Approved: 3-5-96
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 22, 1996 in Room 254-E- of the Capitol.

All members were present except:
Senator Vancrum, Excused
Senator Wisdom, Excused

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

Conferees appearing before the committee:
Leroy Lang, Farmer, Stockman, Norton, Kansas
Senator Stan Clark
Ron Hammerschmidt, PhD, Director of Environment, KDHE
William Craven, Kansas Natural Resources Council

Others attending: See attached list

SB 686--relating to accidental release or discharge of materials detrimental to the quality of the waters and soil of the state; concerning the liability of landowners for correction or remedial action

Leroy Lang, a farmer-stockman, Norton, Kansas, presented testimony before the Committee in support of **SB 686** (Attachment 1). Mr. Lang related an incident which took place on his property when an aerial crop sprayer plane developed engine trouble, crashed in his wheat field leaving pesticide and hydrocarbon pollution and which was subsequently cleaned up to meet minimum EPA/KDHE standards. Mr. Lang expressed concern about future liability for an event over which he had no control. Therefore Mr. Lang urged passage of **SB 686** which would provide a written release for future liability.

Senator Stan Clark presented testimony to the Committee in support of **SB 686** (Attachment 2). Senator Clark told members that when remedial efforts meet current EPA/KDHE acceptable levels the party responsible for the contamination and his insurance carrier are discharged from future liability. Should those standards change and further clean-up be necessary the landowner would be responsible for further clean-up although the initial contamination was through no fault of the landowner. Therefore Senator Clark requested changes in the existing statutes K.S.A. 65-161-to 65-171 as shown in Attachment 2.

Ron Hammerschmdit, Director of Environment, KDHE, presented testimony on **SB 686** stating this bill would release property owners from liability for additional cleanup costs as a result of future changes in cleanup standards/requirements (Attachment 3). He stated the scope of the bill needed to be limited to those things over which the Kansas Department of Health and Environment has jurisdiction, that his department could not provide a release for landowners from federal liability.

Mr. Hammerschmidt stated that the business of risk assessment does change. He presented a bill balloon with suggested changes to the bill. Mr. Hammerschmidt stated most of the cleanup done in the state of Kansas under the oversight of KDHE is done under the terms of a formal consent agreement between the department and the person doing the cleanup.

A member called attention to the use of the word standards noting they preferred not to put that into statute. Mr. Hammerschmidt stated their concern was the Department has, for a number of years, held off writing rules and regulations that formally set groundwater and soil cleanup standards due to the difficulty in writing them and are

concerned with losing that flexibility.

A member stated they felt the change dealing with tenants was good and also questioned the federal law. Mr. Hammerschmidt stated that in the event EPA would delegate the superfund to the states, passage of this bill would make it more difficult to convince EPA that the Department can run the program. At this time an excellent relationship exists between EPA and KDHE, they do not duplicate operations and have delegated considerable authority for cleanup.

A member questioned who would do the cleanup if, in the future, a contaminate is found to be more of a problem than previously thought. Mr. Hammerschmdit stated their reading of the bill would be that the state would be liable.

William Craven, Kansas Natural Resource Council, appeared before the Committee on **SB 686** stating that a number of his concerns about the bill had been met with the various balloons suggested for the bill (Attachment 4). He did express concern over the word "neglect" and suggested language for line 24 removing "neglect" and use "which occurred without any contribution of the contamination and any casual connection to any action of the owner of the property...". Mr. Craven said his language stated if you were connected to the release you could not take advantage of the freedom from liability clause. It was noted that certification of meeting the standards of cleanup is provided by the department.

During discussion concern was expressed about using the word "neglect" and the suggestion was made to replace "neglect" with "causal connection to the release..." . Another commented that a wider perspective was needed, that it could be a manufacturing plant, therefore the language needs to be very carefully crafted to protect the truly innocent.

The chairperson requested the interested parties develop language and present it at the scheduled afternoon meeting of the committee.

In discussing **SB 518** it was determined very little could be done with the bill that would not affect primacy. It was suggested that the only thing that might possibly be done would be to clearly delineate those things covered by the bill such as automobiles, residential air conditioning. The question was asked about good units still in operation and what would happen to them. Mr. Hammerschmidt stated that eventually the issue would become market driven and economically the changeover will happen. The issue of it being unlawful to sell it was discussed with Mr. Hammerschmidt noting that he thought people selling it at the present time had to be certified.

