

Approved: 3-7-95
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 23, 1995 in Room 254-E- of the Capitol.

All members were present:

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

Conferees appearing before the committee:
Whitney Damron, Pete McGill & Associates

Others Attending: see attached list

SB-284: An Act enacting the voluntary cleanup act; concerning remediation of contaminated property

A balloon for **SB 284** was presented to committee members. Whitney Damron explained to the committee that the Kansas Department of Health and Environment would receive an application and place the non-refundable application fee into a segregated account to cover processing costs. The applicant could be required to deposit up to \$5,000 with expenses incurred by the department being deducted from this fund. Any balance would be refunded to the applicant or, should expenses over the amount of the deposit be incurred, the applicant would be required to make further deposits. (Attachment 1)

Chairperson Sallee told the committee that he had received word from the Governor's Office and it was also his own feeling that there is considerable confusion as to future appointments. Therefore the Chairperson would prefer to hold bills pertaining to fees until this issue has been dealt with. A request for re-referral will be made to the President of the Senate for **SB 284** and **SB 337**.

The Chairperson announced the committee would not meet again until after March 3, 1995.

The meeting adjourned at 8:20 a.m.

The next meeting is scheduled for March 7, 1995.

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SENATE BILL No. 284

By Committee on Energy and Natural Resources

2-13

9 AN ACT enacting the voluntary cleanup act; concerning remediation of
10 contaminated property; defining terms.

11
12 *As it enacted by the Legislature of the State of Kansas:*

13 Section 1. This act shall be known and may be cited as the "voluntary
14 cleanup act".

15 Sec. 2. (a) The purpose of this act is to provide for the protection of
16 human health and the environment and to foster the transfer, redevelop-
17 ment and reuse of contaminated facilities, sites and other properties.
18 This program is intended to permit and encourage voluntary cleanups of
19 contaminated property by providing a method of determining cleanup
20 responsibilities. The purpose of the voluntary program is to:

- 21 (1) Eliminate impediments to the use, sale or redevelopment of pre-
22 viously contaminated property;
- 23 (2) encourage and facilitate prompt investigation and cleanup activi-
24 ties;
- 25 (3) minimize administrative processes and costs; and
- 26 (4) reduce the threat of contamination to public health or the envi-
27 ronment.

28 Sec. 3. As used in this act:

29 (a) "Contaminant" means such contamination or other alteration of the
30 physical, chemical or biological properties of any soils and waters of the
31 state as will or is likely to create a nuisance or render such soils or waters
32 potentially harmful, or injurious to public health, safety or welfare, or to
33 the plant, animal or aquatic life of the state.

34 (b) "Secretary" means the secretary of the Kansas department of
35 health and environment.

36 (c) "Department" means the Kansas department of health and en-
37 vironment.

38 (d) "Qualified environmental professional" means a person with ed-
39 ucation, training and experience in preparing environmental studies and
40 assessments.

41 Sec. 4. (a) The program established in this act shall be voluntary and
42 may be initiated by submission to the department of an application for
43 properties where investigation and remediation may be necessary to pro-

and shall apply to real property where environmental cleanup
may be needed.

properties or
properties,

Senate Energy or Natl Res.
February 23, 1995
Attachment 1

Post-it [®] Fax Note	7671	Date	2-21-95	# of pages	9
To	Wayne Kitchen	From	Carry Knack		
Co/Dept	Western BESC	Co.	KDHE/BER		
Phone #		Phone #			
Fax #	913-575-8039	Fax #	913-296-1686		

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1 tect human health and the environment in light of the current or proposed
2 use of the property. The application shall be made on forms provided by
3 the department.

4 (b) No person, financial institution or other entity financing a com-
5 mercial real estate transaction shall require a purchaser to participate in
6 the voluntary program contained in this act, and no state political subdi-
7 vision regulating any person, financial institution or other entity financing
8 a commercial real estate transaction shall require evidence or participa-
9 tion in this program to be a component of standard real estate loan doc-
10 umentation.

