

Approved: 3-6-97
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 25, 1997 in Room 254-E of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Jamie Clover Adams, Governor's Office
Patricia Casey, Attorney, Kansas Department of Health and Environment
Clark Duffy, Kansas Petroleum Council

Others attending: See attached list

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

Chairperson Corbin opened the discussion on **SB 276**. He called on Jamie Clover Adams to walk through the bill and explain the proposed amendments (Attachment 1). She distributed a balloon copy of the bill and a summary sheet (Attachment 2). She said the following changes were made with input of the conferees. Responding to a questions Ms. Adams said participants in the piolet program reported with the flexibility in the plan it is working very well. Pat Casey was called on to responded to questions regarding the certification and if the information could be used against the applicants or if the applicants could stop the program after they started it. Ms. Casey also responded to a question concerning section 12, regarding enforcement, she said it could only be enforced if were covered by other statutes as it is an indepentant law.

Senator Karr moved that the amendments suggested by the governor's office and the clarifying amendment to included the language" departmental statutes and rules and regulations" in section 12 be adopted. Senator Biggs seconded the motion. Motion carried. Senator Huelskamp moved **SB 276** be passed as amended. Senator Karr seconded the motion. Motion carried.

SCR 1609 - concerning the Ozone Transport Assessment Group (OTAG).

Chairperson Corbin called on Clark Duffy for a brief overview regarding the SCR.

Mr. Duffy said the resolution was modeled after the recommendations of the Mid Western Governors and Midwestern Legislative Panels and it simply addresses OTAG to ensure that any strategy selected is based on sound science and is the most cost effective means of reducing transported ozone. Finally that any recommendations from OTAG be carefully reviewed and considered by the 37 states involved. He suggested in line 33 or 34 of page 2 that it be amended to include OTAG in the listing those receiving an enrolled copy of the resolution.

Senator Morris moved to adopt the amendment suggested and that OTAG be sent an enrolled copy. Senator Goodwin seconded the motion. Motion carried. Senator Morris than moved SCR 1609 be passed as amended. Senator Huelsakamp seconded the motion. Motion carried.

Staff addressed a concern regarding **SB 120** that was passed out of committee yesterday. Regarding Senator Morris's amendment of yesterday, addressing expansion plans and who would prepare them and the animal capacity number of 1,000. After brief discussion the committee consensus was it could be amended on the floor.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 254-E Statehouse, at 8:00 a.m. on February 25, 1997.

The meeting adjourned at 8:30 a.m.

The next meeting is scheduled for March 6, 1997.

002/008

Section of 1997

SENATE BILL No. 276

By Committee on Energy and Natural Resources

2-11

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

11
12 *Be it enacted by the Legislature of the State of Kansas:*
13 Section 1. This act shall be known and may be cited as the voluntary
14 cleanup and property redevelopment act and shall apply to real property
15 where environmental cleanup may be needed.

16 Sec. 2. As used in this act:

17 (a) "Department" means the department of health and environment.

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

19 Sec. 3. The secretary may adopt rules and regulations necessary to

20 define, administer and enforce the provisions of this act.

21 Sec. 4. (a) The program established in this act shall be voluntary and

22 may be initiated by submission of an application to the department for

23 properties where investigation and remediation may be necessary to pro-

24 tect human health or the environment based upon the current or pro-

25 posed future use or redevelopment of the property.

26 (b) Property which may be eligible for reimbursement from trust

27 funds established in the Kansas storage tank act, K.S.A. 65-34,100 et seq.,

28 and amendments thereto, or the Kansas drycleaner environmental re-

29 sponse act, K.S.A. 1996 Supp. 65-34,141 et seq., and amendments

30 thereto, shall meet all of the requirements of the respective act.

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

32 (1) Property that is listed or proposed for listing on the national pri-

33 orities list of superfund sites established under the comprehensive envi-

34 ronmental response, compensation, and liability act (CERCLA), 42

35 U.S.C.A. 9601 et seq.;

36 (2) property the contaminated portion of which is the subject of:

37 (A) Enforcement action issued pursuant to city, county, state or fed-

38 eral environmental laws; or

39 (B) environmental orders or agreements with city, county, state or

40 federal governmental agencies;

41 (3) a facility which has or should have a permit pursuant to the re-

42 source, conservation and recovery act (RCRA), 42 U.S.C.A. 6901 et seq.,

43 which contains a corrective action component;

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

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Attachment 1

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4) oil and gas activities regulated by the state corporation commission;

(5) property that presents an immediate and significant risk of harm to human health or the environment; or

(6) property that the department determines to be a substantial threat to public or private drinking water wells.