Concern was expressed that the replacement for chlorofluorocarbons is considered highly toxic, that there may be another change.

It was determined that this bill would serve no major purpose, therefore no further action would be taken.

The meeting adjourned at 8:50 a.m.

The next meeting is scheduled for February 22 upon adjournment of the Senate in Room 529-S., 1996.

SENATE ENERGY & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: February 22, 1996

NAME	REPRESENTING
John Mitchell	KDHE
Deb Lambley	KDA
David B. Schauner	Peter McGrath & Assoc
Bill Craven	KNEC/Sierra
Jean Barbee	Barbee & Associates
Bill Bider	KDHE
Leroy A. Lang	Myself
[illegible]	Sen
Ron Hammerschmidt	KDHE
[illegible]	KPC
ED SCHAUB	WESTERN RESOURCES INC.

TESTIMONY SENATE BILL 686

ENERGY AND NATURAL RESOURCES COMMITTEE

Introducing myself. I am Leroy Lang, a farmer-stockman from Norton, Kansas.

In February of 1992, I purchased the Southwest Quarter of Section 5, Township 2, Range 23, in Norton County.

On June 23, 1992 (five months later), Miller Aviation of Norton, our local aerial crop sprayer, was spraying wheat for weeds on the above quarter section. The plane developed engine trouble and as a result the plane crashed in my wheat field, leaving pesticide and hydrocarbon pollution.

I was notified at home by Mr. Delvis Miller, owner of Miller Aviation, about 11 hours after the crash, that there was a problem and instructed to be at the airport the next morning at 8:30 a.m. I had been working in the field several miles away when the crash occurred and arrived home late that evening.

A meeting was held the next morning with an insurance adjuster from Lloyds of London, Mr. Miller, Mr. Dan Kraus, of D and K Environment Services of Garden City, Kansas and myself in attendance. I was told then that Mr. Kraus was hired by Lloyds of London to clean up the spill. I was led to believe by Mr. Kraus that using approved procedures by Environmental Protection Agency/Kansas Department of Health and Environment, that the soil would be totally clean. I later learned this earth removed from the 10' by 30' by 21' deep hole would only meet minimum standards established by EPA/KDHE of 100 parts per million.

Written clearance from KDHE to put the earth back in the

Senate Energy & Natural Res.
February 22, 1996
Attachment 1

hole came Nov. 16, 1993. Wet weather and inattentive work procedures by D and K Environment Services led to approximately eighteen and a half months of this hole remaining open and finally closed on January 7, 1994.

I was asked for a bill of damages to my property and it was agreed by all parties that $4,862.50 was the total amount. This was about one month before June 23, 1994 which was the statute of limitations date. I had two concerns about this problem. First, I was concerned about future liability to me as the landowner. Secondly, what now was the property's present market value? I asked my lawyer to request that Miller Aviation and Lloyds of London be responsible for future liability should it arise. Both parties declined. The statute of limitations date was fast approaching.

My lawyer and I agreed that to keep this matter open we had to file a lawsuit before the statute of limitations date in the District Court of Norton County.

The results of the lawsuit included the following:

1. KDHE cannot and will not assure me that the current standard of 100 parts per million will not be lowered in the future.

2. KDHE cannot and will not assure me and subsequent owners of the subject property that they will not be held liable for future remediation costs should current standards for hydrocarbons and chemicals be lowered.

3. The Insurance carrier will not agree to leave said claim open or tell statute of limitations date.

4. If I sold this property, I would be morally and legally obligated to inform any prospective purchaser of the hydrocarbon and chemical incident and possibly of future liability.

5. Since filing this suit, my lawyer and I have been endeavoring to find a way to eliminate the threat of future remediation being required by myself or future owners, but we have been unsuccessful in doing so.

This suit was settled by my receiving $4,862.50 for the damages incurred to my property. Miller Aviation and Lloyds of London have fulfilled the current law as it now stands. My property was cleaned up to current EPA and KDHE standards and goodbye.

I have some questions:

1. Why should I, as a landowner, have all the future liability for an act that I didn't have anything to do with and was miles away from when it happened.

2. If I decide to sell this property, what is the market value of the property with this cloud of liability that hangs over it?

3. If I decide to give this property to one of my children, why would they take it with the possibility of future liability?

