

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 25, 2003 in Room 231-N of the Capitol.

All members were present except: Representative Dan Thimesch - excused

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

Conferees appearing before the committee:

Others attending: See attached sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She called attention to the committee minutes for January 21, 23, and 28, that had been distributed to committee members in the February 20 meeting. She asked if anyone had a motion to approve the minutes.

Rep. Gary Hayzlett made a motion the minutes for January 21, 23, and 28, be approved. Rep. Lee Tafanelli seconded the motion. Motion carried.

The Chairperson opened **HB2196** for discussion and possible action.

HB2196: Storage tanks; applicability of certain prohibitions.

Rep. Lee Tafanelli explained new language in the balloon.

Rep. Lee Tafanelli made a motion the balloon to **HB2196** be adopted. (See attachment 1) Rep. Dan Johnson seconded the motion. Motion carried.

Gary Blackburn, Director, Bureau of Environmental Remediation, Kansas Department of Health and Environment was in attendance and addressed committee questions.

Rep. Donald Betts made a motion **HB2196** be passed as amended. Rep. James Miller seconded the motion. Motion carried. Rep. James Miller will carry the bill on the House Floor.

Chairperson Freeborn opened **HB2247** for discussion and possible action.

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

Gary Blackburn, Director, Bureau of Environmental Remediation, Kansas Department of Health and Environment, explained changes made to the bill.

Rep. Vaughn Flora made a motion to adopt the balloon to **HB2247** with staff numbering and technical corrections; striking "beneficial" in the insert on page 1, in line 23; and deleting paragraph (b) (7) shown as an insert after line 42 on page 5. (See attachment 2) Rep. Donald Betts seconded the motion. Motion carried.

Rep. Lee Tafanelli made a motion to adopt new language (See attachment 3), paragraph (b) (7) to be inserted after line 42 on page 5. Rep. Ted Powers seconded the motion. Motion carried.

Rep. Dan Johnson made a motion **HB2247** be passed as amended. Rep. Donald Betts seconded the motion. Motion carried. Rep. Lee Tafanelli will carry the bill on the House Floor.

The meeting adjourned at 4:00 p.m. The next meeting to be announced.

HOUSE BILL No. 2196

By Committee on Environment

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House Environment
2-25-03
Attachment 1

9 AN ACT amending the Kansas storage tank act; concerning unlawful
10 acts; amending K.S.A. 65-34,109 and repealing the existing section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 65-34,109 is hereby amended to read as follows:

14 65-34,109. (a) It shall be unlawful for any ~~person to:~~ or operator

15 ~~(1) owner of a storage tank to deposit, store or dispense, or permit any~~
16 ~~person to deposit, store or dispense, any regulated substance into any~~
17 ~~such storage tank which does not comply with the provisions of this act,~~
18 ~~the rules and regulations promulgated hereunder, or any order of the~~
19 ~~secretary;~~

20 (b) *It shall be unlawful for any person to:*

21 ~~(1)~~ (1) Construct, install, modify or operate a storage tank without
22 any required permit or other written approval from the secretary or oth-
23 erwise be in violation of the rules and regulations, standards or orders of
24 the secretary;

25 ~~(2)~~ (2) prevent or hinder a properly identified officer or employee of
26 the department or other authorized agent of the secretary from entering,
27 inspecting or sampling at a facility on which a storage tank is located or
28 from copying records concerning such storage tank as authorized by this
29 act;

30 ~~(3)~~ (3) knowingly make any false material statement or representation
31 in any application, record, report, permit or other document filed, main-
32 tained or used for purposes of compliance with this act.

33 ~~(4)~~ (4) knowingly destroy, alter or conceal any record required to be
34 maintained by this act or rules and regulations promulgated hereunder;

35 or
36 ~~(5)~~ (5) knowingly allow a release, knowingly fail to report a release or
37 knowingly fail to take corrective action in response to a release of a reg-
38 ulated substance in violation of this act or rules and regulations promul-
39 gated hereunder.

40 ~~(c)~~ (c) Any person who violates any provision of subsection (a) or (b)
41 all be guilty of a class A misdemeanor and, upon conviction thereof,
42 all be punished as provided by law.