11 (c) The provisions of this act shall not apply to the following:

12 (1) Property that is listed ~~or proposed for listing~~ on the national pri- *[delete]*
13 orities list of superfund sites established under the comprehensive envi-
14 ronmental response, compensation, and liability act (42 U.S.C.A. 9601 et
15 seq.), (CERCLA), or sites proposed for scoring under the hazard ranking
16 system established ~~under (CERCLA);~~

17 (2) property that is the subject of enforcement actions *for purposes of*
18 pursuant to state or federal environment laws; *or legal order*

19 ~~[(3) property that is subject to an order issued by or in agreement with~~
20 ~~state or federal governmental agencies;]~~ *[delete]*

21 ~~(4) a facility which has or should have a permit pursuant to any state~~
22 ~~or federal environmental act which contains a corrective action compo-~~
23 ~~nent;~~ *covered by the Kansas Corporation Commission*

24 ~~(5) oil and gas activities *shall mean all practices involved in the ex-*~~
25 ~~ploration for and gathering of oil and gas and the drilling, production,~~
26 ~~lease storage, treatment, abandonment and postabandonment of oil and~~
27 ~~gas wells, except refining, treating or storing of oil or gas after transpor-~~
28 ~~tation of the same;]~~ *[delete]*

29 ~~(6) property that presents an immediate and significant risk of harm~~
30 ~~to human health and the environment; and~~

31 ~~(7) property with public or private drinking water wells *within a 1/4-*~~
32 ~~mile radius of the property.]~~ *[delete]*

that the department determines to be a threat to

33 Sec. 5. (a) Each application, or reapplication as described in subsec-
34 tion ~~(e)(2)~~ ⁽³⁾ ~~(b)~~ of section 8, for participation in the voluntary program *application*
35 shall be accompanied by a nonrefundable ~~fee~~ ^{fee} of \$200 to cover proc-
36 essing costs.

37 (b) The department shall review and approve or deny all applications
38 within 90 days of receipt of the application. The department shall approve
39 the application unless the department determines that the actual or sus-
40 pected contamination warrants action under subsection ~~(3)~~ ⁽²⁾ of section 4,
41 in which case the department shall deny the request. *(c) (2)*

42 (c) Following the approval of an application and execution of a vol-
43 untary agreement, the applicant shall submit a copy of all reports con-

1 cerning the results of any site assessments, investigations, sample collec-
 2 tions and sample analyses including at a minimum, a phase I
 3 environmental site assessment, as defined in subsection (b) of section 10,
 4 to the department. The department shall review the documents submit-
 5 ted and comment, within 90 days on the nature and extent of any addi-
 6 tional required investigations to be conducted on the property. The de-
 7 partment will provide a detailed scope of work for the applicant to follow
 8 if additional investigative work is required.

9 (d) During the time allocated for review of applications, assessments,
 10 other investigative activities and cleanup activities under this act, the de-
 11 partment shall, upon reasonable notice to the applicant, have access at all
 12 reasonable times to the subject real property.

13 (e) As part of the voluntary agreement, the department shall require
 14 the applicant to ~~post a deposit, not to exceed \$5,000, which shall be used~~
 15 ~~to cover~~ the costs to the department in providing technical review, over-
 16 sight and guidance in relation to the specific property ~~[if the department's~~
 17 ~~oversight costs exceed the initial deposit, an additional amount agreed~~
 18 ~~upon by the department and the applicants will be required prior to~~
 19 ~~proceeding with voluntary work under the program.]~~

pay oversite

[delete]

[delete]

20 (f) The department shall establish and publish hourly rates for review
 21 charges performed by the department in connection with application re-
 22 view and oversight charges associated with technical review, oversight and
 23 guidance of voluntary program work plans and reports under this act.
 24 Within 180 days after the signature of a voluntary agreement, the de-
 25 partment shall bill an applicant for all direct and indirect charges under
 26 this act in accordance with the hourly rate structure established pursuant
 27 to subsection (e) of section 4. ~~The department shall furnish to the appli-~~
 28 ~~cant a complete accounting of the costs for which the applicant is charged.~~
 29 Timely remittance of reimbursements to the department is a condition
 30 of continuing participation ~~[if a balance remains after the conclusion of~~
 31 ~~the remedial action, the department shall refund that amount with 60~~
 32 ~~days.]~~

herein

(f)
[delete]

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[delete]

33 (g) There is hereby established a segregated fund in the state treasury
 34 called the voluntary cleanup fund. Revenue from the following sources
 35 shall be deposited in the state treasury and credited to the fund:

- 36 (1) Moneys collected for application fees;
- 37 (2) moneys collected for direct or indirect costs associated with techni-
 38 cal review, oversight and guidance;
- 39 (3) any moneys received by the secretary in the form of gifts, grants,
 40 reimbursements or appropriations from any source intended to be used
 41 for purposes of the fund; and
- 42 (4) interest attributable to the investment of moneys in the fund.
- 43 (h) Moneys in the voluntary cleanup fund shall only be expended for

as deposits

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1 direct and indirect costs of:
 2 (1) Review of applications;
 3 (2) Technical review, oversight and guidance concerning activities do-
 4 fined in this act; and
 5 (3) administration of the provisions of this act.

