Sallee and Members of the Senate Committee on Energy & Natural Resources:

My name is Whitney Damron of Pete McGill & Associates appearing before you today on behalf of The Coastal Corporation and Colorado Interstate Gas Company, a Coastal subsidiary, as a proponent of SB 284, enacting the Voluntary Cleanup Act.

As we noted a few weeks ago in our comments made during introduction of this legislation, Coastal/CIG worked in support of similar legislation in the State of Colorado last year. Attached to my testimony is a recent newspaper article from *The Denver Business Journal* describing the Colorado program, several of the applicants and the potential for their legislation as seen by regulators and developers. We would note that the Colorado legislation is geared towards the commercial landowner. The legislation before you has been drafted in a manner to benefit virtually all landowners.

Prior to requesting introduction of SB 284 we visited with the Kansas Department of Health & Environment, the Kansas Petroleum Council, the Kansas Chamber of Commerce & Industry, the Kansas Association of Realtors and other associations potentially interested in this legislation.

In meetings with KDHE, we discussed the merits of this proposal and subsequently forwarded to them existing legislation from Colorado and Missouri, both of which were enacted in 1994. The work product before you today is a compilation of legislation those two states which was essentially prepared by KDHE.

In general terms, this program is intended to provide a statutory framework which will encourage the voluntary cleanup of contaminated property by providing a means of determining cleanup requirements, responsible parties and a certification or verification of the cleanup results.

Highlights of SB 284 include:

1. This is a voluntary program and does not preclude nor supersede any other existing remediation requirements, statutes or rules and regulations. There are no waivers, exclusions or departures from state or federal law within this bill.

2. This program is designed to make the users pay for the costs associated with this plan. There is a \$200.00 license fee as well as an hourly charge for KDHE's time involved. In the State of Colorado there is a single person involved with this program on behalf of the Colorado Department of Public Health and the Environment, and that is not full time position.

3. SB 284 requires KDHE to work within a responsive timeframe and also requires the property owner to be responsive and specific as well.

4. KDHE may also make a determination that no remediation is required and issue an order accordingly referred to in the bill as a "no action determination".

5. The cleanup plan shall be rendered void in the event of submission of misleading information by the applicant.

In summary, we believe SB 284 will encourage the voluntary cleanup of real property in our state and lead to increased remediation of pollution sites and compliance with environmental laws. On behalf of The Coastal Corporation and Colorado Interstate Gas Company, we would respectfully request your support for SB 284.



# Nuggets, others explore cleanup

## Voluntary state program elicits only 8 responses since Ju

By ALYO SVALIM

Business Journal Staff Reporter

ANXIOUS TO KICK their high-profile projects into gear, Comsat and Colorado's Ocean Journey may avail themselves of a new state program allowing voluntary environmental cleanups.

Comsat, owner of the Denver Nuggets, would like to build a new sports arena and entertainment complex in the Central Platte Valley, next to the Elitch Gardens site. Ocean Journey wants to build an aquarium nearby or at an alternate site adjacent to The Children's Museum.

Although neither group has applied for

a voluntary cleanup, they have had preliminary discussions with the Colorado Department of Public Health and Environment, said Jeffrey Deckler, the program's manager.

The voluntary cleanup program, which started July 1, seeks to make tainted sites marketable without endless months and years of red tape.

A property owner submits a cleanup plan which the state approves or rejects within 45 days. Generally, the state will allow a cleanup to match uses planned for the site.

Once a property owner follows thro

See CLEANUPS page 2



Jeffrey Deckler, manager of the voluntary cleanup program, with the Colorado Department of Public Health and Environment.

FOR SUBSCRIPTION INFORMATION, CALL 303-837-3500

## CLEANUPS

Continued from page 1A

the state can give the location a bill of health, making it more marketable. The program also allows the state to declare that a site doesn't need anything done to it.

That in turn can assuage banks, lenders and buyers, who generally shun contaminated property like the plague.

"You can't sell industrial property without making sure both parties know what the property looks like," said Leah Cooper, manager of environmental projects at Lone Star Steel in Dallas.

Lone Star just mailed its final sign-off back to the state on the cleanup of its pipe-manufacturing plant in Fort Collins, making it the first to "graduate."

The company had a sale pending on the property when the voluntary program took effect. It submitted an application at the end of August, and after some initial hitches got its plan approved at the end of October. It took another month to clean up the site and yet another month to verify the results and write a report.