43 Sec. 2. K.S.A. 65-34,109 is hereby repealed.

; or
(6) deposit, store or dispense any regulated substance into any storage tank which does not comply with the provisions of this act, or the rules and regulations promulgated hereunder, after written notice by certified mail has been supplied by the secretary that such storage tanks do not comply with the provisions of the act or such rules and regulations

Insert Sec. 2 attached

Amend title and repealer and renumber sections

1-2

Sec. 2. K.S.A. 65-34,113 is hereby amended to read as follows: 65-34,113. (a) Any person who violates any provisions of K.S.A. 65-34,109 65-34,110, and amendments thereto, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$10,000 for every such violation, and in case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of K.S.A. 65-34,109 or 65-34,110, and amendments thereto, may impose a penalty within the limits provided in subsection (a), which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No penalty shall be imposed pursuant to this section except upon the written order of the director of the division of environment to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Within 15 days after service of the order, any such person may make written request to the secretary for a hearing thereon in accordance with the Kansas administrative procedure act.

(d) Any action of the secretary pursuant to subsection (c), (e)(1) or (e)(2) is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(e) Notwithstanding any other provision of this act, the secretary, upon receipt of information that the storage or release of a regulated substance may present a hazard to the health of persons or to the environment, may take such action as the secretary determines to be necessary to protect the health of such persons or the environment. Operating a storage tank without a permit issued pursuant to K.S.A. 65-34,106, and amendments thereto, shall be deemed to constitute such a hazard. The action the secretary may take shall include, but is not limited to:

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(1) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing the owner or operator of the storage tank, or the custodian of the regulated substance which constitutes such hazard, to take such steps as are necessary to prevent the act, to eliminate the practice which constitutes such hazard, to investigate the extent of and remediate any pollution resulting from the storage or release. Such order may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing an owner, tenant or holder of any right of way or easement of any real property affected by a known release from a storage tank to permit entry on to and egress from that property, by officers, employees, agents or contractors of the department or of the person responsible for the regulated substance or the hazard, for the purposes of monitoring the release or to perform such measures to mitigate the release as the secretary shall specify in the order.

(3) Commencing an action to enjoin acts or practices specified in this subsection or requesting the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices. Upon a showing that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.

(4) Applying to the appropriate district court for an order of that court directing compliance with the order of the secretary pursuant to the act for judicial review and civil enforcement of agency actions. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this subsection shall have precedence over other cases in respect to order of trial.

(f) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought it shall be sufficient to show that a violation of the provisions of this act, or the rules and regulations adopted thereunder has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.

HOUSE BILL No. 2247

By Committee on Environment

2-7

AN ACT concerning environmental contamination of real property; providing for prohibition or restriction of activities on and use of such property.

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

Section 2. As used in this act:

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

(b) "Environmental use control" means 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. Any environmental use control created pursuant to this act runs with the property and is binding on the owner and subsequent owners, lessees and other users of the land.

(c) "Owner" means any owner of record of property, and any person or entity authorized to make decisions regarding the transfer of the subject property or placement of encumbrances on the subject property, other than by the exercise of eminent domain.

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

(e) "Protective structure" means an engineered physical structure implemented as part of the remedial action to control or respond to a release or threat of release of environmental contamination. Protective structure includes capping, fencing, berming, diking, drainage structures and other structures that may control erosion, migration or other releases of environmental contamination.

(f) "Property" means real property.

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

Section 1. The intent of the environmental use control act is to provide a voluntary mechanism to assist existing state programs to address environmental contamination in a cost effective manner that is protective of human health and the environment.

as requested by a land owner at the time of issuance

For the purposes of this act, environmental contamination does not mean animal or process waste from a confined feeding facility as defined by K.S.A. 65-171d, livestock operations or the beneficial application of livestock waste for use as a plant nutrient.

with written authorization from the owner

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Attachment 2

1 monitoring associated with a contaminated property, remedial action, cor-
 2 rective action, emergency action, removal action or other action necessary
 3 or appropriate to respond to a release or threat of release of environ-
 4 mental contamination.

5 (h) "Secretary" means the secretary of health and environment.

