

Approved: 4-9-97  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Steve Lloyd at 3:30 p.m. on March 17, 1997 in Room 526-S of the Capitol.

All members were present except: Rep. Dan Johnson - excused  
Rep. Kent Glasscock - excused  
Rep. Don Meyers - excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Hank Avila, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Jamie Clover Adams, Legislative Liaison  
Larry Knoche, Director of Bureau of Environmental Remediation for KDHE  
Charles Benjamin, KS Natural Resource Council & Sierra Club  
Clark Duffy, Associate Director, KS Petroleum Council  
Doug Wareham, KS Grain & Feed Association and KS Fertilizer & Chemical Association  
Terry Leatherman, Executive Director KS Industrial Council, KS Chamber of Commerce and Industry  
Yvonne Anderson, Director, Office of Legal Services, KDHE

Others attending: See attached list

Chairman Steve Lloyd called the meeting to order at 3:30 p.m. He announced that no final action will be taken today on **SB 110**, since some of the committee members have gone on a tour of Wolf Creek, nor tomorrow, because of the full schedule of tomorrow's meeting.

The Chairman opened public hearing on **SB 276**:

**SB 276: An act enacting the voluntary cleanup and property redevelopment act; concerning remediation of contaminated property.**

Raney Gilliland, Legislative Research Department, explained the bill. Discussion and questions followed.

The Chairman welcomed Jamie Clover Adams, Legislative Liaison, to the committee. She supports the bill, which is another of the Governor's innovative environmental initiatives. (See Attachment 1) This bill establishes a voluntary cleanup program within the Department of Health and Environment to address moderate to low risk contamination. A balloon was distributed to the committee and she explained the changes that had been made.

The Chairman welcomed Larry Knoche, KDHE. He provided testimony (See Attachment 2) in support of the bill, which was an outline of the Voluntary Cleanup and Property Redevelopment Act. He reviewed the outline and explained each of the sixteen sections.

The Chairman welcomed Charles Benjamin, KS Natural Resource Council and Sierra Club. He presented testimony (See Attachment 3) in support of the bill along with an amendment. He focused on achieving two goals: generally clearing up the language of the bill so that it is consistent and less vague, and including language in the bill allowing input by parties potentially affected by the applicant's cleanup plans to have input into those plans prior to their formal approval by KDHE.

The Chairman welcomed Clark Duffy, KS Petroleum Council. The KS Petroleum Council represents the

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 526-S Statehouse, at 3:30 p.m. on March 17, 1997.

major oil and gas companies and allied industries in Kansas. They support the concepts in the bill (See Attachment 4) and feel this bill would provide KDHE with the resources for oversight when a property owner voluntarily requests guidance in cleaning up a contamination site.

The Chairman welcomed Doug Wareham, KS Grain & Feed Association and KS Fertilizer and Chemical Association. He provided testimony in support of the bill (See Attachment 5) and applaud the intent of the bill for providing individuals and businesses with an opportunity to "do the right thing" without reproach from KDHE.

The Chairman welcomed Terry Leatherman, Executive Director, Kansas Industrial Council, to the committee. He provided testimony in support of the bill (See Attachment 6) and believes by establishing a process where a property owner can work with the Department to voluntarily correct environmental problems, the bill provides a framework to achieve environmental improvement through cooperation.

Discussion and questions followed. Hearing no others to testify the Chairman closed the hearing. He appointed a subcommittee to discuss SB 276, Chairperson, Rep. Becky Hutchins; Rep. David Huff; Rep. Marti Crow; Rep. Tom Sloan and Rep. Dennis McKinney.

The Chairman opened public hearing on SB 123:

**SB 123:**            **An act concerning regulation of discharges of sewage; amending K.S.A. 65-264 and 65-165 and repealing the existing sections.**

Raney Gilliland, Legislative Research Department, explained the bill.

The Chairman welcomed Yvonne Anderson, KDHE. She spoke in support of the bill (See Attachment 7) and believes the proposed legislation is consistent with other environmental programs which provide for administrative appeals of agency orders and permitting actions as well as with current administrative practice which is to allow for administrative appeals of agency actions prior to court review. Discussion and questions followed.

The Chairman hearing no others to testify closed the hearing on SB 123.

The meeting adjourned at 5:15 p.m.

