

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Representative Joann Freeborn at 3:30 p.m. on February 20, 2003 in Room 231-N of the Capitol.

All members were present except: Representative Bill Light - excused
Representative Tom Sloan - excused

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

Conferees appearing before the committee: Gary Blackburn, Director, Bureau of Environmental Remediation, Kansas Department of Health and Environment, 1000 SW Jackson Ste. 410, Topeka, KS 66612
Ray Cheatham, KOCH Industries, ARCADIS Geraghty & Miller, Inc., 11490 Westheimer Ste 600, Huston, Texas 77077
Charles Benjamin, Kansas Sierra Club, PO Box 1642, Lawrence, KS 66044-8642
Doug Wareham, Kansas Grain & Feed Association and Kansas Agribusiness Retailers Association, 816 SW Tyler, Topeka, KS 66612
Derenda Mitchell, Assistant Counsel, Kansas Livestock Association, 6031 SW 37th Street, Topeka, KS 66614-5129
Richard E. Koerth, Assistant Secretary for Administration, Kansas Department of Wildlife and Parks, 1020 S. Kansas Ave. Room 200, Topeka, KS 66612-1327

Others attending: See attached sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She announced that there may be some changes to next Tuesday's agenda, February 25. The committee will take action on **HB2196** - Storage tanks; applicability of certain prohibitions. Also, possible action on **HB2247** - Environmental use controls; prohibition or restriction of activities on or use of property where contamination has occurred. There may be other changes to the agenda. She suggested the committee watch their e-mails for information.

The Chairperson welcomed Richard Koerth, Assistant Secretary for Administration, Kansas Department of Wildlife and Parks. He briefed the committee on Management of Federal Aid Funds. For federal fiscal year (FFY) 2003, the KDWP has been apportioned an amount of \$6,139,847 for Sportfish Restoration and Wildlife Restoration Programs. These programs are referred to as D/J (Dingell-Johnson) and P/R (Pittman-Robertson), respectively. These two programs provide the majority of federal funds used by the KDWP and are critical to continued operation of agency programs for fish and wildlife management. The two programs provide for reimbursement of 75% of agency funds used for eligible expenditures.

For FFY 2003, the agency will also receive federal aid funds for Aquatic Education, \$587,916; Motorboat Access, \$587,916; and Hunter Education, \$391,334. These programs are also financed through the D/J and P/R federal aid legislation. In addition, to the D/J and P/R programs, the KDWP will have available in FFY 2003 federal aid funds for Boating Safety, Wildlife Conservation and Restoration, and State Wildlife Grants. The KDWP is, at the current time, not receiving any federal aid for management of prairie dogs. Since this species is considered to be a candidate for listing as an endangered species, federal aid from the P/R program is not available. (See attachment 1) Committee discussion followed.

The Chairperson recognized Secretary Mike Hayden, Kansas Department of Wildlife and Parks, in attendance to answer committee questions.

Chairperson Freeborn thanked Mr. Koerth and Secretary Hayden for their presentation.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT at 3:30 p.m. on February 20, 2003 in Room 231-N of the Capitol.

The Chairperson opened **HB2197** for sub-committee report and possible action.

HB2197: Assistance animals for handicapped and disabled persons.

Mary Torrence, Revisor of Statutes, explained changes made to the bill. (See attachment 2)

The sub-committee (Rep. Joann Freeborn, Chair; Rep. John Faber; and Rep. Donald Betts) and Mary Torrence answered committee questions.

Rep. John Faber made a motion proposed Substitute for HB2197 be adopted. Rep. Donald Betts seconded the motion. Motion carried.

Rep. John Faber made a motion Substitute for HB2197 be passed. Rep. Donald Betts seconded the motion. Motion carried. Rep. John Faber will carry the bill on the House Floor.

The Chairperson opened the hearing on **HB2247**.

HB2247: Environmental use controls; prohibition or restriction of activities on or use of property where contamination has occurred.

The Chairperson welcomed Gary Blackburn, Director, Bureau of Environmental Remediation, Kansas Department of Health and Environment. He testified in support of the bill and believes this bill will establish a voluntary process for responsible parties and landowners to use to obtain cleanup standards which are much easier to achieve at some sites based on property use. If owners place restrictions associated with environmental contamination on their commercial or industrial property, the public is protected from the remaining contamination with a much less costly cleanup. 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 public health or the environment which created the need for the use control is no longer present. (See attachment 3)

Ray Cheatham, KOCH Industries, was welcomed to the committee. He testified in support of the bill and supports the Kansas Department of Health and Environment's efforts to develop Environmental Use Control (EUC) legislation. EUCs can be an extremely useful mechanism to minimize contamination exposure risks. Furthermore they can enable limited state and private resources to be focused on actions that create the greatest reduction of risks to human health and the environment. He feels that EUC monitoring and enforcement provisions can be beneficial to ensure that landowners are aware of and comply with the EUCs, thus ensuring the intended protection to human health and the environment. He offered two amendments to the bill. (See attachment 4)

Charles Benjamin, Kansas Sierra Club, was welcomed. He testified in support of the bill and believes this bill allows owners of property, with approval by Kansas Department of Health and Environment (KDHE), to restrict the use of their property by imposing on the property an appropriate level of environmental use control. An environmental use control, or restriction on the use of the property, is only applied by KDHE when there is known contamination that exceeds KDHE's standards for unrestricted use of the property. Upon approval by KDHE, the owner of the property must register the environmental use control with the register of deeds in the county in which the property is located. This requirement is not onerous to the owner of the contaminated property. It puts any prospective purchaser of the property, who has carried out due diligence, to avoid buying contaminated property with restricted uses. (See attachment 5)