6 (i) On or before the 10th day of the month following the month in
 7 which moneys are first credited to the voluntary cleanup fund, and
 8 monthly thereafter on or before the 10th day of the month, the director
 9 of accounts and reports shall transfer from the state general fund to the
 10 voluntary cleanup fund the amount of money certified by the pooled
 11 money investment board in accordance with this subsection. Prior to the
 12 10th day of the month following the month in which moneys are first
 13 credited to the voluntary cleanup fund, and monthly thereafter prior to
 14 the 10th day of the month, the pooled money investment board shall
 15 certify to the director of accounts and reports the amount of money equal
 16 to the proportionate amount of all the interest credited to the state gen-
 17 eral fund for the preceding period of time specified under this subsection,
 18 pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable
 19 to moneys in the voluntary cleanup fund. Such amount of money shall be
 20 determined by the pooled money investment board based on:

21 (1) The average daily balance of moneys in the voluntary cleanup
 22 fund during the period of time specified under this subsection as certified
 23 to the board by the director of accounts and reports; and

24 (2) the average interest rate on repurchase agreements of less than
 25 30 days duration entered into by the pooled money investment board for
 26 that period of time. On or before the fifth day of the month for the
 27 preceding month, the director of accounts and reports shall certify to the
 28 pooled money investment board the average daily balance of moneys in
 29 the voluntary cleanup fund for the period of time specified under this
 30 subsection.

31 (j) All expenditures from the voluntary cleanup fund shall be made
 32 in accordance with appropriation acts upon warrants of the director of
 33 accounts and reports issued pursuant to vouchers approved by the sec-
 34 retary for the purposes set forth in this section.

35 ~~[(k) Any unused amount as defined by subsection (f) of section 5 shall~~
 36 ~~be refunded to the applicant.]~~

37 Sec. 6. (a) The department shall review reports, including any ad-
 38 ditional environmental assessments and investigations required and make
 39 a determination within 90 days of any required remedial actions. Based
 40 upon such documentation, if the department determines that no remedial
 41 action is required, the department shall issue a no further action deter-
 42 mination pursuant to section 9. If the department determines that re-
 43 mediation is required, the applicant shall submit a remedial action plan

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 [delete]

voluntary cleanup

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1 to the department for any contamination identified in the environmental
2 assessments and investigations.

3 (b) The voluntary cleanup plan shall include:

4 (1) An environmental assessment of the real property which describes
5 any contamination on the property and the risk the contamination cur-
6 rently poses to public health and the environment;

7 (2) a proposal, if needed, to remediate any contamination or condi-
8 tion which has or could lead to a release which poses an unacceptable
9 risk to human health or the environment considering the present and any
10 differing proposed future use of the property, and a timetable for imple-
11 menting the proposal and for monitoring the site after the proposed meas-
12 ures are completed. The department shall provide a detailed scope of
13 work for the applicant to follow in development of a voluntary cleanup
14 plan; and

15 (3) a description of applicable state standards or guidelines establish-
16 ing acceptable concentrations of constituents in soils, surface water or
17 groundwater and for constituents present at the site for which such state
18 standards do not exist, a description of proposed cleanup levels and any
19 current risk to human health or the environment based on the current or
20 proposed use of the property.

21 Sec. 7. Remediation alternatives shall be based on the actual risk to
22 human health and the environment currently posed by contaminants on
23 the real property, considering the following factors:

24 (a) The present or proposed uses of the site;

25 (b) the ability of the contaminants to move in a form and manner
26 which would result in exposure to humans and the surrounding environ-
27 ment at levels which exceed applicable state standards or guidelines; and

28 (c) the potential risks associated with proposed cleanup alternatives
29 and the economic and technical feasibility and reliability of such alter-
30 natives.

31 Sec. 8. (a) The department shall provide formal written notification
32 that a voluntary cleanup plan has been approved or disapproved within
33 60 days after a request by an applicant, unless the applicant and the
34 department agree to an extension of the time for review to a date certain.
35 Such review shall be limited to a review of the materials submitted by
36 the applicant and documents or information readily available to the de-
37 partment.