(a)

6 Sec. 3. The provisions of this act, except the provisions of subsection
 7 (b) of section 10 and amendments thereto, shall not apply to solid waste
 8 disposal areas which are issued permits pursuant to K.S.A. 65-3407, and
 9 amendments thereto, or which receive authorization from the secretary
 10 for unpermitted disposal pursuant to K.S.A. 65-3407c, and amendments
 11 thereto, provided that the owner of each such solid waste disposal area
 12 establishes environmental use controls for the area, subject to approval
 13 by the department, by executing and filing a restrictive covenant on the
 14 property deed.

(b) The provisions of this act shall not apply to confined feeding
 facilities as defined in 65-171d (c)(2).

15 Sec. 4. (a) An owner of property, with departmental approval, may
 16 restrict the use of the owner's property to mitigate the risk posed to
 17 human health and the environment by imposing on the property an ap-
 18 propriate environmental use control.

If the owner elects to voluntarily restrict the owner's property, the

19 (b) (1) The owner or the owner's authorized representative shall
 20 make application to the department for approval of an environmental use
 21 control. Such application shall be made on forms provided by the de-
 22 partment and shall be completed and submitted to the department by
 23 the owner or the owner's authorized representative.

application containing the following components: appropriate
 restrictions to protect public health and environment from known
 contamination which exceeds department standards for unrestricted
 residential use;

24 (2) Department approval of an application shall be subject to the
 25 ~~appropriate restrictions for the known contamination which exceeds de-~~
 26 ~~partment standards for unrestricted use,~~ access to the subject property;
 27 an inspection schedule that is appropriate to monitor conditions at the
 28 subject property; and the availability of funds to administer the provisions
 29 of this act related to the subject property.

30 (3) The department may require the applicant to provide financial
 31 assurance for category 3 property as described in subsection (b)(3) of
 32 section 6, and amendments thereto, based on the potential for long term
 33 maintenance cost of protective structures and the potential for release or
 34 migration of environmental contamination from the property. The appli-
 35 cant shall provide the financial assurance by one or more methods satis-
 36 factory to the department, including, but not limited to, environmental
 37 insurance, guarantee, performance or other surety bond, letter of credit,
 38 qualification as a self-insurer or other demonstration of financial capabil-
 ity. The demonstration of financial capability must be adequate to provide
 remedies which are protective of human health and the environment
 should the proposed remedial activity fail.

42 (4) The application shall include an accurate legal description or sur-
 43 vey of the portion of the property where an environmental use control is

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1 proposed.

2 (c) The department shall review the application. If the application is
3 disapproved by the department, the applicant may modify the application
4 in a manner necessary to obtain department approval and resubmit the
5 application for the department's approval. If the application is approved
6 by the department, the department shall provide the applicant a written
7 approval.

8 (d) An environmental use control pursuant to this act ~~shall~~ be ap-
9 proved by the department ~~only for the protection of human health and~~
10 ~~the environment from~~ residual contamination which exceeds department
11 standards for unrestricted residential use on the subject property.

may
as part of the remedial activity for the property when

12 Sec. 5. (a) After an environmental use control has been approved by
13 the department, the owner must register the environmental use control
14 with the register of deeds in the county where the property is located or,
15 if property is owned by the United States or a division thereof, a notice
16 of the environmental use control must be filed with the register of deeds
17 in the county where the property is located. When registering the envi-
18 ronmental use control or filing the notice, the following must be included:

19 (1) A notarized original environmental use control agreement be-
20 tween the applicant and the department; and

21 (2) an adequate legal description or legal survey of the property which
22 identifies the portion of the property which is subject to the environ-
23 mental use control.

24 (b) The applicant must provide to the department a notarized copy
25 of the recorded environmental use control agreement with the register
26 of deeds seal for the property.

27 (c) Recorded environmental use controls established pursuant to this
28 act shall be enforceable as set forth in section 7, and amendments thereto.

29 Sec. 6. (a) Funding needs may be satisfied by department appropri-
30 ations for property where adequate funding is supplied by federal grants,
31 designated fee funds or other funding sources.

(b) Any funding requirements for an application pursuant to this act,
will be based on a one time payment for the property made by the original applicant.