The next meeting is scheduled for March 18, 1997

# HOUSE ENVIRONMENT COMMITTEE COMMITTEE GUEST LIST

DATE: 3-17-97

NAME	REPRESENTING
Walter Randall	Whitney Samson, P.A.
Bob Casey	KDHE
Cliff Duffin	Ks. Petroleum Council
Harry Kuehn	KDHE
Thomas Anderson	KDHE
Richard Ben	KDHE
Colleen Bell, Denton	Bottenberg's Assoc.
Lisa Meyer	KS Gov. Consulting
Julie Lubin	Mo. Co-op Council /
Doug Wareham	Ks. Grain Feed Assn / Ks. Fertilizer & Chemical Assn.
Lew Jere SCHNEIDER	KLA
STEVE KEARNEY	KOMA
Tom PALACE	KOMA
Alan Kool	Western Resources
Ron Hammerschmidt	KDHE
DAVID B SCHLOSSER	Pete McGinn & Assoc.
Pamela Burhanan-Lyon	Intern - Rep. Carl Holmes
Mark Lyon	self
Charles Benjamin	KNRC / KS Sierra Club

# HOUSE ENVIRONMENT COMMITTEE COMMITTEE GUEST LIST

DATE: 3-17-97

NAME	REPRESENTING
<i>Kim Dully</i>	<i>League of KS Municipalities</i>

# STATE OF KANSAS



BILL GRAVES, Governor  
State Capitol, 2nd Floor  
Topeka, Kansas 66612-1590

(913) 296-3232  
1-800-748-4408  
FAX: (913) 296-7973

## OFFICE OF THE GOVERNOR

### LEGISLATIVE TESTIMONY

TO: Chairman Steve Lloyd and Members of the House Environment Committee

FROM: Jamie Clover Adams, Legislative Liaison

DATE: March 17, 1997

BILL: Senate Bill 276 -- The Voluntary Cleanup and Property Redevelopment Act

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Mr. Chairman and members of the Committee, thank you for the opportunity to appear today in support of another of the Governor's innovative environmental initiatives.

Past experience shows that command-and-control regulation is not effective in addressing a broad range of environmental concerns. Command-and-control emphasizes standard setting and prosecuting violators. This type of regulation consumes more time and resources than government and the private sector can afford in many instances. Therefore, new innovative approaches -- like the **voluntary measures embodied in S.B. 276** -- are necessary to address a wide variety of environmental concerns.

S.B. 276 establishes a **voluntary** cleanup program within the Department of Health and Environment to address moderate to low risk contamination. The business works with KDHE to establish a cleanup plan based on risk -- cleaning up the property to its expected future use. The department then oversees the landowner's implementation of the plan. When cleanup is complete, KDHE issues a notification of "no further action required" providing the landowner with a definitive end to the cleanup process. This limits liability and should help facilitate the orderly sale of previously contaminated property.

S.B. 276 is win-win legislation that brings environmental, economic and regulatory factors together in a manner that is beneficial to all -- present property owners, potential buyers, financial institutions and the community as a whole. Larry Knoche, Director of the Bureau of Environmental Remediation for KDHE is here today to address the technical aspects S.B. 276. The Governor appreciates your consideration of this legislation. I would be happy to answer any questions you may have.

*House Environment  
3-17-97  
Attachment 1*

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FAX: (913) 296-7973

## OFFICE OF THE GOVERNOR

### SB 276 -- Voluntary Cleanup and Property Redevelopment Act

- ISSUE:** Bill to establish a voluntary property cleanup program within the Department of Health and Environment.
- WHY IMPORTANT:** Currently, most financial institutions require an environmental assessment before money can be loaned to buy property. Many times low risk contamination is found and the financial institution will not loan money for the purchase. SB 276 allows landowners to work with KDHE to cleanup the contamination. KDHE will then issue a notification of no further action required when cleanup is complete. This limits liability and will help facilitate the orderly sale of previously contaminated property.
- BILL CONTENT:** The bill establishes a voluntary cleanup program that culminates with the issuance of a notice of no further action required to the landowner -- an end to cleanup. Each applicant must pay a \$200 application fee and deposit \$5000 with KDHE to cover the department's administrative expenses. Any money not used is returned to the applicant. The business works with KDHE to establish a cleanup plan based on risk -- cleaning up property to its expected future use. The department then works with the landowner to implement the plan. When the work has been completed, the department will issue a notice of no further action required to the landowner. The landowner pays all cleanup costs. The landowner can withdraw from the program at any time so long as they leave the property in the same condition -- from an environmental prospective -- as when they made the application and so long as there is no immediate threat to human health and the environment. Sites that fall under Superfund and RCRA, as well as those that are oil and gas sites or sites determined to be a substantial threat to public or private drinking water wells are not eligible to participate in this program. The bill is targeted at moderate to low risk sites and should help cleanup property that might otherwise remain polluted because of limited department time and resources.
- BACKGROUND:** Senate amendments were the result of negotiations between the Governor's office, KDHE, industry and the environmental activist community. The bill passed the Senate 38-1.