4. If the KDHE required me to retest this site, what would be the cost? It cost $24,651.75 to clean it up the first time. An environmental contractor from Hays has told me a hold bored 33" in diameter and 80 feet deep would cost $7,000. It is 160 feet to water at this site. The contractor said one hole will

never do it. It will take several.

5. If contamination was found, what would be the total cost twenty or fifty years from now? Would it bankrupt me, my heirs, or someone who I sold it to?

6. If a close neighbor dies and contamination is found in their water table, what's the legal cost for defending myself, or my heirs, or another owner defending himself. I've spent plenty already for legal fees for something I didn't do and wasn't around when the act was committed.

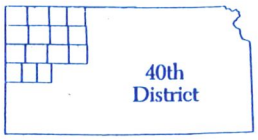
It appears to me that if current EPA and KDHE standards are met, the landowners liability should cease. We've met the law. If the law is changed lowering the standards, then the parties who committed the act originally should be responsible, or a landowner should qualify for the "super fund", as I understand a filling station now qualifies. The landowner would be limited to a small liability and the "super fund" would pay the balance. Right now the landowner is in left field with full potential liability. It's just not fair!

I understand KDHE considers me an innocent victim in this case, but will not give me anything in writing that I'm not responsible for future liability should it arise. I cannot accept verbal word not knowing whom I'm dealing with 5, 20, or 30 years from now. I want the written release. I urge you to support Senate Bill No. 686 or some version of it that is fair to all landowners. We need some relief!

Many thanks!

STATE OF KANSAS

STAN CLARK
STATE SENATOR



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
VICE CHAIR: ELECTIONS
MEMBER: AGRICULTURE
ASSESSMENT AND TAXATION
FINANCIAL INSTITUTIONS
AND INSURANCE

TESTIMONY - SENATE BILL 686
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
FEBRUARY 22, 1996

Mr. Chairman and members of the committee. I appreciate the opportunity to appear before you in support of SB 686.

If an airplane falls out of the sky and crashes on your property, or a train derails on your property, or a semi truck leaves the road and comes to rest on your property or, theoretically, a ship runs aground on your property which results in environmental contamination, the owner of the "vehicle" and his insurance company are responsible for the initial clean-up. When these remedial efforts meet the current EPA/KDHE acceptable levels, the Department issues a letter to the company (attachment 1) that performed to environmental clean-up and to the owner of the land (attachment 2). The party responsible for the contamination and his insurance carrier are discharged from future liability.

If those EPA/KDHE standards change, which they have in recent years, the landowner is responsible for further clean-up even though the initial contamination was through no fault of his own. This bill relieves the owner of this costly liability. "Any owner or subsequent purchaser of land..." The peanut of the bill starts on line 25 "...shall not be liable for any costs of subsequent remedial action required as a result of changes in standards adopted after the time of such accident...."

There are three proposed changes to this bill (attachment 3). There are existing statutes K.S.A. 65-161 to 65-171, and others that cover contamination where the landowner is responsible. The balloon in section 1, line 16, attempts to be very specific that the landowner was not at fault nor negligent when the contamination occurred.

Senate Energy & Natural Res.
February 22 1996
Attachment 2

205 U.S. 83
OAKLEY, KANSAS 67748
913-672-4280

STATE CAPITOL, RM. 128-S
TOPEKA, KS 66612-1504
913-296-7399

On Section 2, line 28 to 30 is a strike. The Department of Health and Environment supervises the cleanup and certifies the successful completion of the remedial action. Presumably, the Secretary will have required the parties responsible to utilize the "best available demonstrated technology," in performing the correction or remediation. Also the stricken language would place a difficult, if not impossible, burden on the owner or subsequent purchaser. How would a subsequent owner, fifty years from the remediation, be able to establish that the "best available demonstrated technology" was employed?

On Section 2, line 33 is a balloon that makes this statute apply to remedial actions taken before and after the adoption of this act.

I would be happy to stand for questions.

Attachment 1

Joan Finney, Governor

Reply To: (913) 296-1673/ FAX (913)
Bureau of Environmental Remedia
Forbes Field, Building 740
Topeka, KS 66620-0001

Department of Health and Environment
Robert C. Harder, *Secretary*

November 10, 1993

Dan Krause
D & K Environmental
6620 Jennie Barker Road
Garden City, Kansas 67846

Dear Dan:

Attached are the sample results of soil collected September 22, 1993 by Shawn and myself at the site of the Miller Aviation soil remediation north of Norton. As previously discussed, these samples were obtained from the areas found to be in excess of the 100 ppm total petroleum hydrocarbon standard utilized by KDHE.