Doug Wareham, Kansas Grain and Feed Association (KARA) and Kansas Agribusiness Retailers Association (KGFA), was welcomed to the committee. He testified in support of the bill and indicated KARA and KGFA are primarily grain elevator firms and agribusiness retail firms, several of which are currently involved in remediation activities under the supervision of Kansas Department of Health and Environment. This bill

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT at 3:30 p.m. on February 20, 2003 in Room 231-N of the Capitol.

codifies a process of enabling contaminated site owners to utilize environmental use controls (EUC) in lieu of cleaning a site to residential standards. The use of environmental use controls is an important tool for agribusiness, whose business sites are often located in industrial and commercial parks. The fact that their sites are not typically located in residential areas potentially allows the use of environmental use controls, which can mean savings to agribusiness firms. They appreciate the KDHE's willingness to work with their members in trying to work towards protecting the environment in a reasonable manner. (See attachment 6)

Committee questions of the proponents followed. Rick Bean, Chief, Remedial Section, Bureau of Environmental Remediation, KDHE, was in attendance to answer questions.

The Chairperson welcomed Derenda Mitchell, Kansas Livestock Association (KLA), to the committee. She testified in opposition to the bill. KLA opposes the bill as currently drafted and believes it is over broad, places unbridled discretionary authority in the Secretary of Health and Environment, grants injunctive powers that are lacking in traditional safeguards against governmental abuse, and is confusing and vague in its application and scope. More specifically the bill gives KDHE the authority to enter into or impose environmental use controls (EUCs). While the proponents of the bill tout the voluntary nature of an EUC, the bill does not limit EUCs to voluntary arrangements or settlements. Voluntary EUCs may be the ideal, but the definition of an EUC is: "an institutional or administrative control, a restriction, prohibition or control of one or more uses of, or activities on, a specific property to ensure future protection of public health and the environment when environmental contamination which exceeds department standards for unrestricted use remains on the property following the appropriate assessment and/or remedial activities as directed by the department pursuant to the secretary's authority." (See attachment 7) Committee questions followed.

The Chairperson closed the hearing on HB2247.

The meeting adjourned at 5:25 p.m. The next meeting is scheduled for Tuesday, February 25, 2003.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 20, 2003

NAME	REPRESENTING
John Hablutzel	KS Sierra Club
Barbara Holbert	CARES Inc.
Daranda Mitchell	KLA
Andy Shaw	Kearney & Associates Inc
John Frederick	Boeing
Stanley Rasmussen	Dpt. of Defense / US Army
Marilyn Nichols	Registry of Wills Assoc.
Kristen Wheeler	KU Student - Observing
Mary Jane Stattelman	KGFA / KARA / KARB
Doug Wareham	KGFA / KARA
D. Steve Swatter	Ks Farm Bureau
John C. Botteby	Westar Energy
Scott Schneider	GPBA
Brenda Edridge, LMSW	Self-Advocacy Org. People w/ Disability
Patricia Gail Nichols	Self & online ID forum
[Signature]	Org People w/ Disabilities
Ana de Ihl	Rep. McKinney
Ken Brotewicz	Kansas Water Office
Keril J. Bacon	KCDC

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 20, 2003

NAME	REPRESENTING
SAVE KRAEWY	W M X
J.P. Small	KOCH INDUSTRIES
Ray Cheatham	Koch Industries
MARK COATES	KABVI
Michael Byington	KRST/KABVI
Terry Denton	KDWP
Ken Peterson	KS Petroleum Council
Steve Paul	Horn Law Firm
TOM PALACE	PACIFIC OF KS



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
1020 S Kansas Ave., Room 200
Topeka, KS 66612-1327
Phone: (785) 296-2281 FAX: (785) 296-6953



February 20, 2003

Representative Joann Freeborn, Chairperson
House Committee on Environment
Room 231 - N, State Capitol Building
Topeka, Kansas 66612

Dear Representative Freeborn:

The Kansas Department of Wildlife and Parks (KDWP) has been requested to provide information to your committee regarding the management of federal aid funds by the Department. In particular, you had requested information on federal funds for Prairie Dog issues, threatened and endangered species, and new federal programs. For the Committee's background information, the KDWP will provide a brief review of the existing federal aid programs through which the Department receives the majority of federal aid funds.

For Federal Fiscal Year (FFY) 2003, the KDWP has been apportioned an amount of \$6,139,847 for Sportfish Restoration and Wildlife Restoration Programs. These programs are referred to as D/J (Dingell - Johnson) and P/R (Pittman - Robertson), respectively. These two programs provide the majority of federal funds used by the KDWP and are critical to continued operation of agency programs for fish and wildlife management. The two programs provide for reimbursement of 75% of agency funds used for eligible expenditures.

For FFY 2003, the agency will also receive federal aid funds for Aquatic Education, \$587,916; Motorboat Access, \$587,916; and Hunter Education, \$391,334. These programs are also financed through the D/J and P/R federal aid legislation. In addition, to the D/J and P/R programs, the KDWP will have available in FFY 2003 federal aid funds for Boating Safety, Wildlife Conservation and Restoration, and State Wildlife Grants.