38 (b) The department shall approve a voluntary cleanup plan if based
39 on the information submitted by the applicant, the department concludes
40 that the plan will:

41 (1) Attain a degree of cleanup and control of contaminants that com-
42 plies with all applicable ~~state statutory requirements and~~ rules and reg-
43 ulations; and

statutes,

, and guidelines and standards

1 (2) for contaminants not governed by subsection (b)(1) of section 4,
 2 reduce concentrations such that the property does not present an unac-
 3 ceptable risk to human health or the environment based upon the pro-
 4 perty's current use and any future uses proposed by the applicant.

5 (c) In the event that a voluntary cleanup plan is not approved by the
 6 department, the department shall promptly provide the property owner
 7 with a written statement of the reasons for such denial. If the department
 8 disapproves a voluntary cleanup plan based upon the applicant's failure
 9 to submit the information required by subsection (b) of section 4, the
 10 department shall notify the applicant of the deficiencies in the informa-
 11 tion submitted.

12 (d) The approval of a voluntary cleanup plan by the department ap-
 13 plies only to conditions identified in state statutes and rules and regula-
 14 tions that exist when the application is submitted.

15 (e) (1) Failure of a property owner to comply with the voluntary
 16 cleanup plan approved by the department pursuant to this section shall
 17 render the approval void.

18 (2) Submission of misleading information by the applicant in the con-
 19 text of the voluntary cleanup plan shall render the approval void.

20 (1) (A) If a voluntary cleanup plan is not initiated within 12 months
 21 and completed within 24 months after approval by the department, such
 22 approval shall lapse unless the department grants an extension of the time
 23 limit for completion of the voluntary cleanup plan.

24 (B) An applicant desiring to implement a voluntary cleanup plan after
 25 the time limits permitted in subsection (a) of section 6 shall submit a
 26 written petition for reapplication accompanied by written certification of
 27 a qualified environmental professional that the conditions on the subject
 28 real property are substantially similar to those existing at the time of the
 29 original approval.

30 (C) Reapplications shall be subject to review by the appropriate de-
 31 partment, under the circumstances, which shall complete such review
 32 within 30 days of receipt of a petition for reapplication, except that any
 33 reapplication that involves real property, the condition of which has sub-
 34 stantially changed since approval of the original voluntary cleanup plan,
 35 shall be treated as a new application and shall be subject to all the re-
 36 quirements of this act.

37 (D) Within 45 days after the completion of the voluntary cleanup
 38 described in the voluntary cleanup plan approved by the department, the
 39 applicant shall provide to the department, justification from a qualified
 40 environmental professional that the plan has been fully implemented. A
 41 verification sampling program may be required by the department to
 42 confirm that the property has been cleaned up as set out in the voluntary
 43 cleanup plan.

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those contaminants and

on the property and those statutes, rules and regulations, and standards or guidelines

(e) 3(a) (A)

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shall

1 (E) After receipt of the certification or the verification of cleanup,
2 the department shall issue a written notification to the applicant which
3 contains the following statement:

4 "Based upon the information provided by (insert name (s) of
5 applicant (s)) concerning property located at (insert address), it is
6 the opinion of the Kansas department of health and environment
7 that the approved voluntary cleanup plan has been completed and
8 no further action is required to assure that this property, when used
9 for the purposes identified in the voluntary cleanup plan is protec-
10 tive of existing and proposed uses and does not pose an unaccept-
11 able risk to human health or the environment at the site."

12 Sec. 8. (a) After an applicant completes the requirements prescribed
13 by subsection (a) of section 4 and subsection (a) of section 5, and section
14 6, if required, the department may determine that no further remedial
15 action is required. The department shall provide formal written notifi-
16 cation that a no action determination has been made within no more than
17 60 days after completion of the requirements prescribed by subsection
18 (a) of section 4 and subsection (a) of section 5, and section 6, if required,
19 unless the applicant and the department agree to an extension of the time
20 for review.

21 (b) (1) The department may consider in issuing this determination
22 that contamination or a release or threatened release of contamination
23 originates from a source on adjacent real property owned by a person or
24 entity which is legally responsible for the source of contamination and
25 such person or entity is or will be taking necessary action which protects
26 human health and the environment to address the contamination.

