

HOUSE BILL No. 2340

By Committee on Commerce, Labor and Economic Development

Requested by Stephen Duerst on behalf of Astra Enterprise Park

2-7

1 AN ACT concerning hazardous materials; relating to responsibility for
2 costs associated with application of commercial pesticides; providing
3 an exemption from remediation costs or other liability for owners of
4 certain property located in Johnson county; amending K.S.A. 65-3453
5 and 65-3455 and repealing the existing sections.
6

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

8 Section 1. K.S.A. 65-3453 is hereby amended to read as follows: 65-
9 3453. (a) The secretary shall have the power to:

10 (1) Determine that the clean up of a site is necessary to protect the
11 public health or the environment;

12 (2) expend and authorize the expenditure of moneys from the
13 environmental response fund;

14 (3) issue clean-up orders to persons responsible for the health or
15 environmental hazard created by the hazardous substance;

16 (4) recover moneys from persons responsible for the health or
17 environmental hazard created by the hazardous substance;

18 (5) assign personnel and equipment necessary to carry out the
19 purpose of this act;

20 (6) enter into contracts or agreements with any person or company to
21 conduct the necessary clean-up operations.

22 (b) Any authorized officer, employee or agent of the department or
23 any person under contract with the department may enter onto any
24 property or premises, at reasonable times and upon written notice to the
25 owner or occupant, to gather data, conduct investigations, or take remedial
26 action where the secretary determines that such action is necessary to
27 protect the public health or environment:

28 (1) If consent is not granted by the person in control of a site or
29 suspected site regarding any request made by any employee or agent of the
30 secretary under the provisions of this section, the secretary may issue an
31 order directing compliance with the request. The order may be issued after
32 such notice and opportunity for consultation as is reasonably appropriate
33 under the circumstances;

34 (2) The secretary may ask the attorney general to commence a civil
35 action to compel compliance with a request or order referred to in

1 paragraph (1). Where there is a reasonable basis to believe there may be
2 pollution, the court shall take the following actions:

3 (A) In the case of interference with entry or investigation, the court
4 shall enjoin such interference or direct compliance with orders to prohibit
5 interference with entry or investigation unless under circumstances of the
6 case the demand for entry or investigation is arbitrary and capricious, an
7 abuse of discretion, or otherwise not in accordance with law;

8 (B) In the case of information or document requests or orders, the
9 court shall enjoin interference with such information or document requests
10 or orders or direct compliance with the requests or orders to provide such
11 information or documents unless under the circumstances of the case the
12 demand for information or documents is arbitrary and capricious, an abuse
13 of discretion, or otherwise not in accordance with law;

14 (3) All orders issued hereunder shall be subject to the provisions of
15 K.S.A. 65-3456a and amendments thereto.

16 (c) The secretary is hereby authorized to adopt any rules and
17 regulations necessary to carry out the provisions of this act.

18 *(d) Notwithstanding any other provisions of this act or Kansas law,*
19 *no state agency or subdivision thereof shall issue cleanup orders, seek*
20 *recovery of money, promulgate regulations or guidance or otherwise*
21 *require any person owning or possessing any interest in property*
22 *previously owned by the United States army that is located in Johnson*
23 *county, to be subject to or responsible for restrictions on use of such land*
24 *or the costs of investigation, removal or remediation of soil, groundwater*
25 *or surface water where legally registered pesticidal commercial chemical*
26 *products were applied at or near structures on land to control pests by the*
27 *United States army at such property prior to 2005. It is the intent of the*
28 *legislature that this provision be applied retroactively.*

29 Sec. 2. K.S.A. 65-3455 is hereby amended to read as follows: 65-
30 3455. *Except as provided by K.S.A. 65-3453(d), and amendments thereto,*
31 any person responsible for the discharge, abandonment or disposal of
32 hazardous substances which the secretary determines is necessary to be
33 cleaned up pursuant to K.S.A. 65-3453 and amendments thereto shall be
34 responsible for the payment of the costs of investigation to determine
35 whether remedial action is necessary at the site. If remedial action is
36 required to protect the public health and environment, the costs of that
37 remedial action shall be borne by the responsible party. If the secretary
38 incurs costs or expends funds for such activities, the responsible person
39 shall be notified of such costs and expenditures and shall make repayment
40 of all costs incurred for response to the site in accordance with K.S.A. 65-
41 3454a and amendments thereto. If the responsible person fails to pay for
42 such costs, such payment or repayment shall be recoverable in an action
43 brought by the secretary in the district court of Shawnee county. Any

1 money recovered under this section shall be deposited in the
2 environmental response fund.

3 Sec. 3. K.S.A. 65-3453 and 65-3455 are hereby repealed.

4 Sec. 4. This act shall take effect and be in force from and after its
5 publication in the statute book.