The KDWP is, at the current time, not receiving any federal aid for management of prairie dogs. Since this species is considered to be a candidate for listing as an endangered species, federal aid from the P/R program is not available. The Department could apply for a grant from the State Wildlife Grants program, but at this time lacks the matching funds required for this program. In the future, if the species is not listed, the KDWP will have the option available to consider the use of federal P/R funds to assist in management. The KDWP has received \$77,100 in federal grants to research the Topeka Shiner. Currently, the Department does not have any federal grant funds available for research regarding endangered species.

*House Environment
2-20-03
Attachment 1*

The Legislative Post Auditor, in a letter dated January 29, 2003, requested information on federal grant programs in which the KDWP has limited or no participation at the current time. Attached is the response submitted to the Post Auditor pursuant to their request. The response lists various programs which are available but the Department is not currently using due to lack of state matching funds or ability to comply with grant requirements for eligibility.

The KDWP has a Federal Aid and Planning Section within the Department whose responsibility is to assure that federal grants are properly utilized and corrective action taken if necessary. The Department assigns personnel as grant managers who will prepare the grant application and assure compliance with grant utilization requirements. Since the mid 1990's, the KDWP has instituted improved procedures to assure the proper expenditure of federal aid funds. The Department was audited in 2002 and with the exception of one issue all funds were properly expended. This issue involved the use of the El Dorado Correctional Facility, North Unit Shop and an amount of \$85,852. The KDWP has proposed corrective action to resolve this issue which will not require any additional state general funds.

Thank you for the opportunity to provide the Committee with information on federal aid programs and grant management. If you or members of the Committee have any questions, please advise.

Sincerely,



Richard E. Koerth
Assistant Secretary for Administration
Kansas Department of Wildlife and Parks

Attachment (1)



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
1020 S Kansas Ave., Room 200
Topeka, KS 66612-1327
Phone: (785) 296-2281 FAX: (785) 296-6953



TO: Barbara J. Hinton, Legislative Auditor

FROM: J. Michael Hayden, Secretary

DATE: February 10, 2003

REGARDING: Federal Grant Programs

Following is a list of grant programs that can be used to draw down federal funds. In keeping with the request from the Legislative Division of Post Audit, we have only listed those programs in which we do not currently participate or participate to a limited degree.

Boating Infrastructure Grant Program. This program provides funds to states to install or upgrade tie-up facilities for transient recreational boats twenty-six or more feet in length. This is a competitive program in which proposals are solicited annually. A minimum of twenty-five percent must be matched. There has been little reason to pursue these grants in that Kansas has few vessels in excess of twenty-six feet. It would involve committing state funds as match for activities that benefit a very small constituency. This is primarily a program for states with very large lakes or ocean coasts.

Clean Vessel Act of 1992. Established by an amendment to the Federal Aid in Sport Fish Restoration Act (Wallop-Breaux Act; 16 U.S.C. 777) to allow the Secretary of the Interior to issue grants to coastal and inland states for pumpout stations and waste reception facilities to dispose of recreational boater sewage. Reimburses up to seventy-five percent of the cost of conducting surveys, developing plans, and constructing and maintaining facilities. This is a competitive grant program. It has little applicability because it generally provides funds for the maintenance of marina facilities, which are usually privately owned. We also are restricted by the amount of state funds available. In addition, we are able to satisfy the Department's needs through Motorboat Access Grants provided by our ongoing Federal Aid in Sport Fish Restoration Program. Therefore, there has been little reason to go after competitive grant funds through another program.

Coastal Wetlands Conservation. The Coastal Wetlands Conservation Program is authorized by Section 305 of the Coastal Wetlands Planning, Protection and Restoration Act of 1991 (16 U.S.C. 3954). Kansas is not eligible since it is not a coastal state.

Land Owner Incentives Program. The Department of the Interior and Related Agencies Appropriations Act of 2002 allocated forty million dollars from the Land and Water Conservation Fund for conservation grants. The purpose is to establish or supplement state landowner incentive programs that restore habitats on privately owned

land for federally recognized endangered or at-risk species. The program may provide technical or financial assistance to private landowners for habitat preservation and restoration. There are two tiers to the program. The first is allocated to each state to set up the administrative and technical framework for the program. The second tier is a competitive program that funds individual projects. The Kansas Department of Wildlife and Parks may apply for this program in the future. The Department would need to find match for the first tier by shifting resources from existing programs. Because of a lack of state match, most two tier projects would have to be in the form of pass-through grants to third parties who would provide the match. This is a one-time appropriation that may not be reauthorized.

State Wildlife Grant Program. This program funds efforts that benefit species with the greatest conservation needs. This is a non-competitive program and the level of appropriation is determined by the land mass and population. This, however, was a one-time appropriation and its future funding is not certain. The expenditure of the funds is limited by the amount of state general funds for match, therefore some of the funds will need to be distributed through subgrants in which third parties provide the match. The grants enable the state to engage in special projects, but have little financial impact on on-going operations.

Route 66 Corridor Preservation Program. This program funds activities for the preservation and interpretation of properties located on old Route 66. As only thirteen miles of Route 66 can be found within Kansas, the bulk of these funds will most likely be dedicated to those states in which Route 66 had a stronger presence. In addition, this is primarily an historic preservation grant and would fall more into the mission statement of the Kansas State Historical Society. The KSHS received a grant to conduct a study of Route 66 from this program in 2001.