As Amended by Senate CommitteeSession of 1997

## SENATE BILL No. 276

By Committee on Energy and Natural Resources

2-11

10 AN ACT enacting the voluntary cleanup and property redevelopment act;  
11 concerning remediation of contaminated property.

12

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

14 Section 1. This act shall be known and may be cited as the voluntary  
15 cleanup and property redevelopment act and shall apply to real property  
16 where environmental cleanup may be needed.

17 Sec. 2. As used in this act:

18 (a) "Contaminants" means such alteration of the physical, chem-  
19 ical or biological properties of any soils and waters of the state as  
20 will or is likely to create a nuisance or render such soils or waters  
21 potentially harmful, or injurious to public health, safety or welfare,  
22 or to the plant, animal or aquatic life of the state.

23 (b) "Department" means the department of health and environment.

24 (b) (c) "Secretary" means the secretary of health and environment.

25 Sec. 3. The secretary may adopt rules and regulations necessary to  
26 define, administer and enforce the provisions of this act.

27 Sec. 4. (a) The program established in this act shall be voluntary and  
28 may be initiated by submission of an application to the department for  
29 properties where investigation and remediation may be necessary to pro-  
30 tect human health or the environment based upon the current or pro-  
31 posed future use or redevelopment of the property.

32 (b) Property which may be eligible for reimbursement from trust  
33 funds established in the Kansas storage tank act, K.S.A. 65-34,100 et seq.,  
34 and amendments thereto, or the Kansas drycleaner environmental re-  
35 sponse act, K.S.A. 1996 Supp. 65-34,141 et seq., and amendments  
36 thereto, shall meet all of the requirements of the respective act.

37 (c) The provisions of this act shall not apply to:

38 (1) Property that is listed or proposed for listing on the national pri-  
39 orities list of superfund sites established under the comprehensive envi-  
40 ronmental response, compensation, and liability act (CERCLA), 42

41 U.S.C.A. 9601 et seq.

1 *applicant* initiated voluntary activities. The ~~participant~~ *applicant* must  
 2 notify the department in writing of the intention to terminate the vol-  
 3 untary agreement. The department will cease billing for review of any  
 4 submittal under the voluntary agreement upon receipt of notification.  
 5 Within 90 days after receipt of notification for termination, the depart-  
 6 ment shall provide a final ~~invoice~~ for services provided. If the ~~participant~~  
 7 *applicant* requests termination of the voluntary agreement under this  
 8 subsection, initial deposits are not refundable. In the event the depart-  
 9 ment has costs in excess of the initial deposit, the ~~participant~~ *applicant*  
 10 must remit full payment of those costs. Upon payment of all costs, the  
 11 department shall notify the ~~participant~~ *applicant* in writing that the vol-  
 12 untary agreement has been terminated.

bill

13 (h) The department may terminate the voluntary agreement if the  
 14 ~~participant~~ *applicant*:

- 15 (1) Violates any terms or conditions of the voluntary agreement or
- 16 fails to fulfill any obligations of the voluntary agreement; or
- 17 (2) fails to address an immediate and significant risk of harm to public
- 18 health and the environment in an effective and timely manner.

19 The department shall notify the ~~participant~~ *applicant* in writing of the  
 20 intention to terminate the voluntary agreement and include a summary  
 21 of the costs of the department. The notification shall state the reason or  
 22 reasons for the termination.

23 (i) There is established a fund in the state treasury the voluntary  
 24 cleanup fund. Revenue from the following sources shall be deposited in  
 25 the state treasury and credited to the fund:

- 26 (1) Moneys collected for application fees;
- 27 (2) moneys collected as deposits for costs associated with administra-
- 28 tion of the act, including technical review, oversight and guidance;
- 29 (3) moneys received by the secretary in the form of gifts, grants, re-
- 30 imbursements or appropriations from any source intended to be used for
- 31 purposes of the fund; and
- 32 (4) interest attributable to the investment of moneys in the fund.

33 (j) Moneys in the voluntary cleanup fund shall only be expended for  
 34 costs of:

- 35 (1) Review of applications;
- 36 (2) technical review, oversight, guidance and other activities neces-
- 37 sary to carry out the provisions of this act;
- 38 (3) activities performed by the department to address immediate or
- 39 emergency threats to human health and the environment related to a
- 40 property under this act; and
- 41 (4) administration and enforcement of the provisions of this act.
- 42 (k) On or before the 10th of each month following the month in
- 43 which moneys are first credited to the voluntary cleanup fund, and



1 monthly thereafter on or before the 10th of each month, the director of  
2 accounts and reports shall transfer from the state general fund to the  
3 voluntary cleanup fund interest earnings based on:

4 (1) The average daily balance of moneys in the voluntary cleanup  
5 fund for the preceding month; and

6 (2) the net earnings rate of the pooled money investment portfolio  
7 for the preceding month.

