

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairman Robert Tyson at 8:38 a.m. on March 21, 2002 in Room 423-S of the Capitol.

All members were present except: Senator Lana Oleen - excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Lisa Montgomery, Office of Revisor of Statutes  
Deborah McIntire, Committee Secretary

Conferees appearing before the committee:  
Gary Blackburn, Director, Bureau of Environmental Remediation  
Doug Warehem, Kansas Agribusiness Retailers Association  
Tom Bruno, Williams Companies

Others attending: See attached list

Chairman Tyson opened the hearing on **HB 2830**.

**Briefing on HB 2830**

This bill would establish a process where owners of environmentally contaminated property could apply to the Kansas Department of Health and Environment for approval of an "environmental use control" to prohibit or restrict use of properties that are contaminated or that have been or currently are subject to environmental remediation activities. The bill would also establish that any environmental use control created pursuant to the bill would run with the property and is binding on the owner and subsequent owners, lessees, and other users of the land. The bill would require that environmental use control orders be filed in the office of the county register of deeds in the county where the property is located and would require applicants to pay an initial nonrefundable fee of \$1,000. Additional fees could be assessed if the initial fee was not adequate to cover the cost of agency oversight. The bill would authorize KDHE to grant an environmental use control in perpetuity, or for a specified period. The bill would create the Environmental Use Control Fund. The bill would also require KDHE to develop and maintain an environmental use control tracking system.

**Testimony on HB 2830**

The first conferee and proponent was Gary Blackburn (Director, Bureau of Environmental Remediation). He testified that this bill provides an additional method of resolving the environmental risks posed by contaminated sites in Kansas and assurance that voluntary restrictions placed on properties will be periodically visited and maintained. (Attachment 1). Questions and discussion followed.

The second conferee and proponent was Doug Warehem (Kansas Agribusiness Retailers Association). He testified that there are concerns and questions about some of the components of the bill; i.e. the fee structure, the financial assurance requirement, and how someone would get a restriction removed from the title. As these issues warrant more study, he would suggest that this bill be considered for interim study. (Attachment 2).

Tom Bruno made a brief comment on behalf of Williams Companies that although there was no objection to the concept of **HB 2830**, the bill needed further study.

Chairman Tyson closed the hearing on **HB 2830**.

**Discussion and action on HB 2830—Concerning environmental contamination of real property**

The committee decided to request that **HB 2830** be assigned to an interim committee.

The meeting adjourned at 9:31 a.m.

CONTINUATION SHEET

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE at 8:38 a.m. on March 21, 2002  
in Room 423-S of the Capitol.

The next meeting is scheduled for March 22 at 8:30 a.m.

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: March 21, 2002

NAME	REPRESENTING
Steve Scanlon	Army CREO
<del>Tom Brund</del>	GBBA
Amy Salisbury	Gov. office
<del>Rich Bar</del>	KDHE
<del>Gary Blackburn</del>	KDHE
Clint Riley	KDWP
<del>Greta Foley</del>	KDA
Mary Jane Stattelman	
Bill Speed	C&D Landfill
Denny Koch	PENNELL SHELTON WELTE
Doug Wareham	Kansas Agribusiness Retailers Assn.
<del>Andy Shaw</del>	Waste Mgmt of Ks



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
BILL GRAVES, GOVERNOR  
Clyde D. Graeber, Secretary

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**Testimony on Environmental Use Controls Act**  
to  
**Senate Natural Resources Committee**  
**Presented by Gary Blackburn**

**March 21, 2002**

Chairperson Tyson and members of the Natural Resources Committee, I am pleased to appear before you today in support of House Bill 2830 related to Environmental Use Controls.

The Kansas Department of Health and Environment works with responsible parties to address hundreds of contaminated properties throughout the state each year. These sites are addressed through a variety of programs with the goal of restoring the property to a condition which will permit unrestricted use, such as use for residential development. In many instances; however, the time required to cleanup these properties may be tens of years and the cost is often prohibitive. The agency has cleanup standards established for cleanups of both residential and non-residential properties. The non-residential standards are adequate for properties whose intended use is for commercial or industrial purposes and are generally much easier to attain than residential standards.

House Bill 2830 which establishes Environmental Use Controls provides property owners and developers with a method of selecting less costly and time consuming cleanup solutions by establishing limits for the future property use. If development of a property is intended for commercial or industrial use, the less restrictive cleanup standard may be used where future residential use is not intended. Under House Bill 2830, the property owner may apply for an Environmental Use Control as part of a site remediation plan. If approved, the property owner would complete the cleanup and place the agreed upon use restrictions on the property.

The department currently allows some sites to be remediated to non-residential standards if a restriction is placed on the deed. At this time there is no method of tracking these sites to determine if the restrictions on the deed are followed. If the properties changes hands the department has no method of requiring the new owner to maintain the restrictions on the property. The department staff are concerned that the current process of using deed restrictions within Kansas is inadequate to protect of human health and the environment. This proposed legislation provides a method of tracking and periodically visiting these sites to insure that the Environmental Use Controls are being maintained. Additionally, Environmental Use Controls established under House Bill 2830 would follow the property and could not be removed without department approval.