Endangered Species: Traditional Section 6. Authorized by Section 6 of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531-1543). It authorizes the Secretary of the Interior "to enter into a cooperative agreement with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species." Title 50 CFR Part 81. May be used to acquire habitats, introduce species, conduct research, and protect threatened species. This is a competitive program that is awarded based upon specific projects. The funds for this program also are quite limited. The KDWP has accessed this program as funding and staffing have allowed. There are several non-traditional Section 6 grants that we have not used. They are as follows:

Recovery Land Acquisition: This program provides grants to states to acquire habitat for endangered and threatened species in support of approving Recovery Plans. Up to seventy-five percent of the cost of acquisition can be paid by federal funds. The grants are awarded on a competitive basis. We are limited in the use of this program in that we would need an allocation of additional state funds to make the match.

Habitat Conservation Planning Assistance: This program provides grants to states to develop Habitat Conservation Plans through baseline surveys and inventories, studies, and outreach activities. This is a competitive program with very limited funding. We are limited due to a lack of match and staff commitments to ongoing projects. In addition, the plans are generally developed from these grants to take advantage of the following grant program, which requires a greater investment of state funds.

Habitat Conservation Land Acquisition: Grants are awarded to states to acquire land associated with approved Habitat Conservation Plans (HPL). These are competitive grants and tend to be for large awards. KDWP has difficulty accessing these funds in that we do not have HPLs developed for the acquisition projects and we do not have the cash match needed for large-scale acquisitions.

Although the programs are different in terms of guidelines and scope, we generally do not apply for the funds for the same reason. Each of these requires matching funds and our match is tied up in existing programs. We may pull resources away from current programs, such as Federal Aid in Wildlife Restoration, but only at the risk of increasing our balances in these programs and the potential for reversion.

I am not aware of any practices used by other states to maximize the use of federal funds other than the use of subgrants by states such as Nebraska. These programs have emphasized the distribution of funds from special grants, such as WCRP. We are currently pursuing this avenue as well.

It should be pointed out that the employment of a subgranting process does not reduce the state costs of the department involved. Rather, it provides greater opportunity for local entities to engage in work that furthers wildlife conservation. I am not aware of any federal programs that we can use to reduce our state costs further.

Please let me know if you have any questions or if I may be of further assistance.

Office of Revisor of Statutes

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Topeka, Kansas 66612-1592
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MEMORANDUM

To: Committee on Environment
From: Mary Torrence, Senior Assistant Revisor of Statutes
Date: February 20, 2003
Subject: Proposed Substitute for House Bill No. 2197

The proposed substitute bill is different from the original bill in the following ways:

- (1) Assistance animals are no longer addressed. The bill deals only with assistance and therapy dogs.
- (2) A definition of "assistance dog" is added and includes guide dogs, hearing assistance dogs and service dogs. It does not include professional therapy dogs. [section 1(a)]
- (3) The definition of "professional therapy dog" is changed to clarify that dogs used by volunteers for pet visitation therapy are not included even if the dog is certified. [section 1(d)]
- (4) The language recognizing the right of a person with a disability to be accompanied by an assistance dog is changed to be consistent for all types of disabilities and all types of assistance dogs. [sections 3, 5 & 6]
- (5) The criminal provisions are changed to clarify and simplify the provisions of the original bill. [section 4]
- (6) The substitute bill changes provisions regarding identification cards and letters to allow, but not require, a person with a disability to present the card or letter. If a person presents the card or letter, the person must be allowed to have an assistance dog accompany the person. The information required to be in the letter is also changed so that a person's disability and an assistance dog's functions are not revealed. [section 9(a)]
- (7) New language is added making it a class A misdemeanor to falsely represent that one is entitled to be accompanied by an assistance dog or that one has a disability for the purpose of acquiring an assistance dog. [section 10]

*House Environment
2-20-03
Attachment 2*



K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

**Testimony on Environmental Use Controls Act
to
House Environment Committee
Presented by Gary Blackburn
Director, Bureau of Environmental Remediation
February 20, 2003**

Chairperson Freeborn and members of the House Environment Committee, I am pleased to appear before you today in support of House Bill 2247 related to Environmental Use Controls.

During last year's legislative session, KDHE testified in support of House Bill 2830 related to Environmental Use Controls which subsequently passed the House by a 105 to 17 vote and was tabled by the Senate. During the Fall of 2002, KDHE developed an Environmental Use Control Committee consisting of fifteen stakeholders to revise the original bill and develop support for the bill. A list of organizations participating on this committee is included as an attachment to the testimony. The concerted efforts of the committee are represented by new House Bill 2247.

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 that will permit unrestricted use, such as use for residential development. The agency has established risk-based standards for cleanups of both residential and non-residential properties. The nonresidential standards are adequate for properties whose intended use is for commercial or industrial use and are generally much easier to attain, but are not protective of residential or recreational uses. Clean up of commercial and industrial properties to residential standards in many cases is cost prohibitive and may require longer time frames to put the property back in productive use.

The agency currently allows some properties to be remediated to nonresidential standards if certain restrictions are placed on the deed. At this time, there is no requirement or mechanism to track these properties to determine if restrictions placed on the deed are followed. Additionally, if the property changes hands the department has no method to require these restrictions be followed by the new owner. KDHE is concerned that the current process of using deed restrictions within Kansas is inadequate to protect public health and the environment.