32 (b) Funding requirements for other properties will be determined
33 individually and be based on the size of the property, toxicity and mobility
34 of the contaminants, frequency of site inspections and the anticipated
35 inspection costs, as determined by the department.

to which the environmental use control applies
to which the environmental use control applies

36 (1) Category 1 property includes property with the following char-
37 acteristics: The property is not greater than five acres in size, the residual
38 contamination is characterized by low toxicity and mobility, there is min-
41 imal anticipated maintenance of protective structures and the anticipated
42 inspection frequency is once every five years. Category 1 properties would
43 have a one-time payment by the applicant not to exceed \$2,000 to fund
the life of the environmental use control.

(2) Category 2 property includes property with the following char-

acteristics: The property may cover areas larger than five acres in size, the residual contamination is characterized by moderate toxicity and mobility, there is limited anticipated maintenance of protective structures and more complicated and/or costly inspections are anticipated, with an inspection frequency of not more than once per year. Category 2 property would have a one-time payment by the applicant not to exceed \$10,000 to fund the life of the environmental use control.

(3) Category 3 property includes property with some or all of the following characteristics: The property may cover a large acreage, the residual contamination is characterized by higher toxicity or mobility, complicated maintenance or monitoring of protective structures is required and frequent or complicated site inspections are anticipated, which may be more frequent than once per year. The inspection cost of category 3 properties is also dependent on the future uses of the property and the maintenance of protective structures by the property owner. For this reason, long term care agreements between the department and the applicant will be required for category 3 properties. These long term care agreements will include a provision to reimburse the department for costs incurred to perform the long term care at the property.

(c) The secretary shall remit to the state treasurer, in accordance with K.S.A. 75-4215, and amendments thereto, all moneys received from fees and long term care reimbursement agreements pursuant to this section. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the environmental use control fund.

Sec. 7. (a) An environmental use control may be granted either in perpetuity or for a term of years, as determined by the department. An environmental use control may not be approved for a term of years unless provisions are included that ensures the protection of human health and the environment beyond the expiration of the environmental use control. Upon expiration of the term if contamination remains ~~which poses an unacceptable threat to human health or the environment~~ **above department standards, as set forth in the approved environmental use control** the department can require additional action.

(b) An environmental use control runs with the land and is binding on all successors in interest to property until the environmental use control is removed upon the department's approval or upon expiration of the term of the environmental use control.

(c) An environmental use control shall be removed if the property owner demonstrates to the department's satisfaction that the original risk to human health or the environment which created the need for the control is no longer present. An owner must submit a request to the department for approval to remove all or a portion of the environmental use controls from the property. The department shall review the request

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1 and provide the owner with the department's decision to approve or deny
 2 the request within 120 days after the department's receipt of the request.
 3 If the department denies the request, justification shall be provided to
 4 the owner with a written explanation of the denial, which may include
 5 that the applicant has not provided the documentation to demonstrate
 6 that the request is protective of human health and the environment, as
 7 determined by the department.

8 (d) If the department approves an owner's request to remove all or
 9 a portion of environmental use controls, the owner shall file the approval
 10 with the register of deeds in the county where the property is located.

11 (e) An environmental use control may not be extinguished, limited
 12 or impaired through adverse possession, abandonment, waiver, lack of
 13 enforcement or other common law principles relating to covenants or by
 14 the exercise of eminent domain.

15 (f) An environmental use control may be modified by mutual written
 16 agreement by the property owner and the department.

17 (g) The department shall not acquire any liability by virtue of ap-
 18 proving an environmental use control or by approving removal of all or a
 19 portion of environmental use controls.

20 Sec. 8. (a) An environmental use control pursuant to this act may
 21 restrict or prohibit the activities at or uses of property. The restrictions
 22 imposed shall be those agreed to by the applicant and deemed necessary
 23 by the department to protect the public from exposures to contaminants
 24 which remain at the property.

25 (b) An environmental use control pursuant to this act may include or
 26 require the following:

27 (1) Prompt notification to the department of any transfer of the prop-
 28 erty, such notice to be given by the transferor;

29 (2) prompt notification to the department of any change in use of the
 30 property, such notice to be given by the property owner;

31 (3) maintenance of protective structures or remedial systems at the
 32 property, such as soil caps, soil covers, soil surfaces, berms, drainage struc-
 33 tures, vegetation, monitoring wells or other structures or systems;

34 (4) access to the property by agents of the department as necessary
 35 to inspect and monitor remediation activities, monitoring wells, surface
 36 streams and protective structures or remedial systems and to ensure im-
 37 plementation and enforcement of the requirements, restrictions and
 38 other limitations of the environmental use controls;

(5) any other obligations necessary to reduce or eliminate risks or
 threats to human health and the environment from the property; or

41 (6) a one-time payment or long term care agreement to provide fund-
 42 ing for environmental use control oversight.