8 (1) All expenditures from the fund shall be made in accordance with  
9 appropriation acts upon warrants of the director of accounts and reports  
10 issued pursuant to vouchers approved by the secretary for the purposes  
11 set forth in this section.

12 Sec. 6. (a) The department shall review reports, including any envi-  
13 ronmental assessments and investigations submitted, and make a deter-  
14 mination as to any required actions. ~~Based upon submitted documents,~~  
15 ~~if the department determines that no remedial action is necessary,~~  
16 the department may issue a no further action determination pursuant to  
17 section 9.

by the applicant.

I

18 (b) If the department determines that further investigation or re-  
19 mediation is required, the applicant shall submit to the department a  
20 voluntary cleanup plan that follows the scope of work prepared by the  
21 department for voluntary investigation or remediation and includes the  
22 actions necessary to address the contamination.

23 Sec. 7. Remedial alternatives shall be based on the actual risk as-  
24 sumptions to human health and the environment currently posed by con-  
25 taminants on the property, considering the following factors:

26 (a) The present and proposed future uses of the property and sur-  
27 rounding properties;

28 (b) the ability of the contaminants to move in a form and manner  
29 which would result in exposure to humans and the surrounding environ-  
30 ment at levels which exceed applicable state standards and guidelines or  
31 *the results of a risk analysis if such standards and guidelines are*  
32 *not available;* and

33 (c) the potential risks associated with proposed cleanup alternatives  
34 and the reliability and economic and technical feasibility of such alter-  
35 natives.

36 Sec. 8. (a) The department shall provide formal written notification  
37 to the applicant that a voluntary cleanup plan has been approved or  
38 disapproved within 60 days of submittal of the voluntary cleanup plan by  
39 the applicant unless the applicant and the department agree to an exten-  
40 sion of department extends the time for review to a date certain. Review  
41 shall be limited to a review of the materials submitted by the applicant  
42 and documents or information readily available to the department.

43 (b) The department shall approve a voluntary cleanup plan if, based

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1 on the information submitted by the applicant; the department concludes  
2 that the plan will attain a degree of cleanup and control of contaminants  
3 that complies with all applicable statutes and rules and regulations.

4 (c) If a voluntary cleanup plan is not approved by the department,  
5 the department shall promptly provide the property owner applicant  
6 with a written statement of the reasons for denial. ~~If the department~~  
7 ~~disapproves a voluntary cleanup plan based upon the applicant's failure~~  
8 ~~to submit the information required, the department shall notify the ap-~~  
9 ~~plicant of the deficiencies in the information submitted.~~

10 (d) The approval of a voluntary cleanup plan by the department ap-  
11 plies only to those contaminants and conditions identified on the property  
12 based upon the statutes and rules and regulations that exist when the  
13 application is submitted.

14 (e) Upon determination by the department that a voluntary cleanup  
15 plan is approved, the department ~~may~~ shall publish a notice of the action  
16 in a daily newspaper of general circulation in the area affected and make  
17 the voluntary cleanup plan available to the public. If sufficient interest is  
18 shown by the public, or a local governing body of a city, township or  
19 county, the department ~~may~~ conduct a public meeting at or near the  
20 property regarding the proposed voluntary cleanup plan.

21 (f) Departmental approval of a voluntary cleanup plan shall be void  
22 upon:

23 (1) Failure of a property owner ~~an applicant~~ to comply with the  
24 approved voluntary cleanup plan;

25 (2) submission of misleading information by the applicant in the con-  
26 text of the voluntary cleanup plan;

27 (3) Failure to initiate the plan within 6 months after approval by the  
28 department, or failure to complete the plan within 24 months after ap-  
29 proval by the department, unless the department grants an extension of  
30 time.

31 (g) An applicant desiring to implement a voluntary clean up plan after  
32 the time limits prescribed by subsection (f)(3) have expired shall submit  
33 a written petition for reapplication accompanied by written assurances of  
34 a qualified environmental professional from the applicant that the con-  
35 ditions on the subject property are substantially similar to those existing  
36 at the time of the original approval. Reapplications shall be reviewed by  
37 the department. Any reapplication that involves property upon which the  
38 condition has substantially changed since approval of the original volun-  
39 tary cleanup plan shall be treated as a new application and shall be subject  
40 to all the requirements of this act.

41 (h) Within 45 days after the completion of the voluntary cleanup de-  
42 scribed in the approved voluntary cleanup plan, the applicant shall pro-  
43 vide to the department assurance from a qualified environmental profes-

shall

Willful

false, inaccurate, or

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1 sional that the plan has been fully implemented. A verification sampling  
2 program shall be required by the department to confirm that the property  
3 has been cleaned up as described in the voluntary cleanup plan.