DIVISION OF ENVIRONMENT
Bureau of Environmental Remediation

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*House Environment
2-20-03
Attachment 3*

HB2247 will establish a voluntary process for responsible parties and landowners to use to obtain cleanup standards which are much easier to achieve at some sites based on property use. If owners place restrictions associated with environmental contamination on their commercial or industrial property, the public is protected from the remaining contamination with a much less costly cleanup. 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 public health or the environment which created the need for the use control is no longer present.

The proposal to establish Environmental Use Controls provides responsible parties and property owners with another alternative to cleaning up their property. Cleanup alternatives for commercial or industrial properties that implement Environmental Use Controls will likely be less costly and easier to implement than cleanup alternatives targeted for residential properties.

HB2247 also requires KDHE to develop a tracking system to identify to the public, developers and purchasers those properties with Environmental Use Controls in place and conduct periodic property visits to insure the Environmental Use Controls are being maintained and public health and the environment is adequately protected. Environmental Use Controls would follow the property and could not be removed without department approval.

Funding for KDHE to implement the site tracking system and conduct periodic inspections of Environmental Use Controls would be provided by an application fee or long-term agreement negotiated with the responsible party or land owner. Different sites will require varying amounts of oversight, which is the reason for the provisions of stair-stepped fees and the long-term care agreement. 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 benefits of placing Environmental Use Controls on their property.

The Environmental Use Control Committee suggested numerous modifications to the previous bill which were incorporated into the present bill and including the following:

The addition of Section 2 which indicates the act, except Section 9(b) shall not apply to solid waste disposal areas which are issued permits or receive special authorization from KDHE pursuant to existing state law.

Modification of the funding section (new Section 4) which categorizes properties and funding requirements based on the size of the property, toxicity and mobility of contaminants, frequency of inspections and anticipated inspection costs. Three categories of properties are defined with various funding requirements including a long-term care agreement to be negotiated between KDHE and the responsible party or landowner for higher priority, complex properties.

The addition of a provision which allows for a hearing process in accordance with the provisions of the Kansas Administrative Procedures Act.

Various other minor modifications and clarifications were made by the Environmental Use Control Committee.

This legislation provides a mechanism to allow a responsible party or landowner the alternative of controlling the access and use of a property as an element of a cleanup action while assuring long-term protection of public health and the environment from any remaining environmental issues at the property. KDHE appreciates the efforts of the fifteen stakeholders in drafting the legislation before you today and urges support for H.B. 2247.

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

KDHE/Stakeholder Committee on Environmental Use Controls

Stakeholder Participants:

Kansas Agribusiness Retailers Association

Kansas Association of Counties

Petroleum Marketers Association

Kansas Natural Resource Council

Kansas Agricultural Remediation Board

Kansas Corn Growers/Grain Sorghum Producers

Department of the Army

Westar Energy

City of Wichita

Sierra Club

Kansas Farm Bureau

Kansas Petroleum Council

Kansas Livestock Association

JD Information Services

Kansas Department of Health and Environment

3-5

APPENDIX A KDHE TIER 2 RISK-BASED SUMMARY TABLE

Chemical Name	CAS No.	RESIDENTIAL SCENARIOS			NON-RESIDENTIAL SCENARIOS		
		Soil Pathway (mg/kg)	Soil to Ground Water Protection Pathway (mg/kg)	Ground Water Pathway (mg/L)	Soil Pathway (mg/kg)	Soil to Ground Water Protection Pathway (mg/kg)	Ground Water Pathway (mg/L)
TPH DRO		2000 n	3000	0.500 n	20000 n	15000	0.720 n
Toxaphene	8001-35-2	7.7 c	150	0.003 m	17 c	150	0.003 m
2,4,5-TP (Silvex)	93-72-1	530 n	55	0.05 m	5500 n	55	0.05 m
1,2,4-Trichlorobenzene	120-82-1	600 n	25	0.07 m	4900 n	25	0.07 m
1,1,1-Trichloroethane	71-55-6	880 n	5.5	0.2 m	1800 s	5.5	0.2 m
1,1,2-Trichloroethane	79-00-5	13 c	0.07	0.005 m	20 c	0.07	0.005 m
Trichloroethene (TCE)	79-01-6	62 c	0.20	0.005 m	98 c	0.20	0.005 m
2,4,5-Trichlorophenol	95-95-4	6700 n	1600	1.2 n	68000 n	9200	6.7 n
2,4,6-Trichlorophenol	88-06-2	770 c	45	0.05 c	1700 c	150	0.17 c
2(2,4,5-Trichlorophenoxy)propionic acid	93-72-1	530 n	130	0.12 n	5500 n	800	0.73 n
1,2,3-Trichloropropane	96-18-4	0.17 c	0.0004	2.E-05 c	0.28 c	0.0007	4.E-05 c
Trifluraline (Treflan)	1582-09-8	500 n	1800	0.05 c	2500 c	6000	0.18 c
1,2,4-Trimethylbenzene	95-63-6	9.7 s	0.85	0.005 n	9.7 s	2.9	0.017 n
1,3,5-Trimethylbenzene	108-67-8	2.5 n	0.24	0.005 n	42 s	0.83	0.017 n
2,4,6-Trinitrotoluene	118-96-7	14 s	0.05	0.008 n	14 s	3.3	0.05 n
Vanadium	7440-62-2	550 n	N/A	0.11 n	14000 n	N/A	0.71 n
Vinyl Chloride	75-01-4	0.34 c	0.02	0.002 m	0.54 c	0.02	0.002 m
Xylene (mixed)	1330-20-7	700 s	700 s	10 m	700 s	700 s	10 m
Zinc	7440-66-6	23000 n	N/A	5 M	61000 n	N/A	5 M