27 (2) The department shall provide formal written notification of a no
28 action determination, which shall contain the following statement:

29 "Based upon the information provided by (insert name (s) of
30 applicant (s)) concerning property located at (insert address), it is
31 the opinion of the Kansas department of health and environment
32 that no further action is required to assure that this property when
33 used for the purposes identified and such use includes those prop-
34 erty restrictions specified by the department, protects existing and
35 proposed uses and does not pose an unacceptable risk to human
36 health or the environment of the site."

37 (3) The issuance of a no further action determination by the depart-
38 ment applies only to identified conditions on the property and is based
39 upon state statutes and rules and regulations that exist as of the time of
40 completion of the requirements prescribed by subsection (a) of section 4
41 and subsection (a) of section 5 and section 6, if required.

42 (c) Submission of misleading information by the applicant in the con-
43 text of a no action determination shall render the department's no action

contained in the voluntary cleanup plan final report

(c)

(c)

investigative documentation required by the department and

(c)

1 determination void.

2 (d) In the event that a no action determination is not issued by the
3 department, the department shall promptly provide the applicant with a
4 written statement of the reasons for such denial.

5 Sec. 10. (a) The department may only accept environmental assess-
6 ments under this act prepared by a qualified environmental professional.

7 (b) The environmental assessment described in section 6 shall con-
8 form to the standards set forth in the American society for testing and
9 materials designation: 1527-03 as in existence on the effective date of this
10 act, and may include the following information:

11 (1) The legal description of the site and a map identifying the location
12 and size of the property;

13 (2) the physical characteristics of the site and areas contiguous to the
14 site, including the location of any surface water bodies and groundwater
15 aquifers;

16 (3) the location of any wells located on the site or on an area within
17 a 1/2 mile radius of the site and a description of the use of those wells;

18 (4) the current and proposed use of on-site groundwater;

19 (5) the operational history of the site and the current use of areas
20 contiguous to the site;

21 (6) the present and proposed uses of the site;

22 (7) information concerning the nature and extent of any contamina-
23 tion and releases of contaminants which have occurred at the site includ-
24 ing any impacts on areas contiguous to the site;

25 (8) any sampling results or other data which characterizes the soil,
26 groundwater or surface water on the site; and

27 (9) a description of the human environmental exposure to contami-
28 nation at the site based upon the property's current use and any future
29 use proposed by the property owner.

30 Sec. 11. (a) Nothing in this act shall absolve any person from obli-
31 gations under any other law or rule and regulation, including any require-
32 ment to obtain permits or approvals for work performed under a voluntary
33 cleanup plan.

34 (b) If the federal environmental protection agency (EPA) indicates
35 that it is investigating a site which is the subject of an approved voluntary
36 cleanup plan, the department shall attempt to obtain agreement with the
37 (EPA) that the property be addressed under the appropriate state pro-
38 gram or, in the case of property being addressed through a voluntary
39 cleanup plan, that no further federal action be taken with respect to the
40 property at least until the voluntary cleanup plan is completely imple-
41 mented.

42 Sec. 12. (a) Voluntary cleanup plans are not enforceable against a
43 property owner, except that, if the department can demonstrate that an

1 applicant who initiated a voluntary cleanup under an approved plan has
2 failed to fully implement that plan the department may require further
3 action if the action is authorized by other state statutes or rules and reg-
4 ulations.

5 (b) Information provided by an applicant to support a voluntary
6 cleanup plan shall not provide the department with an independent basis
7 to seek penalties from the applicant pursuant to state environmental stat-
8 utes or rules and regulations. If, pursuant to other state statutes or rules
9 and regulations, the department initiates an enforcement action against
10 the applicant subsequent to the submission of a voluntary cleanup plan
11 regarding the contamination addressed in the plan, the voluntary disclo-
12 sure of the information in the plan shall be considered by the enforcing
13 authority to reduce or eliminate any penalties assessed to the applicant.

14 Sec. 13. If any provision of this act or the application thereof to any
15 person or circumstances is held invalid, the invalidity does not affect other
16 provisions or applications of this act which can be given effect without
17 the invalid provisions or application. To this end the provisions of this act
18 are severable.

19 Sec. 14. The provisions of this act shall expire on July 1, 2005.

20 Sec. 15. This act shall take effect and be in force from and after its
21 publication in the statute book.

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(c) *Either the applicant or the "Secretary" may withdraw from participation in a project covered by the voluntary cleanup act. Such withdrawals will require a 30 day written notice to the other party and a statement outlining the just cause of the withdrawal.*