On the basis of these analyses, the remaining hydrocarbon contamination has been successfully remediated below levels which may cause adverse environmental impact.

It is our conclusion that the contamination caused by this aircraft crash has been remediated to current applicable standards. Therefore, the soil may be returned to the excavation and the site restored to original grade. Native vegetative cover should be established as soon as possible to prevent erosion damage.

After these activities are accomplished, the site may be considered closed with no further action necessary.

If you have any further questions or comments, please contact me at 913-296-1679 or by FAX at 913-296-1686.

Sincerely,

G. Paul Belt
Environmental Technician
Landfill Remediation Section
Bureau of Environmental Remediation

Enclosure

Attachment 2

State of Kansas

Joan Finney Governor

Department of Health and Environment

Robert C. Harder, Secretary

May 19, 1994

Mr. Leroy Lang
R.R. 2
Norton, Kansas 67654

Dear Mr. Lang:

Pursuant to the request of Mr. William J. Ryan, of Ryan, Walter, & McClymont, I am transmitting this letter summarizing the final sampling of area of your farm impacted by an aircraft crash. Samples were obtained from the material excavated following the crash. These samples were taken in areas which still exceeded the 100 ppm total petroleum hydrocarbon standard utilized by KDHE. Samples were collected by a representative of D & K Environmental and myself. These samples were hand carried by myself to a State certified laboratory for analyses.

Based on the outcome of these analyses the hydrocarbons were remediated below levels shown to cause adverse environmental impact.

It is the conclusion of KDHE that contamination resulting from the crash has been cleaned up to current environmental standards. Therefore, in my letter to D & K environmental on November 10, 1993 I stated that the soil removed subsequent to the crash could be returned to the excavation and the site restored to original grade. I further noted that native vegetative cover should be established to prevent erosional damage. Once these tasks were accomplished the site would be considered closed requiring no further action.

A copy of the letter to D & K Environmental is attached for your information.

If you or your attorney have any further questions please contact me at 913/296-1679 or by FAX at 913/296-1686.

Sincerely,

G. Paul Belt

G. Paul Belt, Environmental Technician
Bureau of Environmental Remediation
Landfill Remediation Section

GPB:hca

Enclosures

Division of Environment, Bureau of Environmental Remediation
Forbes Field, Building 740, Topeka, KS 66620-0001

Telephone: (913) 296-1660
FAX: (913) 296-1686

Attachment 3

Session of 1996

SENATE BILL No. 686

By Committee on Energy and Natural Resources

2-14

AN ACT relating to the accidental release or discharge of materials detrimental to the quality of the waters and soil of the state; concerning the liability of landowners for correction or remedial action therefor.

Be it enacted by the Legislature of the State of Kansas:

Section 1. It shall be the duty of the owner of any land upon which there has occurred an accidental release or discharge of materials detrimental to the quality of the waters or soil of the state to comply with all existing rules and regulations and requirements of the secretary of health and environment designed to ensure the prompt correction of any such release or discharge for the protection of the public health and environment.

, which release or discharge occurred through no fault or neglect on the part of such owner,

Sec. 2. Any owner or subsequent purchaser of land, upon which there has occurred an accidental release or discharge of materials detrimental to the quality of the waters or soil of the state, which occurred through no fault or by reason of any neglect on the part of the owner of the property at the times of such release or discharge, shall not be liable for any costs of subsequent remedial action required as a result of changes in standards adopted after the time of such accident, if such owner or purchaser can demonstrate that ~~the parties responsible for the correction of the release utilized the best available demonstrated technology in the correction or remedial process and~~ the secretary of health and environment has certified that the action taken has met all requirements and standards prescribed by rules and regulations of the secretary, which were in effect at the time of the accidental release or discharge.

The provisions of this section shall apply to both releases and discharges and remedial actions taken prior to the effective date of this act and releases and discharges and remedial actions taken hereafter.