Notes

n - non-carcinogenic risk, HI = 1

c - carcinogenic risk, risk = 1×10^{-5}

s - soil saturation

m - primary maximum contaminant level (MCL)

M - secondary maximum contaminant level (MCL)

h - health advisory

N/A - insufficient data to calculate value

Chairperson and Members of the
House Environmental Committee

Re: Proposed Modifications to the Proposed House Bill No. 2247
Environmental Use Controls

Dear Chairperson and Members,

I would like to express my appreciation for the opportunity to provide input regarding House Bill No. 2247, related to Environmental Use Controls. I am providing my comments based on a my experience as an environmental professional with experience working in Kansas and more than 20 other states. I am currently the Environmental Business Practice Manager for ARCADIS, G&M Inc, in Houston, Texas. I have managed environmental projects in Kansas related to a variety of sites ranging from agricultural chemical facilities, to confined animal feeding operations, to underground salt cavern storage facilities. In the late 1990s I was privileged to lead an industry-working group that provided input to the KDHE related to the development of new regulations pertaining to Underground Salt Cavern Storage facilities.

I support the KDHE's efforts to develop Environmental Use Control (EUC) legislation. EUCs can be an extremely useful mechanism to minimize contamination exposure risks. Furthermore they can enable limited state and private resources to be focused on actions that create the greatest reduction of risks to human health and the environment.

I feel that EUC monitoring and enforcement provisions can be beneficial to ensure that landowners are aware of and comply with the EUCs, thus ensuring the intended protection to human health and the environment.

After reviewing House Bill 2247, I have two recommendations for improving the bill that are depicted on the attached balloon. The first recommendation is to add language, as shown on line 18 of the attached version of House Bill 2247, that would allow restrictions placed by governmental entities to be used as EUCs. This is intended to allow appropriate local ordinances and zoning laws to be used as EUCs. If a legally binding use control is already in place (e.g. industrial land use zoning, or groundwater use restrictions), it would be more efficient to rely on the existing legal mechanism than to create a new redundant mechanism. If there are concerns that certain municipalities may not have adequate monitoring or enforcement capabilities, it appears that the proposed monitoring to be conducted by the KDHE and the enforcement provisions included in the current bill would be adequate to address

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Environmental Business Unit

February 20, 2003

Contact:

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2-20-03
Attachment 4*

these issues. In certain circumstances, allowing the use of ordinances and zoning laws to be used as EUCs would be beneficial. For instance, if multiple properties are involved, the placement, monitoring and enforcement of EUCs, might be more effectively managed through a single zoning mechanism, in comparison to the alternative process of placing separate deed restriction mechanisms on multiple properties. This would also provide an avenue for reducing exposure risks when a landowner cannot be located, and it is not feasible to cleanup a property to residential standards.

The second recommended revision, as noted on lines 28 and 30 of the attached version of House Bill 2247, is to allow a person who has obtained written landowner consent to be able to apply for and establish the EUC. From a practical standpoint, this would provide greater flexibility to accommodate a number of circumstances. For instance, when dealing with multiple landowners, it might be more efficient to have a single party pursue placement of a common EUC on all the properties. In other cases, such as landowners living out of the state or out of the country, the landowner may be willing to provide consent to the EUC, but will not want to be, or will not be able to be involved in the process of establishing the EUC. This recommended revision would provide greater flexibility to efficiently place the EUC, in unique circumstances that might otherwise prove to be an obstacle to establishing an EUC.

In summary, I feel that formal legislation regarding the use of EUCs will be beneficial to the citizens, the environment, and industry in Kansas. I appreciate the opportunity to discuss these recommendations with you and thank you for your time and consideration of these proposed changes.

Sincerely,



Ray Cheatham, P.G.
Senior Project Manager
Environmental Business Practice Leader

HOUSE BILL No. 2247

By Committee on Environment

2-7

9 AN ACT concerning environmental contamination of real property; pro-
10 viding for prohibition or restriction of activities on and use of such
11 property.
12

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

14 Section 1. As used in this act:

15 (a) "Department" means the Kansas department of health and
16 environment.

17 (b) "Environmental use control" means an institutional or adminis-
18 trative control, a restriction, prohibition or control of one or more uses
19 of, or activities on, a specific property to ensure future protection of
20 public health and the environment when environmental contamination
21 which exceeds department standards for unrestricted use remains on the
22 property following the appropriate assessment and/or remedial activities
23 as directed by the department pursuant to the secretary's authority. Any
24 environmental use control created pursuant to this act runs with the prop-
25 erty and is binding on the owner and subsequent owners, lessees and
26 other users of the land.