4 (i) After receipt of the assurance or the verification of voluntary  
5 cleanup, the department shall issue a no further action determination to  
6 the participant.

7 Sec. 9. (a) After an applicant completes the requirements of this act,  
8 the department may determine that no further remedial action is re-  
9 quired. Within 60 days after such completion, unless the applicant and  
10 the department agree to an extension of the time for review, the depart-  
11 ment shall provide written notification that a no further action determi-  
12 nation has been made.

13 (b) (1) The department may consider in issuing this determination  
14 that contamination or a release of contamination originates from a source  
15 on adjacent property upon which the necessary action which protects  
16 human health and the environment is or will be taken by either a viable  
17 and financially capable person or entity which is *may or may not be*  
18 legally responsible for the source of contamination or a person who is not  
19 legally responsible for such source.

20 (2) The department shall provide written notification of a no further  
21 action determination.

22 (3) The issuance of a no further action determination by the depart-  
23 ment applies only to identified conditions on the property and is based  
24 upon applicable statutes and rules and regulations that exist as of the time  
25 of completion of the requirements.

26 (c) The department may determine that the no further action deter-  
27 mination, under this section is void if:

28 (1) There is any evidence or of fraudulent representation, false as-  
29 surances, concealment or misrepresentation of the data in any document  
30 to be submitted to the department under this act;

31 (2) the participant *applicant* agrees to perform any action approved  
32 by the department and fails to perform such action;

33 (3) the participant's *applicant's* willful and wanton conduct contrib-  
34 utes to known environmental contamination; or

35 (4) the participant *applicant* fails to complete the voluntary actions  
36 required in the voluntary cleanup plan.

37 (d) If a no further action determination is not issued by the depart-  
38 ment, the department shall promptly provide the applicant with a written  
39 statement of the reasons for denial.

40 Sec. 10. (a) The department may accept only environmental assess-  
41 ments under this act prepared by a qualified environmental professional,  
42 as defined by rules and regulations adopted by the secretary.

43 (b) The environmental assessment described in section 6, shall con-

1 form to the standards set forth in the American society for testing and  
2 materials designation: 1527-03, as in existence on the effective date of  
3 this act.

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

8 (b) If the federal environmental protection agency (EPA) indicates  
9 that it is investigating a property which is the subject of an approved  
10 voluntary cleanup plan, the department shall attempt to obtain agreement  
11 with the EPA that the property be addressed under the appropriate state  
12 program or, in the case of property being addressed through a voluntary  
13 cleanup plan, that no further federal action be taken with respect to the  
14 property at least until the voluntary cleanup plan is completely imple-  
15 mented.

16 Sec. 12. (a) Voluntary cleanup plans are not enforceable against a  
17 ~~partieipant~~ *an applicant* unless the department can demonstrate that a  
18 ~~partieipant~~ *an applicant* who initiated a voluntary cleanup under an ap-  
19 proved plan has failed to fully implement that plan. In that case, the  
20 department may require further action if such action is authorized by  
21 other state statutes *administered by the department* or rules and reg-  
22 *ulations of the department.*

23 (b) Information provided by a ~~partieipant~~ *an applicant* to support a  
24 voluntary cleanup plan shall not provide the department with an inde-  
25 pendent basis to seek penalties from the ~~partieipant~~ *applicant* pursuant  
26 to applicable statutes or rules and regulations. If, pursuant to other ap-  
27 plicable statutes or rules and regulations, the department initiates an en-  
28 forcement action against the ~~partieipant~~ *applicant* subsequent to the  
29 submission of a voluntary cleanup plan regarding the contamination ad-  
30 dressed in the plan, the voluntary disclosure of the information in the  
31 plan shall be considered by the enforcing authority to mitigate penalties  
32 which could be assessed to the ~~partieipant~~ *applicant.*

33 Sec. 13. *The department shall publish annually in the Kansas*  
34 *register a summary of the number of applicants, the general cate-*  
35 *gories of those applicants and the number of cleanups completed*  
36 *pursuant to this act.*

37 Sec. 14. If any provision of this act or the application thereof to  
38 any person or circumstances is held invalid, the invalidity does not affect  
39 other provisions or applications of this act which can be given effect with-  
40 out the invalid provisions or application. To this end the provisions of this  
41 act are severable.

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

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## *Voluntary Cleanup and Property Redevelopment Act*

- **Section 1.** Voluntary Cleanup and Redevelopment Act defined.
- **Section 2.** Definition section
- **Section 3.** Secretary may adopt rules and regulations.
- **Section 4.** General provisions, application and eligibility criteria.