43 (c) All interests not limited by the environmental use control shall

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(7) Restrictions, prohibitions or zoning requirements placed on property by a local or state government may be substituted in place of an environmental use control as defined by this act. Such restrictions, prohibitions and zoning requirements may be utilized in addition with any environmental use controls approved by the department. ~~Such zoning restrictions shall not conflict with existing state law pertaining to zoning.~~ This act does not grant or expand the authority of local governments to zone, regulate, limit, restrict, or prohibit environmental activities on agricultural land including feedlots or confined feeding facilities as defined in 65-171(c)(2).

1 remain with the owner.

2 Sec. 9. (a) Upon receipt of information that approved environmental
3 use controls are not being implemented in accordance with an approved
4 environmental use control agreement or ~~present~~ a hazard to human
5 health or the environment, the secretary may take such actions as may be
6 necessary to protect human health or the environment. The action the
7 secretary may take shall include, but not be limited to:

8 (1) Issuing an order directing the owner of the subject property to
9 take such steps as are necessary to correct any deficiencies and fully im-
10 plement the approved environmental use controls.

**that property subject to an approved environmental
use control presents**

11 (2) ~~Retracting the approval of the remedial action for the subject~~
12 ~~property, which included the environmental use control as part of the~~
13 ~~remedy and require the owner of the property to implement remediation~~
14 ~~of the property to a cleanup standard which will allow for unrestricted~~
15 ~~use of the property.~~

Issuing an order

16 (3) ~~Commencing an action enjoining acts or practices set forth in the~~
17 ~~approved environmental use controls or requesting that the attorney gen-~~
18 ~~eral or appropriate district or county attorney commence an action to~~
19 ~~enjoin such actions which result in approved environmental use controls~~
20 ~~not being implemented or not being fully or properly implemented or~~
21 ~~which present a hazard to human health or the environment. Upon dem-~~

For Category 3 property as defined in Section 5 (b)(3),

22 ~~onstratation by the secretary that approved environmental use controls are~~
23 ~~not being implemented or maintained or present a hazard to human~~
24 ~~health or the environment, a permanent or temporary injunction, re-~~
25 ~~straining order or other order may be granted by any court of competent~~
26 ~~jurisdiction.~~

substantial and imminent threat or

27 (4) ~~Applying to the district court in the county in which an order of~~
28 ~~the secretary under subsection (a)(1) will take effect, in whole or in part,~~
29 ~~for an order of the court directing compliance with the order of the sec-~~
30 ~~retary. Failure to obey the court order shall be punishable as contempt~~
31 ~~of the court issuing the order.~~

and (a)(2)

32 (b) Any order of the secretary pursuant to subsection (a)(1) is subject
33 to hearing and review in accordance with section 14, and amendments
34 thereto.

35 (c) ~~Notwithstanding subsections (a)(1) and (a)(2), the county or dis-~~
36 ~~trict attorney of any county may file appropriate actions for enforcement~~
37 ~~of environmental use controls. The county or district attorney filing the~~
38 ~~action shall notify the secretary before filing the action.~~

39 (1) ~~In any action initiated by a county or district attorney, upon a~~
40 ~~showing by a county or district attorney that approved environmental use~~
41 ~~controls are not being implemented or present a hazard to human health~~
42 ~~or the environment, a permanent or temporary injunction, restraining~~
43 ~~order or other order may be granted by any court of competent~~

6 (3) (3)

1 ~~jurisdiction.~~
 2 ~~(9) In any action brought by a county or district attorney in which~~
 3 ~~temporary restraining order, preliminary injunction or permanent in-~~
 4 ~~junction is sought, it shall not be necessary to allege or prove at any stage~~
 5 ~~of the proceeding that irreparable damage will occur should the tempo-~~
 6 ~~rary restraining order, preliminary injunction or permanent injunction not~~
 7 ~~be issued or that the remedy at law is inadequate, and the temporary~~
 8 ~~restraining order, preliminary injunction or permanent injunction shall~~
 9 ~~issue without such allegations and without such proof.~~

(b)

10 ~~(d)~~ An environmental use control may not be separated from the
 11 property and survives foreclosure of a mortgage, lien or other encum-
 12 brance, as well as tax sales and the issuance of a tax deed.