The city of Denver also hopes for the same godspeed and stands close to receiving a final decision on a cleanup plan for a part of Stapleton International Airport along Sand Creek.

Denver wants to open a wildlife preserve and park in the vicinity of Bluff Lake by next fall if possible. Myles Carter, manager of environmental services for the airport, said the city decided to go ahead with the voluntary cleanup as a quick and economical alternative.

"It's the least headaches," Carter said.

Deckler said he hopes some success stories will convince more businesses to consider the program, which has received only eight applicants.

"We were expecting 50," Deckler said.

Of the eight applications submitted, two have received approval, three are in the process and one involved a "no-action" plan.

Another was disapproved because the area in question was a hazardous-waste site. An incomplete application was sent back.

The tepid response may involve the Little Red Riding Hood syndrome. Nervous companies do not want to confess environ-

mental sins to state regulators only to find out that helpful grandma is really the big bad wolf.

"It's not a rabbit trap," Deckler said. The program is designed to put companies and regulators on a cooperative footing rather than an adversarial one.

But Deckler recommends that potential applicants do a thorough screening before coming to the state.

The act authorizing the program excludes properties that fall under the Resource Conservation and Recovery Act, the National Priority List, Superfund or those that are hazardous-waste sites.

Properties with serious groundwater problems, underground storage tanks and radioactive materials would most likely fall under other state programs and not be eligible. There's no immunity once those problems are exposed.

Reluctance to reveal information to regulators has proved the biggest stumbling block in the program. Deckler said lack of disclosure forces the state to ask for more information or simply deny the request.

Jim Salmon, director of industrial services with R.W. Beck, an environmental and engineering firm, said another fear may hold companies back — that of spending money.

Many companies treat a voluntary cleanup as a discretionary expense. Absent an environmental motive, such as a health risk, or an economic motive, such as a pending sale of a property, it becomes a cash-flow issue.

The program hasn't greatly excited Coors Brewing Co., which has called Golden home for 122 years and doesn't have any plans to move.

"It could be an opportunity in the future," said spokesman Jon Goldman.

Environmental groups have expressed concern about the program, because it doesn't seek the cleanest cleanup possible.

Deckler said future uses for a property determine how clean the state will want it. An industrial site won't be held to the same standard as an elementary school, for example.

Community groups have also expressed concern that the program doesn't contain

THE DENVER BUSINESS JOURNAL

FEBRUARY 3-9, 1995

For Your Information  
Pete McCall & Associates



The city of Denver hopes to receive a final decision on a cleanup plan for a part of Stapleton International Airport along Sand Creek.

specific provisions for public involvement like other environmental laws.

William Carreon Jr., a community activist, is spearheading an effort to amend the law to include a citizens' advisory committee. The committee, as Carreon envisions it, would allow "the public to be present, to inspect and negotiate a proper cleanup."

Deckler said consideration a property owner gives the public plays into the con-

sideration the state gives a plan, adding that it is better when property owners involve the public early in the process.

Deckler points to one applicant that wanted to solve its problem of lead-contaminated soils by mixing them with clean soils.

"Dilution is not the solution to pollution," Deckler said, quoting a regulatory rhyme. Working together, he and the applicant found a better solution. ■

Colorado Interstate Gas Company P.O. Box 1067, Colo. Spgs, CO 80944  
Telecopy Cover Sheet Date: \_\_\_\_\_

**SB 284**  
**SENATE ENERGY AND NATURAL RESOURCES COMMITTEE**  
**CLARK DUFFY, KANSAS PETROLEUM COUNCIL**  
**FEBRUARY 16, 1995**

I am Clark Duffy, Associate Director of the Kansas Petroleum Council. The Kansas Petroleum Council represents the major oil and gas companies and allied industries in Kansas.

The Kansas Petroleum Council supports the concepts in SB 284. This bill would provide KDHE with the resources and authority for oversight when a property owner voluntarily requests guidance in cleaning up a contamination site. This program could be especially useful when used in conjunction with real estate transactions.

Section 4(c)(5) on page 2 line 24-28 excludes "oil and gas activities" from the provision of this act. The Kansas Petroleum Council believes these activities should be included whether administered by KDHE or the KCC.

Thank you.

*Senate Energy & Nat'l Res.*  
*February 16, 1995*  
*Attachment 3*