An application to the department initiates voluntary process.

Sites eligible for reimbursement from established state trust funds (dry cleaner, AST or LUST) must meet the requirements of their respective acts;

*CRITERIA:* This act will not apply to: a) sites listed or proposed for listing by CERCLA actions; b) property the subject of enforcement action or orders issued pursuant to environmental laws; c) RCRA corrective action sites; d) oil and gas sites; e) sites that present an immediate and significant risk to human health and the environment; and f) sites determined to be a substantial threat to public or private drinking water wells.

- **Section 5.** Application fees, department acceptance, voluntary agreements.

Application or reapplication accompanied by a non-refundable application fee of \$200.

Department shall approve or deny all applications; notification in writing with reasons for denial.

If approved, a voluntary agreement must be executed prior to any site specific activities.

A deposit of no more than \$5000 is required to cover direct and indirect costs to administer.

If costs exceed \$5000, a new amount must be agreed upon by department and applicant prior to continuing work.

Department shall refund any remaining balance within 60 days of completion.

Department shall have access to site during voluntary agreement.

Termination by applicant prior to completion of work is allowed, if the condition of the site is no worse than at the start of voluntary agreement. Department will cease billing upon notification.

90 days after notification of termination the department shall provide final billing.

Initial deposits are non-refundable under termination by applicant.

Department may terminate agreement if: 1) terms of agreement are violated; 2) applicant fails to address immediate and significant risks in a timely manner.

A voluntary cleanup fund established in the state treasury.

Revenue from: 1) application fees; 2) deposits; 3) gifts, grants, reimbursements or appropriations; 4) interest.

Money in the fund shall be expended for: 1) review of applications; 2) technical review; 3) activities to address immediate or significant threats; 4) administration and enforcement of the act.

Transfer of money from the state general fund to the voluntary cleanup fund on 10th day of each month.

Expenditures from the fund are made in accordance with the act.

- **Section 6.** Voluntary cleanup plan.

Department shall review reports and make determination as to any required actions including a "no further action determination."

If further investigation or remediation is required, the applicant shall submit a voluntary cleanup plan to the department which follows the SOW prepared by department.

- **Section 7.** Remedial alternatives

Remedial alternatives are based on actual risk to human health and the environment considering: 1) present and proposed future uses of the site; 2) ability of contaminants to migrate which would pose threats; 3) reliability and (technical and economic) feasibility of such alternatives.

- **Section 8.** Review of plans, public participation.

Written approval or disapproval of plans from the department within 60 days.  
Department can extend the time for review to a date certain.

If department approves the plan, the plan will attain a degree of cleanup and control of contaminants that complies with applicable law.

Disapproval of the plan includes outlining the deficiencies.

Approval applies only to those contaminants and conditions identified on property based on current applicable law.

Notice shall be published by the department in a local newspaper following approval of the voluntary cleanup plan. The department shall conduct a public meeting if sufficient interest is shown by local governmental bodies or citizens.

Voluntary Cleanup Plan may be considered void if applicant: 1) fails to comply; 2) willfully submits false, inaccurate, or misleading information; 3) fails to initiate plan within six months and complete within 24 months after approval.

If time has expired, reapplication accompanied by written assurances from a consultant that property conditions has not changed is required.

Reapplication reviewed by department.

Upon completion of a voluntary cleanup plan the applicant shall provide written assurance to the department that plan has been fully implemented.

Implementation of a verification program is required to confirm that cleanup goals were achieved.

- **Section 9.** No further action determination.

Written notification by the department to the applicant within 60 days of completion for notification of "no further action."

The department can issue the determination to an adjacent property who is not a source of contamination.

Issuance of "no further action determination" applies only to conditions identified and addressed on property based on applicable law that existed at time of completion.

"No further action determination" may be void if: 1) fraudulent representation or misrepresentation; 2) applicant fails to perform agreed upon actions; 3) willful and wanton conduct by applicant contributes to known contamination; 4) applicant fails to complete voluntary actions.

KDHE shall notify the applicant if "no further action" is not issued.

- **Section 10.** Environmental assessments.

The department will accept only environmental assessments prepared by a qualified environmental professional as defined by the regulations.

- **Section 11.** Coordination with other laws.

Nothing in the act shall absolve applicant from other obligations.

The department shall attempt to obtain agreement with EPA to withhold federal action at an applicable voluntary site at least until voluntary action is complete.

- **Section 12.** Enforceability.

Voluntary cleanup plans are not enforceable unless applicant fails to complete action and action is authorized by other state law.