Sec. 3. The secretary of health and environment is hereby authorized to adopt rules and regulations necessary for the administration of the provisions of this act.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

State of Kansas

Bill Graves Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

The Senate Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

Senate Bill 686

This bill relates to landowner liability for corrective action when materials that are detrimental to the quality of the waters and soils of the state are accidentally released or discharged. We believe that the purpose of this bill is to provide a way for property owners to be released from liability for additional cleanup costs as a result of future changes in cleanup standards/requirements. This bill will not release landowners from federal liability.

The bill as currently drafted is very broad and open ended. Terms used in the bill, such as materials, accidental release, and best available technology are not defined. The department may need to develop regulations to clarify these terms and to limit the scope of agency involvement to those areas under the jurisdiction of the secretary.

Under several of the programs it administers, KDHE has the authority to require corrective action by a permitted entity or the responsible party. We do not believe this bill will impact upon that authority. The majority of the corrective actions that are currently being performed under the direction of the KDHE are done by the permitted entity or the responsible party, who is not always the landowner. Since this bill places a requirement to perform corrective action on the landowner and not on the responsible party, KDHE will implement this bill, if passed, in conjunction with other applicable statutes such as K.S.A. 65-3452, et seq. The majority of the cleanups currently are being performed under consent orders with the permitted entity or the potentially responsible party, not under rules and regulations. Many of the releases currently being remediated were releases that occurred many years ago, before environmental standards were developed and before the risk from such releases was identified. Some of these releases may have been accidental releases; however, many are as result of operating procedures that were not thought to be harmful at that time. The question becomes: can the secretary certify a cleanup if it has not been performed under departmental oversight or when the corrective action was implemented without approval of the secretary?

Since this bill potentially conflicts with future federal cleanup requirements, we may be required to promulgate rules and regulations that would address not only current requirements, but also any future standards that might be implemented at the federal level. There has been a great deal of discussion about the delegation of federal Superfund authorities to the state. In the event of a Superfund delegation, KDHE may have to promulgate much stricter standards in those programs delegated from EPA than may ever be needed for the future in order to avoid violation of the "no less stringent than" criteria. As an example, the Maximum Contaminant Level (MCL) for carbon tetrachloride is currently 5 parts per billion. The EPA MCL goal is 0. KDHE would have to set the standard for carbon tetrachloride at 0, with the possibility that the EPA MCL goal will not materialize. In the event that KDHE fails to meet the criteria for delegation, EPA could withdraw the program, overfile against the property owner or both.

Senate Enervou & Natural Res
February 22, 1996
Attachment 3

Division of Environment, Director of Environment Office
Forbes Field, Building 740, Topeka, KS 66620-0001

Telephone: (913) 296-1535
FAX: (913) 296-8464

Section 2 refers to best available demonstrated technology (BDAT) as the standard for cleanup. Currently, each site is different and corrective action and cleanup levels are determined on a site-by-site basis using risk assessment techniques. Thus, the BADT standard is not always the selected corrective action. Using the procedure currently in place for RCRA -- which uses that standard -- this bill would require KDHE to develop and adopt standards defining each element. This would require an analysis of each element of the standard for a variety of technologies and pollutants. The BADT standard may ultimately increase costs for property owners interested in selling their property and obtaining certification that they met all such requirements and standards -- since lending institutions will look to this statute for assurance of no future cleanup requirements. The BADT standards may be more stringent than those required by KDHE to remediate a site and may not be justified based on a risk analysis. Therefore, we may need to clarify the definition of BADT for the purposes of this bill in rule and regulation.

Finally, the risk analysis process for chemicals is an on-going process. The effects of many chemicals on human health and the environment have not been fully determined. As research progresses, new information develops which may result in lowering of contaminant levels which could result in additional cleanup becoming necessary to be protective of human health and the environment. Under certain circumstances, this bill could possibly result in state liability for additional cleanup costs. It is not possible to predict potential liability or the amount of costs.

We have attached a draft balloon of House Bill 686 which includes changes that would provide state protection to landowners where releases have been remediated under approval by the secretary or pursuant to administrative orders or agreements. The changes also require the remedial action be approved by the secretary. In addition, the changes add "...owner permitted occupant..." to the coverage of the bill. The department often deals with parties other than the landowner in remedial situations and feels this clarification is necessary.

Thank you for your attention.

