

Approved: 2-24-97  
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson David Corbin at 8:00 a.m. on February 19, 1997 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
Lila McClafin, Committee Secretary

Conferees appearing before the committee:

Senator Steve Morris  
Jamie Clover Adams, Governor's Office  
Ron Hammerschmidt, Director, Division of Environment, KDHE  
Doug Wareham, Kansas Grain and Feed Assn. and Kansas Fertilizer and Chemical Assn.  
Clark Duffy, Kansas Petroleum Council  
Terry Leatherman, Kansas Chamber of Commerce and Industry  
Wayne Kitchen, Director of Environmental Services, Western Resources  
David Schlosser, Pete McGill & Associates, representing The Williams Companies  
Charles Benjamin, Kansas Chapter Sierra Club and Kansas Natural Resources Council

Others attending: See attached list

Senator Schraad moved to adopt the minutes of February 14, 17 and 18. Senator Karr seconded the motion. Motion carried.

**SB 275 - Granting of easement to Finney County for stream crossing on the Arkansas River.**

Fiscal note was distributed, stating there could be some cost for surveying and possibly some cost for legal fees.

Senator Morris said the bill had been introduced to allow Finney County to acquire an easement for constructing and maintaining a stream crossing on the Arkansas River. Responding to a question Senator Morris said it would apply to one specific crossing.

There was no opposition. Chairperson Corbin closed the hearing. He asked for committee discussion. Senator Morris moved SB 275 be passed. Senator Karr seconded the motion with a request that it be amended to place SB 275 on the consent calendar. The motion was amended. Motion carried. The bill will be placed on the consent calendar.

**SB 276 - Voluntary cleanup and Property Redevelopment Act.**

Fiscal note was distributed stating receipts are estimated to be identical, although the department suggests it could end slightly higher than expenditures.

Jamie Clover Adams, Governor's Office, supported the bill. Experience shows that command and control regulation is not effective when covering a wide array of environmental concerns. This bill would provide landowners with an incentive to voluntarily cleanup contaminated property. (Attachment 1).

Ron Hammerschmidt, Director of Environment, KDHE, supported the bill. He said the bill addresses contaminants affecting both soils and waters of the state. He reviewed the technical aspects of the bill and

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 254-E Statehouse, at 8:00 a.m. on February 19, 1997.

suggested some cleanup language in section 10 (b) (Attachment 2).

Doug Wareham, Kansas Grain and Feed Association and the Kansas Fertilizer and Chemical Association, spoke in support of the bill, as it includes some very important components for such a program to be used and to accomplish the objectives of protecting human health and the environment. However, they had some concerns regarding the inability to protect the individuals or businesses confidentially when using the process (Attachment 3).

Clark Duffy, Kansas Petroleum Council, supported the bill as it would provide KDHE with the resources and oversight to help a property owner who voluntarily requests guidance in cleaning up a contaminated site (Attachment 4).

Terry Leatherman, Kansas Chamber of Commerce and Industry, supported the legislation as it embraces the philosophy of their organization. He introduced Wayne Kitchen, Director of Environmental Services for Western Resources, and said Mr. Kitchen is a member of the Kansas Chamber. He said Mr. Kitchen would be happy to answer any technical questions (Attachment 5).

David Schlosser, Pete McGill & Associates, representing the interests of the Williams Companies in Kansas, supported the bill because it contains important provisions for those interested in cleaning up property they own or acquire (Attachment 6).

Charles Benjamin, Legislative Coordinator, Kansas Chapter of Sierra Club, and Kansas Natural Resource Council opposed the bill. He suggested some amendments to the bill (Attachment 7).

The hearing was closed.

Committee discussion followed. Committee members and staff had questions concerning whether the legislation would impose any liability to the state. Regarding a question concerning, Mr. Benjamin's suggested amendments, Mr. Hammerschmidt said they would need time to review them.

Chairperson called for discussion on **SB 236 - Boating safety.**

Clint Riley responded to questions regarding how the course would be conducted. Concerns were expressed with how out of state guests would be handled. Senator Biggs moved SB 236 be passed. Senator Karr seconded the motion. Motion failed.

The meeting adjourned at 8:59 a.m.

The next meeting is scheduled for February 20, 1997.



# STATE OF KANSAS

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## OFFICE OF THE GOVERNOR

### LEGISLATIVE TESTIMONY

TO: Chairman David Corbin and Members of the Senate Energy and Natural Resources Committee

FROM: Jamie Clover Adams, Legislative Liaison *Jamie*

DATE: February 19, 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 wide array 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 those 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. It provides landowners with an incentive to voluntarily cleanup contaminated property that might otherwise remain polluted because of limited Department time and resources. It focuses on risk -- cleaning up property to its expected future use -- and provides the landowner with a definitive end to the cleanup process. Finally, S.B. 276 should reduce obstacles to property transfers while cleaning up the environment.