Information provided by applicant shall not provide the department with an independent basis to seek penalties from applicant. If enforcement action taken by the department, the voluntary disclosure of information in the plan shall be considered by the enforcing authority to mitigate penalties.

- **Section 13.** Reporting.

Department shall publish a summary of applicants and cleanups completed in the Kansas Register.

- **Section 14.** Severability.

Provisions of the act are severable.

- **Section 15.** Effective date of Act.

- **Section 16.** The act shall take effect after publication in the statute book.



Testimony of Charles M. Benjamin, Ph.D., J.D.  
Legislative Coordinator  
Kansas Natural Resource Council  
Kansas Chapter of Sierra Club  
935 S. Kansas Ave., Suite 200, Topeka, KS 66612

Re: Senate Bill 276 as amended by Senate Committee  
House of Representatives Committee on the Environment  
March 17, 1997

I have had the opportunity to submit proposed changes to this bill at two different points in time: 1) during the hearings by the Senate Energy and Natural Resources Committee and 2) after the amended version of SB 276 was approved by the full Senate. Both times my efforts have focused on achieving two goals: 1) generally clearing up the language of the bill so that it is consistent and less vague, and 2) including language in the bill allowing input by parties potentially affected by the applicant's cleanup plans to have input into those plans prior to their formal approval by KDHE. I believe that together with the Governor's staff, KDHE staff and other conferees we have succeeded in the former goal with the caveat that we may have missed something that the members of this committee, in their wisdom, will point out to us. The second goal has thus far eluded us. I want to make the case for public review of applicant's cleanup plans, prior to final KDHE approval, on two grounds:

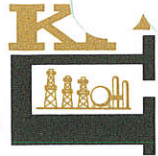
1) There are affected parties, such as adjacent landowners or renters who may be affected by the cleanup process. For example, the cleanup process may affect ingress and egress from an adjacent place of business, or cleanup may involve the use of heavy equipment that can affect neighboring businesses during their normal business hours. Perhaps a cleanup plan in which work occurred during non-peak business hours would have less negative impact on the applicant's neighbors. These are just examples, but my point is that unless the neighboring property owners, and others, know about and can make suggestions to the cleanup plan prior to approval, then a plan may be approved that will have a detrimental impact on adjoining properties that could have been avoided.

2) Environmental cleanup plans are often controversial. It does not make them any less controversial for KDHE to be in the position of approving a plan and then seeking public input, which is what the current language in the bill proposes. The current bill calls for approval of the cleanup plan first and then a public notification, with possible input, if there is "sufficient" interest. In other words, anything anyone can contribute to the plan really makes no difference. That kind of situation leads to cynicism, mistrust and resentment of heavy-handed governmental decision-making. There are always going to be those who oppose anything. A process that is open, with specific criteria for approval and denial, will minimize the impact of that kind of behavior. Don't freeze out those who have legitimate concerns and valuable input. Let them have that input prior to final approval.

With that in mind I propose the following amendment:

**Page 5, Section 8(e), line 15: Substitute the word "approved" with the phrase "proposed for approval,"**

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**SB 276**  
**HOUSE ENVIRONMENT COMMITTEE**  
**CLARK DUFFY, KANSAS PETROLEUM COUNCIL**  
**MARCH 17, 1997**

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.

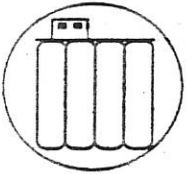
The Kansas Petroleum Council supports the concepts in SB 276. This bill would provide KDHE with the resources for oversight when a property owner voluntarily requests guidance in cleaning up a contamination site. This program could be especially useful when used in conjunction with real estate transactions.

I participated in development of the amendments to SB 276 proposed by the Governor. I support these suggested changes to improve the bill.

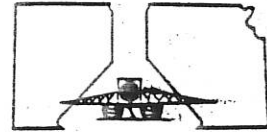
I also suggest an amendment on page 5, line 14, by striking the word "upon" and inserting in lieu thereof, the phrase "prior to a". This amendment would require KDHE to provide public notice prior to approving the cleanup plan, not after it approved the plan.

I think this change is an important administrative procedure. I recognize this bill will only deal with "minor" contamination sites and there will be few, if any, objections to cleanup plans. However, the purpose of public notice is to allow an agency to consider and act upon new information without intervention by the courts. This change would be consistent with the Kansas Administrative Procedures Act.

Thank you.