Sec. 5. (a) Each application or reapplication for participation in the voluntary program shall be accompanied by a nonrefundable application fee of \$200 to cover processing costs.

(b) The department shall review and approve or deny all applications.

(c) The department shall notify the applicant in writing, whether the application is approved or denied. If the application is denied, the notification shall state the reason for the denial.

(d) Following departmental approval of an application, a voluntary agreement must be executed between the participant and the Department in accordance with this act. The department shall not commence oversight and review activities until the voluntary agreement is executed.

(e) As part of the voluntary agreement, the department shall require the applicant to post a deposit not to exceed \$5,000. The deposit shall be used to cover all direct and indirect costs of the department in administration of the program, including but is not limited to providing technical review, oversight and guidance in relation to the specific property covered in the application. If the costs of the department exceed the initial deposit, an additional amount agreed upon by the department and the applicant will be required prior to proceeding with any voluntary work under the program. Timely reimbursement of reimbursements to the department is a condition of continuing participation. After the mutual termination of the voluntary agreement, the department shall refund any remaining balance within 60 days.

(f) During the time allocated for review of applications, assessments, other investigative activities and remedial activities under this act, the department, upon reasonable notice to the applicant, shall have access at all reasonable times to the subject real property. applicant

(g) The participant may unilaterally terminate the voluntary agreement prior to completion of investigative and remedial activities if the participant leaves the site in no worse condition, from a human health and environmental perspective, than when the participant initiated voluntary activities. The participant must notify the department in writing of the intention to terminate the voluntary agreement. The department will cease billing for review of any submittal under the voluntary agreement upon receipt of notification. Within 90 days after receipt of notification for termination, the department shall provide a final invoice for services provided. If the participant requests termination of the voluntary agreement under this subsection, initial deposits are not refundable. In applicant

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the event the department has costs in excess of the initial deposit, the
2 ~~participant~~ must remit full payment of those costs. Upon payment of all
3 costs, the department shall notify the ~~participant~~ in writing that the vol-
4 untary agreement has been terminated. applicant

5 (h) The department may terminate the voluntary agreement if the applicant

6 ~~participant~~
7 (1) Violates any terms or conditions of the voluntary agreement or
8 fails to fulfill any obligations of the voluntary agreement; or
9 (2) fails to address an immediate and significant risk of harm to public
10 health and the environment in an effective and timely manner. applicant

11 The department shall notify the ~~participant~~ in writing of the intention
12 to terminate the voluntary agreement and include a summary of the costs
13 of the department. The notification shall state the reason or reasons for
14 the termination.

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

- 18 (1) Moneys collected for application fees;
- 19 (2) moneys collected as deposits for costs associated with administra-
20 tion of the act, including technical review, oversight and guidance;
- 21 (3) moneys received by the secretary in the form of gifts, grants, re-
22 imbursements or appropriations from any source intended to be used for
23 purposes of the fund; and
- 24 (4) interest attributable to the investment of moneys in the fund.

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

- 27 (1) Review of applications;
- 28 (2) technical review, oversight, guidance and other activities neces-
29 sary to carry out the provisions of this act;
- 30 (3) activities performed by the department to address immediate or
31 emergency threats to human health and the environment related to a
32 property under this act; and
- 33 (4) administration and enforcement of the provisions of this act.

34 (k) On or before the 10th of each month following the month in
35 which moneys are first credited to the voluntary cleanup fund, and
36 monthly thereafter on or before the 10th of each month, the director of
37 accounts and reports shall transfer from the state general fund to the
38 voluntary cleanup fund interest earnings based on:

- 39 (1) The average daily balance of moneys in the voluntary cleanup
40 fund for the preceding month; and
- 41 (2) the net earnings rate of the pooled money investment portfolio
42 for the preceding month.
- 43 (1) All expenditures from the fund shall be made in accordance with

appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

Sec. 6. (a) The department shall review reports, including any environmental assessments and investigations submitted, and make a determination as to any required actions. Based upon submitted documentation, if the department determines that no remedial action is necessary, the department may issue a no further action determination pursuant to section 9.