13 Sec. 10. (a) The department shall provide oversight of the environ-
 14 mental use control for property to ensure that the property is being used
 15 only for the purposes permitted by the terms of the environmental use
 16 control agreement and is not being used in a manner that is prohibited
 17 or restricted by the terms of the agreement.

18 (b) The department shall develop and maintain an environmental use
 19 control tracking system on all approved environmental use controls. The
 20 tracking system data shall be made available to the public in a manner
 21 which allows review by either city or county and shall include the
 22 following:

- 23 (1) Name of the property;
- 24 (2) address of the property, including the city and county;
- 25 (3) legal description of the property;
- 26 (4) cause and type of the environmental contamination;
- 27 (5) description of the environmental use control; and
- 28 (6) duration of the environmental use control.

29 Sec. 11. (a) There is established in the state treasury the environ-
 30 mental use control fund. Moneys from the following sources shall be
 31 deposited in the state treasury and credited to the fund:

- 32 (1) Moneys collected from the environmental use control one-time
 33 payments and long term care agreement reimbursements;
- 34 (2) moneys received by the secretary in the form of gifts, grants, re-
 35 imbursements or appropriations from any source intended to be used for
 36 purposes of the fund; and
- 37 (3) interest attributable to the investment of moneys in the fund.

38 (b) Moneys in the environmental use control fund shall be expended
 only for costs of:

- 39 (1) Review of environmental use control applications;
- 40 (2) oversight of remedial projects which include an environmental
 42 use control as an element of their remedy, including inspections, moni-
 43 toring and tracking of the environmental use control;

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1 (3) activities performed by the department to address immediate or
 2 emergency threats to human health or the environment related to prop-
 3 erties subject to environmental use controls;
 4 (4) development, operation and maintenance of the environmental
 5 use control tracking system; and
 6 (5) administration and enforcement of the provisions of this act.
 7 (c) On or before the 10th of each month, the director of accounts
 8 and reports shall transfer from the state general fund to the environmen-
 9 tal use control fund interest earnings based on:
 10 (1) The average daily balance of moneys in the environmental use
 11 control fund for the preceding month; and
 12 (2) the net earnings rate of the pooled money investment portfolio
 13 for the preceding month.
 14 (d) All expenditures from the environmental use control fund shall
 15 be made in accordance with appropriation acts upon warrants of the di-
 16 rector of accounts and reports issued pursuant to vouchers approved by
 17 the secretary or the secretary's designee for purposes set forth in this
 18 section.

19 Sec. ~~12~~ **12**. The secretary ~~may~~ **shall** adopt rules and regulations to implement
 20 the provisions of this act.

21 Sec. ~~13~~ **13**. The department shall publish annually in the Kansas register
 22 a summary of the number of approved environmental use control agree-
 23 ments pursuant to this act.

24 Sec. ~~14~~ **14**. Any person adversely affected by any order or decision of
 25 the secretary pursuant to this act, within 15 days after service of the order
 26 or decision, may request in writing a hearing. Hearings under this section
 27 shall be conducted in accordance with the provisions of the Kansas ad-
 28 ministrative procedure act. Any action of the secretary pursuant to this
 29 section is subject to review in accordance with the act for judicial review
 30 and civil enforcement of agency actions.

31 Sec. ~~15~~ **15**. If any provision of this act or its application to any person
 32 or circumstance is held invalid, the invalidity does not affect other pro-
 33 visions or applications of this act which can be given effect without the
 34 invalid provision or application. To this end the provisions of this act are
 35 severable.

36 Sec. ~~16~~ **16**. This act shall take effect and be in force from and after its
 37 publication in the statute book.

Rep. Lee TAFANELLI

Restrictions, prohibitions and zoning requirements placed on property by a local or state government may be substituted in place of an environmental use control, as defined by this act. Such restrictions, prohibitions and zoning requirements may be utilized in addition with any environmental use controls approved by the department. This provision does not grant or expand authority of local government to restrict, prohibit , zone or regulate land.

*House Environment
2-25-03
Attachment 3*