27 (c) "Owner" means any owner of record of property, and any person
28 or entity ~~authorized to make decisions regarding the transfer of the sub-~~ with written authorization
29 ject property or placement of encumbrances on the subject property,
30 other than by the exercise of eminent domain ~~_____~~ and any third party with written consent of the owner

31 (d) "Person" means any individual, trust, firm, joint stock company,
32 public or private corporation, limited liability company or partnership;
33 the federal government or any agency or instrumentality thereof; any
34 state, or any agency, instrumentality or political or taxing subdivision
35 thereof; or any interstate body.

36 (e) "Protective structure" means an engineered physical structure im-
37 plemented as part of the remedial action to control or respond to a release
38 or threat of release of environmental contamination. Protective structure
39 includes capping, fencing, berming, diking, drainage structures and other
40 structures that may control erosion, migration or other releases of envi-
41 ronmental contamination.

42 (f) "Property" means real property.

43 (g) "Remedial activity" means any site cleanup, soil or groundwater

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Testimony on Behalf of the Kansas Sierra Club
Supporting passage of H.B. 2247: Concerning Environmental Use Controls
Before the Kansas House Environment Committee
February 20, 2003

Madam Chair, members of the Environment Committee, thank you for the opportunity to testify in support of passage of H.B. 2247 concerning environmental use controls. Thanks to the staff at KDHE for putting together a stakeholders group this past summer and fall to discuss this important legislation.

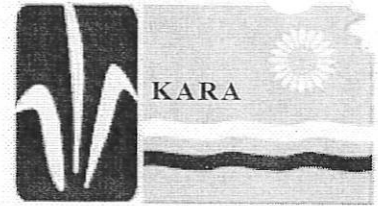
Environmental use controls are simply restrictions on the use of contaminated properties in order to protect human health and welfare. It is also a process of putting prospective buyers of contaminated properties on notice that such restrictions "run with the land."

This bill allows owners of property, with approval by KDHE, to restrict the use of their property by imposing on the property an appropriate level of environmental use control. An environmental use control, or restriction on the use of the property, is only applied by KDHE when there is known contamination that exceeds KDHE's standards for unrestricted use of the property. Upon approval by KDHE, the owner of the property must register the environmental use control with the register of deeds in the county in which the property is located. This requirement is not onerous to the owner of the contaminated property. It puts any prospective purchaser of the property, who has carried out due diligence, to avoid buying contaminated property with restricted uses. It does not prevent any prospective buyer from buying contaminated property. This is very important because there are some prospective buyers of real property with the financial means to acquire and clean up such property. Once the property is cleaned up then the environmental use control can be removed. That is good for the original owner of the contaminated property; the prospective buyer of the contaminated property; for local governments (who can obtain more property tax revenue because non-contaminated property is worth more than contaminated property); and it is good for the community in terms of human health and the environment. In other words it can be a win-win for all concerned.

At a time when the legislature is struggling to finance current state governmental operations without a tax increase, this program does not require you to raise taxes. The program is self-financing through fees.

Thank you for your time and attention. I would be happy to stand for questions.

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Attachment 5*



STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
AND THE
KANSAS AGRIBUSINESS RETAILERS ASSOCIATION
SUBMITTED TO THE
HOUSE ENVIRONMENT COMMITTEE
REGARDING HOUSE BILL 2247
REPRESENTATIVE JOANN FREEBORN, CHAIR
FEBRUARY 20, 2003

KGFA & KARA MEMBERS 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 THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

816 SW Tyler, Topeka KS 66612 - 785-234-0461 - Fax: 785-234-2930

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Madam Chair and Members of the House Environment Committee I am Doug Wareham appearing on behalf of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 1,100 Kansas business locations and represents 98% of the commercially licensed grain storage in the state. KARA's membership includes nearly 750 agribusiness firms 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 equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. I appear before you in support of HB 2247.

As I have indicated, our member companies are primarily grain elevator firms and agribusiness retail firms, several of which are currently involved in remediation activities under the supervision of KDHE. House Bill 2247 codifies a process of enabling contaminated site owners to utilize environmental use controls (EUC) in lieu of cleaning a site to residential standards. The use of environmental use controls is an important tool for agribusiness, whose business sites are often located in industrial and commercial parks. The fact that their sites are not typically located in residential areas potentially allows the use of environmental use controls, which can mean savings to agribusiness firms. We have appreciated the Kansas Department of Health and Environment's (KDHE) willingness to work with our members in trying to work towards protecting the environment in a reasonable manner, and if codifying the practice of entering into an EUC is necessary for this practice to continue, then our members are supportive of the bill.

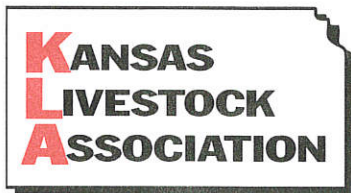
While we fully support the inclusion of environmental use controls as an option for property owners dealing with contamination, we do have concerns with portions of House Bill 2247, and we would respectfully request that this committee consider these as you move forward on this issue:

- KGFA and KARA believe the penalty provisions contained in House Bill 2247 go beyond what is necessary to ensure property owners meet the requirements of an environmental use control agreement. We would suggest the following changes be made to Section 8 of the bill:
 - We believe this bill should require KDHE to issue an order to the property owner before they retract approval of a remedial action as described in Section 8, subsection 2. It only seems fair that the KDHE should have to state reasons for retracting an EUC and have an appeal procedure for property owners that face having an EUC retracted. Property owners may have invested time and money in

developing a plan for the department's approval and should be afforded an appeal process.