Testimony presented by: Ronald F. Hammerschmidt, PhD
Director of Environment
February 22, 1996

SENATE BILL No. 686

By Committee on Energy and Natural Resources

2-14

AN ACT relating to the accidental release or discharge of materials detrimental to the quality of the waters and soil of the state; concerning the liability of landowners for correction or remedial action therefor.

Be it enacted by the Legislature of the State of Kansas:

Section 1. It shall be the duty of the owner or owner-permitted occupant of any land upon which there has occurred an accidental release or discharge of materials detrimental to the quality of the waters or soil of the state or person responsible for such release to comply with all existing rules and regulations , standards and requirements of the secretary of health and environment designed to ensure the prompt correction of any such release or discharge for the protection of the public health and environment.

Sec. 2. Any owner or subsequent purchaser of land, upon which there has occurred an accidental release or discharge of materials detrimental to the quality of the waters or soil of the state, which occurred through no fault or ~~by reason of any~~ neglect on the part of the owner or the owner-permitted occupant of the property at the times of such release or discharge, shall not be liable for any costs of subsequent remedial action required as a result of changes in standards adopted after the time of such accident, if such owner or purchaser can demonstrate that the ~~parties responsible for the correction of the~~ release utilized the best available demonstrated technology in the correction corrective action taken in response to such ~~or~~ remedial process and the secretary of health and environment has certified that the action taken has met all requirements and standards ~~prescribed~~ by rules and regulations of the secretary, which were in effect at the time of the accidental release or discharge. ve action approved the corrective action and and or conditions of administrative orders or agreements

Sec. 3. The secretary of health and environment is hereby authorized to adopt rules and regulations necessary for the administration of the provisions of this act.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Kansas Natural Resource Council

P.O. Box 2635
Topeka, KS 66601-2635

Officers
President
Bill Ward, Lawrence

Vice President
Joan Vibert, Ottawa

Secretary
Ann Fell, Winfield

Treasurer
Art Thompson, Topeka

William J. Craven,
Legislative Coordinator
935 S. Kansas Ave.
Suite 200
Topeka, KS 66612
913-232-1555
Fax: 913-232-2232

Testimony of William Craven
Kansas Natural Resource Council and Kansas Sierra Club
Senate Energy and Natural Resources Committee
February 22, 1996
S.B. 686

Thank you for the opportunity to appear and to express concerns about this bill. I have been told of the incident which caused the introduction of this bill, and I have no doubt as to the good faith behind this proposal. My assumption is that the intent is to end landowner liability for clean-ups caused by no fault of the landowner. However, the bill could be interpreted to be broader than that. My concerns are therefore largely technical in nature, and include:

1. The bill makes no reference to any other statute involving spills or clean-ups. That should be done to avoid any suggestion that this bill is intended to affect federal statutes and in order to clarify which state statutes are being amended.

2. There is no definition of "accidental release or discharge" on line 15. It's important to have a tight definition of "accident" in order to avoid disputes as to what is or is not "accidental."

3. There is no definition of "best available demonstrated technology" on line 29. This term, borrowed from federal statutes, may result in more difficulty for the proponents than at first imagined.

4. The language on line 25 attempts to end liability. The question is, liability to whom? If the bill is attempting to end liability as to adjoining landowners, thus affecting common law theories of recovery, then my opposition would increase considerably. For example, if a court orders the cleanup of even an accidental release in order to protect a neighbor's water supply, that order may involve more than what KDHE requires. For example, if KDHE orders a cleanup to 10ppm, that may not be sufficient for a private drinking well or for livestock. What KDHE may approve, a court might not. It should be made clear that this bill applies only to KDHE-approved clean-ups.

5. If the bill is attempting to end liability only for KDHE-mandated cleanup, I think a process already exists for that, and I know there is process for that at the federal level in the Superfund program. In other words, I'm not certain this bill is necessary.

6. At line 24, the bill introduces the concept of "neglect." I would recommend taking that word out of this bill. There is a big difference between various degrees of negligence and a plane falling out of the sky onto someone's property. The sentence could be amended to read: "which occurred without any contribution of the contamination and any causal connection to any action of the owner of the property..."

7. It's important to prohibit bad actors from taking advantage of this proposal. How does one guard against sham real estate transactions, where, for example, a polluter sells land to a subsidiary, which then tries to end its liability? The language I have suggested in ¶6 might help solve that problem.

Thank you for the opportunity to testify.

Senate Energy & Natural Res.
February 22, 1996
Attachment 4