S.B. 276 is win-win legislation that brings environmental, economic and regulatory components together in a manner that is beneficial to all -- present property owners, potential buyers, financial institutions and the community as a whole. Ron Hammerschmidt, Director of Environment 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.

*Attachment 1*  
*2-19-97*

State of Kansas

Bill Graves



Governor

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Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

Senate Committee on Energy and Natural Resources

by

The Kansas Department of Health and Environment

Senate Bill 276

A bill which provides authority for voluntary cleanup of contaminated property, establishes a fee for application review and oversight of the cleanup activities by KDHE, and sets out a broad range of guidelines for determining cleanup goals. The intent of this bill is to address contamination affecting both soils and waters of the state.

Over the past few years, environmental contamination of commercial facilities and real property in general has become an ever-increasing obstacle to property transfers, business financing, and general economic development. KDHE has attempted to approach this problem in several ways. The concepts in this bill encourage a streamlined approach to low and moderate risk contamination by allowing the owner of the contaminated facility/property to work with KDHE and clean up the contamination to identified goals, which include technological and economic considerations, while preserving the option of the owner to terminate the cleanup. The bill provides for "No Further Action" determinations following completion of the cleanup under this act as well as liability relief for contiguous property owners who did nothing to cause nor contribute to the contamination. Combined, these concepts should encourage participation in voluntary cleanup of contamination, thereby improving the environment and protecting public health in a cost-effective and efficient manner.

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

KDHE supports the concepts and proposals contained in SB276 and we remain available to work with the committee and other interested parties.

Thank you for allowing me to speak today.

Testimony presented by: Ronald F. Hammerschmidt, Ph.D.  
Director  
Division of Environment  
February 19, 1997

*Sen. Energy & Nat Res*  
*2-19-97*  
*Attachment 2*

## *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 not to exceed \$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 participant 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, 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 for termination the department shall provide final invoices.

Initial deposits are non-refundable under termination by participant.

Department may terminate agreement if: 1) terms of agreement are violated; 2) participant 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 assumptions 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. Extension of time allowed if mutually agreed.

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 may be published by the department in a local newspaper. A public meeting may be requested by the locals.

Voluntary Cleanup Plan may be considered void if: 1) failure of an applicant to comply; 2) submission of misleading information; 3) plan not initiated within six months and completed 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.

A verification program implemented to confirm that cleanup goals were achieved.

"No further action determination" issued by the department to the applicant.

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

Written notification by the department to the applicant within 60 days of completion for "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) participant fails to perform agreed upon actions; 3) participants willful and wanton conduct contributes to known contamination; 4) participant 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.

Environmental assessment shall follow ASTM 1527-93.



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

Nothing in the act shall absolve participant from other obligations.

The department shall attempt to obtain agreement with EPA to not pursue 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 participant shall not provide the department with an independent basis to seek penalties from participant. 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*** - Severability.

Provisions of the act are severable.

- ***Section 14*** - The act shall take effect after publication in the statute book.

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. *However, we do have concerns regarding this bills inability to protect the individual or businesses confidentially when using this process.*
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.

*Sen Energy & Nat Res*  
*2-19-97*  
*Attachment 3*

**SB 276**  
**SENATE ENERGY AND NATURAL RESOURCES COMMITTEE**  
**CLARK DUFFY, KANSAS PETROLEUM COUNCIL**  
**FEBRUARY 19, 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.

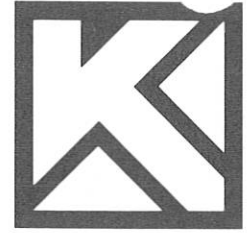
The Kansas Petroleum Council supports the concepts in SB 276. This bill would provide KDHE with the resources and authority for oversight when a property owner voluntarily requests guidance in cleaning up a contamination site. This program could be especially useful when used in conjunction with real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

Thank you.

*Sen Energy & Nat Res*  
*2-19-97*  
*Attachment 4*

# 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

February 19, 1997

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Energy and Natural Resources

by

Terry Leatherman  
Executive Director  
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with 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 share everyone's concern that Kansas maintains a clean and healthy environment, and recognizes the need for government regulation to achieve this objective. In fact, the Kansas Chamber desires to work with environmental regulators to devise ways to reach our

*Sen Energy + Nat Res*  
*2-19-97*  
*Attachment 5*

ual goals efficiently and effectively. Since SB 276 clearly embraces this philosophy, KCCI would support its passage.