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

Sec. 7. Remedial alternatives shall be based on the actual risk ~~assumptions~~ to human health and the environment currently posed by contaminants on the property, considering the following factors:

(a) The present and proposed future uses of the property and surrounding properties;

(b) the ability of the contaminants to move in a form and manner which would result in exposure to humans and the surrounding environment at levels which exceed applicable state standards and guidelines, and

or the results of a risk analysis if such standards and guidelines are not available

(c) the potential risks associated with proposed cleanup alternatives and the reliability and economic and technical feasibility of such alternatives.

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

to the applicant.

(b) The department shall approve a voluntary cleanup plan if ~~based on the information submitted by the applicant~~, the department concludes that the plan will attain a degree of cleanup and control of contaminants that complies with all applicable statutes and rules and regulations.

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

applicant

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

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

12 (f) Departmental approval of a voluntary cleanup plan shall be void
13 upon: applicant

14 (1) Failure of a ~~property owner~~ to comply with the approved volun-
15 tary cleanup plan;

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

18 (3) Failure to initiate the plan within 6 months after approval by the
19 department, or failure to complete the plan within 24 months after ap-
20 proval by the department, unless the department grants an extension of
21 time.

22 (g) An applicant desiring to implement a voluntary clean up plan after
23 the time limits prescribed by subsection (f)(3) have expired shall submit
24 a written petition for reapplication accompanied by written assurances of
25 ~~a qualified environmental professional~~ from the applicant that the conditions on the subject
26 property are substantially similar to those existing at the time of the orig-
27 inal approval. Reapplications shall be reviewed by the department. Any
28 reapplication that involves property upon which the condition has sub-
29 stantially changed since approval of the original voluntary cleanup plan
30 shall be treated as a new application and shall be subject to all the require-
31 ments of this act.

32 (h) Within 45 days after the completion of the voluntary cleanup de-
33 scribed in the approved voluntary cleanup plan, the applicant shall pro-
34 vide to the department assurance ~~from a qualified environmental profes-~~
35 ~~sional~~ that the plan has been fully implemented. A verification sampling
36 program shall be required by the department to confirm that the property
37 has been cleaned up as described in the voluntary cleanup plan.

38 ~~(i) After receipt of the assurance or the verification of voluntary~~
39 ~~cleanup, the department shall issue a no further action determination to~~
40 ~~the participant~~

41 Sec. 9. (a) After an applicant completes the requirements of this act,
42 the department may determine that no further remedial action is re-
43 quired. Within 60 days after such completion, unless the applicant and

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1 the department agree to an extension of the time for review, the depart-
2 ment shall provide written notification that a no further action determi-
3 nation has been made.

4 (b) (1) The department may consider in issuing this determination
5 that contamination or a release of contamination originates from a source
6 on adjacent property upon which the necessary action which protects
7 human health and the environment is or will be taken by either a viable
8 and financially capable person or entity which ~~is~~ legally responsible for
9 the source of contamination ~~by a person who is not legally responsible for~~
10 ~~such source.~~ [redacted] may or may not be

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

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

17 (c) The department may determine that the no further action deter-
18 mination, under this section is void if: [redacted] of

19 (1) There is any evidence of fraudulent representation, false assur-
20 ances, concealment or misrepresentation of the data in any document to
21 be submitted to the department under this act;

22 (2) the participant agrees to perform any action approved by the de-
23 partment and fails to perform such action; [redacted] applicant

24 (3) the participant's willful and wanton conduct contributes to known
25 environmental contamination; or [redacted] applicant's

26 (4) the participant fails to complete the voluntary actions required in
27 the voluntary cleanup plan. [redacted] applicant

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

31 Sec. 10. (a) The department may accept only environmental assess-
32 ments under this act prepared by a qualified environmental professional. [redacted] as defined in the administrative regulations.

33 ~~(b) The environmental assessment described in section 6, shall con-~~
34 ~~form to the standards set forth in the American society for testing and~~
35 ~~materials designation 1527-92, as in existence on the effective date of~~
36 ~~this act.~~

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

41 (b) If the federal environmental protection agency (EPA) indicates
42 that it is investigating a property which is the subject of an approved
43 voluntary cleanup plan, the department shall attempt to obtain agreement

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1 with the EPA that the property be addressed under the appropriate state
2 program or, in the case of property being addressed through a voluntary
3 cleanup plan, that no further federal action be taken with respect to the
4 property at least until the voluntary cleanup plan is completely imple-
5 mented.