- We propose the elimination of Section 8, subsections (3) and (4). We would prefer language that calls for property owners to be held accountable by requiring them to comply with existing laws and regulations pertaining to contamination if terms of the environmental use control are breached by the property owner. We object to broadening the scope of penalties by including action by the attorney general and the district court when terms of an environmental use control agreement are not adhered to.
- KGFA and KARA request further clarification on the definition of the term "unacceptable threat to human health or the environment", which is used in Section 6 (a). This term applies when an EUC term has expired. This term probably needs to be clarified in rules and regulations.
- KGFA and KARA also suggest the committee review the Categories proposed in House Bill 2247 and the fees associated with agreeing to an environmental use control. It is our understanding that KDHE currently has over 20 sites that have some type of EUC in place. We simply encourage the committee to ensure the revenue's collected, match the financial needs of maintaining an EUC program.

As I stated at the beginning of my testimony, some agribusiness firms in Kansas are currently utilizing environmental use control agreements with KDHE and we want EUC's to continue as an option for property owners. I appreciate the opportunity to share our comments on House Bill 2247.



Since 1894

Testimony

To: House Environment Committee

From: Derenda J. Mitchell, Assistant Counsel

Re: HB 2247

Thank you for the opportunity to comment on HB 2247. My name is Derenda J. Mitchell. I am representing the Kansas Livestock Association (KLA). KLA is a trade organization that represents all segments of the livestock industry and has over 6,000 members.

We respectfully oppose HB 2247 as currently drafted. HB 2247 is overbroad, places unbridled discretionary authority in the Secretary of Health and Environment, grants injunctive powers that are lacking in traditional safeguards against governmental abuse, and is confusing and vague in its application and scope.

More specifically, HB 2247 gives KDHE the authority to enter into or impose environmental use controls (EUCs). While the proponents of HB 2247 tout the voluntary nature of an EUC, the bill does not limit EUCs to voluntary arrangements or settlements. Voluntary EUCs may be the ideal, but the definition of an EUC is:

“ . . .an institutional or administrative control, a restriction, prohibition or control of one or more uses of, or activities on, a specific property to ensure future protection of public health and the environment when environmental contamination which exceeds department standards for unrestricted use remains on the property following the appropriate assessment and/or remedial activities as directed by the department pursuant to the secretary’s authority.”

Section 1(b), lines 17-23. Nothing in this language limits an EUC to voluntary arrangements. Words like “institutional,” “administrative control,” “restriction,” “prohibition,” “ensure,” “department standards,” “remedial,” and “directed by the department pursuant to the secretary’s authority” evoke a vision of a governmental program filled with governmental dictates without freedoms or flexibility on the part of the person subject to an EUC. In Section 3(b)(1) of the bill, the proposal requires that the owner or the owner’s authorized representative “**shall** make application to the department for approval of an environmental use control.” In Section eight of the bill, the Secretary of KDHE, may “take such actions as may be necessary to protect human health or the environment.” On page six of the bill in lines 20 and 41, government is authorized to enjoin those who do not implement an EUC. This is mandatory language, not permissive language.

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Also according to the bill in section 3(b)(2), "appropriate restrictions" must "exceed department standards for unrestricted use, access to the subject property, an inspection schedule, and the availability of the funds . . .". It is difficult and often costly to meet department standards, let alone exceed them. Perhaps the drafters intended for this paragraph to refer to the threshold for department approval. In other words, when known contamination exceeds department standards for unrestricted use, the following must be addressed: access to the property, an inspection schedule, and the availability of funds. But that's not what the bill currently says.

The bill also says that KDHE "may" adopt rules and regulations, not "shall." We do not know what the standards are to which we would be subject under this bill because the bill does not identify what the standards are. The bill baldly references standards but rules and regulations are optional.

Another concern is that the bill requires a finding of contamination for an EUC. On page three beginning on line eight, the bill proposes that an EUC shall only be approved for the protection of human health and the environment from residual contamination. As a lawyer, I would be remiss if I were to recommend to a client that he admit there is contamination on his property when he does not agree or if there is no proof that there is contamination that threatens public health or the environment. In short, there is little or no incentive to enter into an EUC voluntarily under this proposal

Throughout the bill, there are references to "contamination." When is something "contaminated?" On page one of the bill in the definitions section, starting on line 36, the proposal seems to suggest that erosion is environmental contamination. Farmers already manage erosion through conservation efforts. Is KDHE trying to regulate farming practices?

We also question how the funding portion of the bill will operate. Beginning on line 43 at the bottom of page 3, the bill says that acreage is a component in assessing how much a landowner will be charged for an EUC. Is KDHE going to consider total acreage of the landowner or the acreage contaminated? In short, there does not seem to be a connection to the category 2 and 3 criterion for acreage and the cost allocation to the landowner.

Perhaps the greatest concern is with regard to enforcement. Please refer to page seven, beginning on line four, the bill says that the government does not have to prove or even allege that irreparable damages justify their actions. Under this proposal, government is not required to follow any of the usual requirements for injunctive relief or restraining orders. This bill would allow the government to shut down an operation temporarily or even permanently without any proof that there is contamination or that the public or the environment will be harmed. Government should not be allowed to sidestep judicial requirements of proof. If there is a problem, government should follow our time-tested rules.

Thank you for considering our concerns.