Joining me today is Mr. Wayne Kitchen, the Director of Environmental Services for Western Resources, a KCCI member business. Wayne and I would be happy to answer any Committee questions regarding SB 276.

**Testimony of David B. Schlosser  
of Pete McGill & Associates  
on behalf of The Williams Companies  
regarding Senate Bill 276  
before the Senate Energy & Natural Resources Committee  
19 February 1997**

Good morning, Mr. Chairman and members of the committee. Thank you for the opportunity to appear in support of Senate Bill 276. My name is David Schlosser. I work with Pete McGill & Associates to represent the interests of The Williams Companies in Kansas.

The Williams Companies are interested in energy and telecommunications, and are the country's largest transporters of natural gas. Williams employs over 500 Kansans, and has several hundred million dollars of transportation and communications infrastructure in Kansas.

The Williams Companies supports legislation that encourages businesses and individuals to voluntarily remediate contaminated properties.

Senate Bill 276 contains three important provisions for those interested in cleaning up property they own or acquire:

- First, SB 276 is voluntary -- it allows property owners to work with government to find a solution that is optimal for both.
- Second, SB 276 focuses on the real world -- it does not require property owners to remediate property to a standard that is not economically justified when considering its expected use.
- Third, SB 276 promises a definite conclusion to the process of remediation -- a conclusion that is too often never reached under current standards.

The Williams Companies advocates passage of SB 276, and hopes to work with Kansas authorities to look for innovative, voluntary opportunities to encourage businesses and individuals to clean up contaminated properties in Kansas.

*Sen Energy Nat Res  
2-19-97  
attachment 6*

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

Before the Kansas Senate  
Committee on Energy and Natural Resources  
Re: S.B. 276  
February 19, 1997

Mr. Chairman, members of the Committee, thank you for the opportunity to testify in opposition to this bill. By opposition to the bill comes not from any ideological reaction to this type of legislation, but rather from the language of the bill which is undefined and contradictory in many places. I would like to just walk you through various sections of the bill to illustrate what I mean.

- Page 2, line 10, Section 5(b): The words "approve or deny all applications" gives no grounds for approval or denial. There needs to be specific standards set in the language of the bill for approval or denial of applications.
- Page 2, line 22, Section 5(e): The words "specific property" does not address contamination that spreads off property. Will it be the State's responsibility to obtain off-site access to contain and/or clean-up contamination? Who would then be liable?
- Page 4, lines 4-9, Section 6(a): All of the review of assessment is done by the department. There is no mandated public participation prior to decision making. Shouldn't there be provisions for notifying adjoining property owners and local governments?
- Page 4, line 8, Section 6(a): There is no requirement that the "no further action letter" be recorded or binding on future real estate transactions. Future real estate buyers may not be aware of the NFAL. Could a voluntary clean-up site be turned into a children's playground?
- Page 4, lines 15-16, Section 7: The term "risk assumptions" is not a term I, or others in the environmental community, have seen before. Should the term be "risk assessment" or just plain "risk"? Even if the terms risk assessment or risk are used, how will the evaluation of risk be carried out and to what standards?

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*2-19-97*  
*Attachment 7*

For example, a common risk criteria is one that protects humans from a cancer risk no greater than one in one million.

- Page 4, line 22, Section 7(b): The phrase “exceed applicable state standards and guidelines” leaves a gap where there are no guidelines, such as the situation in Kansas where there are no standards for groundwater contamination. What happens if the legislature passes a bill such as H.B. 2368 that would “suspend” Kansas’ surface water quality standards?
- Page 4, lines 34-35, Section 8(b): The phrase “based on the information submitted by the applicant” seems to contradict the language in 8(a) which says that the department can review material submitted by the applicant and other information available to the department. However, 8(b) limits departmental approval to material supplied by the applicant and makes no mention of other information available to the department.
- Page 5, line 5, Section 8(e): This is a very weak public notice requirement. A public hearing is not mandatory and there is no way that whatever the public says affects the decision making process. Furthermore, this language does not even require a public hearing before the decisions are made.
- Page 5, line 39, Section 8(I) the word “shall” seems to contradict the word “may” in line 42, Section 9(a). Both sections seem to try to address what departmental actions after the participant completes the requirements of the act.
- Page 6, line 32, Section 10(a): Does the term “qualified environmental professional” mean a Q.E.P. certification that is issued only by the Institute of Professional Environmental Practices?
- Page 7, lines 12-15, Section 12(b): This “audit privilege” language should be amended include language requiring that the clean-up plan is approved, entered into, and accomplished. Otherwise, participants can submit information, not accomplish the clean-up and then be immune from enforcement.

Thank you for the opportunity to submit these remarks. I hope they will be taken in the spirit in which they are offered, as helpful suggestions.