6 Sec. 12. (a) Voluntary cleanup plans are not enforceable against a
7 ~~participant~~ unless the department can demonstrate that a participant who
8 initiated a voluntary cleanup under an approved plan has failed to fully
9 implement that plan. In that case, the department may require further
10 action if such action is authorized by other state statutes or rules and
11 regulations.

12 (b) Information provided by a participant to support a voluntary
13 cleanup plan shall not provide the department with an independent basis
14 to seek penalties from the participant pursuant to applicable statutes or
15 rules and regulations. If, pursuant to other applicable statutes or rules
16 and regulations, the department initiates an enforcement action against
17 the participant subsequent to the submission of a voluntary cleanup plan
18 regarding the contamination addressed in the plan, the voluntary disclo-
19 sure of the information in the plan shall be considered by the enforcing
20 authority to mitigate penalties which could be assessed to the participant.

21 ~~Sec. 10. If any provision of this act or the application thereof to any~~
22 ~~person or circumstances is held invalid, the invalidity does not affect other~~
23 ~~provisions or applications of this act which can be given effect without~~
24 ~~the invalid provisions or application. To this end the provisions of this act~~
25 ~~are severable.~~

26 Sec. 14. This act shall take effect and be in force from and after its
27 publication in the statute book.

an applicant.

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Sec. 13. The department shall annually publish in the Kansas Register a summary of the number of applicants, the general categories of those applicants and the number of cleanups completed.

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SB 276 BALLOON SUMMARY

The following changes were made with input of the conferees.

ISSUE: **Broad nature of voluntary program.** Set out definition of "Contaminant". Page 1, line 18.

ISSUE: **Clarification of voluntary agreement.** Page 2, line 14.

ISSUE: **Off-property contamination.** Eliminate "specific" and add "property covered in application". Can include adjoining property not described in the application. Page 2, line 22.

ISSUE: **Internal inconsistency of "applicant", "landowner" and "participant".** Page 2, lines 33-42; page 3, lines 2 - 11; page 4, line 39; page 5, line 14; page 6, lines 22,24 and 26; page 7, lines 6 - 20.

ISSUE: **Lack of clarity of the term "assumptions".** It has been eliminated. Page 4, line 22.

ISSUE: **Unavailability of standards and guidelines.** Added "risk analysis " if no standards and guidelines exist. Page 4, line 22.

ISSUE: **Clarify who is notified of approval of cleanup plan.** Added notification to the applicant on page 4, line 27.

ISSUE: **Extension of time for KDHE to approve voluntary cleanup plan.** Changed so that KDHE can have additional time, so long as a specific date is established. Necessary due to staffing uncertainty. Page 4, line 30.

ISSUE: **Inconsistency of material to be reviewed by KDHE.** Eliminated inconsistency by deleting " based on the information submitted by the applicant". Page 4, lines 34 - 35.

ISSUE: **Mandated public participation.** Inserted "shall" for the term "may" to require the department to publish a notice of the voluntary action. Page 5, line 6.

ISSUE: **Clarify applicant's responsibility of written assurances.** Inserted "from the applicant" and eliminated "of a qualified environmental professional" to provide for submission for written assurance by the applicant. Page 5, lines 24 - 25 and lines 34 - 35.

ISSUE: **Duplicative language.** Section 8 (i) has been eliminated since this section duplicates the intent of Section 9 (a). Page 5, lines 38 - 40.

ISSUE: **Clarification of liability release to adjacent property owner.** Inserted "may or may not be" and eliminated portions of lines 7,8 and 9 to broaden protection to non-responsible parties. Page 6, lines 7 - 10.

ISSUE: **Typographical error.** Change "or" to "of". Page 6, line 19.

ISSUE: **Uncertainty of the term "qualified environmental professional".** Inserted "as defined in the administrative regulations" to provide for a more detailed definition of the term. Page 6, lines 32 - 36.

ISSUE: **New Section 13 to address Senator Huelskamp's concerns.** Requires department to publish an annual summary of the applicants and cleanup completed under the program. Page 7.

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attachment 2*