Environmental Use Controls will be established on a site specific basis to protect against the risks a particular property poses. These restrictions may include prohibitions against excavating through protective caps, drilling wells for domestic use and using the property for residential, day care or schools as a few examples. Although these restrictions are voluntarily established by the property owner they remain on the deed until the requesting party demonstrates to the department's satisfaction that the original risk to the human health or the environment which created the need for the Environmental Use Control is no longer present.

An important element of this legislation is the provision for funding the future maintenance of the site tracking system and the periodic site visits to insure compliance with the Environmental Use Controls. The \$1,000 application fee will provide funding for long term tracking of sites that require limited long term oversight. Some sites are likely to require considerably more oversight, which is the reason for the provisions of additional fees. The responsible parties for some of these sites may be allowed to perform remedies which save them tens of thousands of dollars in cleanup cost. Participation in the program is voluntary so participants will be able to determine if they want to commit adequate funding for long term oversight in exchange for the less restrictive cleanup standards.

Concerns over the potential failure of the less costly remedies such as soil covers is the basis for the financial assurance provisions. The financial assurance provisions would be used for sites which create concerns of future remedy failure. These financial assurance provisions would apply to a small number of sites where the potential for costly remedial action exists after the responsible party may have left the state or may no longer be in business.

The department is faced with many sites where soil is contaminated by lead from previous operations. The common method of protecting the public from lead is by capping the contaminants in place. Recently a battery waste disposal site was discovered while a new housing development was being constructed (see attached photos). This site was located in the city of Olathe where a battery plant had disposed of waste many years ago. The waste disposal had been performed in accordance with the laws at the time; however, had children been allowed to play in the soil at this site they would have very likely suffered ill effects associated with lead exposure. Due to the magnitude of the wastes at this site, complete remediation could not be performed, so the waste was stabilized in place by a geotextile liner and covered with clean soil. The housing development plans had to be abandoned. Without an environmental use control statute, this site will likely be considered for development again some day in the future.

There are many of sites across the state where contaminated soils and waste are present at a magnitude that makes remediation to a residential standard impractical. Many of these sites are improved dramatically by consolidation and capping of the contaminated material with soil or pavement. This process is very effective for commercial or industrial sites where exposure to the soil can be limited. Through an Environmental Use Control program, the property owner can voluntarily restrict future land use indicating that contamination is present in the subsurface soil as part of the remedial action for the site. This would allow the contaminated material to remain on site while the owner is allowed to return the site to productive use. The public can be protected because the land

use restriction would clearly state the limitations that the owner had agreed to as part of the cleanup. Future developers and prospective purchasers of property could learn about the restrictions and remaining contamination through the tracking system maintained by the department.

To date KDHE has approved 32 cleanups which used some form of deed restriction as part of the remedial action for the site. Although it is difficult to determine the number of property owners who may apply to participate in this program, the legislation is being supported without a request for additional staff.

In summary, this legislation provides an additional method of resolving the environmental risks posed by contaminated sites in Kansas. The legislation also provides assurance that voluntary restrictions placed on properties will be periodically visited and maintained. The public will be aware of site restrictions through the tracking system. KDHE urges support for H.B. 2830.

I thank you for the opportunity to appear before the Natural Resources Committee and will gladly stand for questions the committee may have on this topic.

# Former Battery (Lead) Landfill in Residential Area



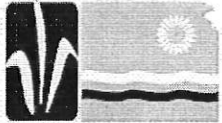
Battery waste was discovered while constructing foundations for new homes in a residential area.



A cap was constructed with clean soil, an Enkamat cover, and vegetation as well as construction of a drainage ditch. Construction shown here is nearing completion.



# KANSAS AGRIBUSINESS RETAILERS ASSOCIATION



KARA is  
"Committed to  
Professional  
Development  
and Business  
Viability for  
the Retail Crop  
Production  
Industry"

Statement of the

Kansas Agribusiness Retailers Association

Presented to the

Senate Energy and Natural Resources Committee

Senator Robert Tyson, Chair

Regarding House Bill 2830

March 21, 2002

Senate Natural Resources Committee

Date 3-21-02

Attachment # 2



Chairman Tyson and members of the Senate Natural Resources Committee, my name is Doug Wareham and I serve as Senior Vice President for the Kansas Agribusiness Retailers Association (KARA). KARA's membership includes nearly 500 agribusiness forms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and various other businesses associated with the retail crop production industry.

I appreciate the opportunity to appear as a proponent of the concept set out in HB 2830. Our industry has been very interested and involved in remediation activities. It was only a couple of years ago that our industry brought forward the concept of the ag remediation fund that would be supported by fees imposed on our own members. We definitely agree with the concept in this bill that some sites, such as industrial or commercial sites, should not be required to be cleaned up to the level needed for residential sites.

However, we also have concerns and questions about some of the components in the bill such as: the fee structure, the financial assurance requirement, and how someone would get a restriction removed from the title. We believe these issues warrant more study so that everyone is clear on how this program would work. We think the concept behind the bill is meritorious and the concerns can be resolved. Therefore, we would suggest this topic be considered for an interim study.

Thank you for the opportunity to appear in support of the concepts set out in HB 2830.