**Kansas Grain & Feed Association  
Kansas Fertilizer & Chemical Association**



**STATEMENT OF THE  
KANSAS GRAIN & FEED ASSOCIATION  
AND THE  
KANSAS FERTILIZER & CHEMICAL  
ASSOCIATION  
TO THE  
HOUSE ENVIRONMENT COMMITTEE  
REPRESENTATIVE STEVE LLOYD, CHAIR  
REGARDING S.B. 276  
MARCH 17, 1997**



**KGFA & KFCFA advocate public policies that advance a sound economic climate for agribusiness to grow and prosper so they may continue their integral role in providing Kansans and the world with the safest, most abundant supply of food and fiber.**

Mr. Chairman and members of the committee, I am Doug Wareham appearing today on behalf of both the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). We appreciate the opportunity to appear today in support of S.B. 276.

KGFA is comprised of 1150 member firms including country elevators -- both independent and cooperative -- terminal elevators, flour mills, grain merchandisers and feed manufacturers. KFCA's nearly 500 members are primarily plant nutrient and crop protection retail dealers, but also include manufacturer's representatives, distribution firms and equipment manufacturers. While the two agribusiness associations I represent share staff, they have distinct memberships, separate governing boards and association programs.

The over 1600 combined members of KGFA and KFCA support the concept of establishing a voluntary program focused on addressing areas of contamination in our state. We applaud the intent of Senate Bill 276 for providing individuals and businesses with an opportunity to "do the right thing" without reproach from the Kansas Department of Health and Environment.

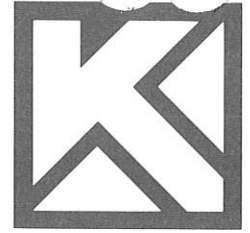
Upon reviewing S.B. 276, we believe it includes three very important components which are necessary for such a program to be utilized by individuals and businesses and to accomplish it's objective of protecting human health and the environment.

1. The voluntary nature of this program will bring a new incentive for individuals and businesses to address environmental concerns which might otherwise go undetected.
2. By including technical support to be provided by KDHE staff during the cleanup and assurances by a qualified environmental professional at the conclusion of cleanup, S.B. 276 ensures that appropriate actions will be taken to remedy contaminated sites.
3. Participants who voluntarily provide information for the purpose of supporting a cleanup plan are protected from being penalized pursuant to applicable statutes, rules and regulations.

KGFA and KFCA commend S.B. 276 for it's innovative and cooperative approach to addressing environmental concerns in Kansas and we ask that this committee look favorably on this bill. Thank you for the opportunity to appear today and I would be happy to answer any questions you might have.

# LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

SB 276

March 17, 1997

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Environment

by

Terry Leatherman  
Executive Director  
Kansas Industrial Council

Mr. Chairman and members of the Committee:

My name is Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and industry. Thank you for the opportunity to explain why the Kansas Chamber supports passage of SB 276.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The members of KCCI recognizes the need for government regulation to maintain the natural resources in our state. In the Kansas Department of Health and Environment's efforts to meet this

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Attachment 6*

ity, KCCI supports an approach where Kansas industry can work with the regulatory agency to reach and maintain environmental compliance.

The voluntary property cleanup program established by SB 276 is very consistent with this KCCI policy position. By establishing a process where a property owner can work with the Department to voluntarily correct environmental problems, SB 276 provides a framework to achieve environmental improvement through cooperation. The members of the Kansas Chamber would urge this Committee to recommend passage of SB 276.

Thank you for this opportunity to comment on SB 276. I would be happy to answer any Committee questions.

Testimony presented to  
House Environment Committee

by

The Kansas Department of Health and Environment

Senate Bill 123

The proposed legislation makes K.S.A. 65-164 and 65-165, water pollution order and permitting actions, subject to the provisions of the Kansas administrative procedure act (KAPA), K.S.A. 77-501 et seq. These amendments are consistent with other environmental programs which provide for administrative appeals of agency orders and permitting actions as well as with current administrative practice which is to allow for administrative appeals of agency actions prior to court review.

The benefits of such administrative proceedings are that they allow the respondent to the agency action or the permittee a full opportunity to challenge the agency action and have it fully reviewed by an independent hearing officer at the agency level. Resolution of issues at this level saves the public and the agency significant resources otherwise expended for civil actions. It also provides for a full and complete record for judicial review should the matter be appealed to the courts. Last year a trailer bill was sponsored by the Judicial Council bringing most other state agency actions under KAPA.

Although the National Pollutant Discharge Elimination System permitting program was approved by EPA without provisions for administrative appeals, such provisions are consistent with the federal NPDES program. KAPA provisions serve to keep permits in place and enforceable when the permittee has filed a timely and sufficient application for renewal. It also allows for further public participation in the administrative process.

As the agency has a policy of granting administrative appeal rights in its orders, the statutory inclusion of KAPA into 65-164 and 65-165 should have limited impact on agency resources.

The department recommends that the amendments be passed as written.

Testimony presented by: Yvonne Anderson  
Director, Office of Legal Services  
March 17, 1997

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