

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;

1 (2) The secretary may ask the attorney general to commence a civil
2 action to compel compliance with a request or order referred to in
3 paragraph (1). Where there is a reasonable basis to believe there may be
4 pollution, the court shall take the following actions:

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

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

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

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

20 (d) *Notwithstanding any other provisions of this act or Kansas law,*
21 *no state agency or subdivision thereof shall issue cleanup orders, seek*
22 *recovery of money, promulgate regulations or guidance***{, fail to timely**
23 **grant approvals for any permit under any state program, including**
24 **issuance of a no further action approval or resource conservation and**
25 **recovery act permit modification,}** *or otherwise require any person*
26 *owning or possessing any interest in property previously owned by the*
27 *United States army that is located in Johnson county, to be subject to or*
28 *responsible for* **{any nonresidential property}** *restrictions on use of such*
29 *land or the costs of investigation, removal or remediation of soil,*
30 *groundwater or surface water where legally registered pesticidal*
31 *commercial chemical products were applied at or near structures on land*
32 *to control pests by the United States army at such property prior to 2005.*
33 **{The provisions of this subsection shall only be applicable to any such**
34 **person if the property owned by such person is nonresidential. Any**
35 **such person owning such nonresidential property shall be responsible**
36 **for the costs of investigation, removal or remediation of soil,**
37 **groundwater or surface water of contamination as provided by law,**
38 **including, but not limited to, contamination by legally registered**
39 **pesticidal commercial chemical products, if such person converts such**
40 **property to residential property}** *or such property is used for a day*
41 *care facility. Any person owning such nonresidential property shall*
42 *include in any deed transferring such property a notice of the potential*
43 *presence of legally registered pesticidal commercial chemical products*

1 *on such property that may need to be remediated, as determined by the*
2 *Kansas department of health and environment, if the property is ever*
3 *used for residential purposes, and such notice shall run with the land*
4 *and remain permanently on all future deeds until the property is*
5 *confirmed not to contain pesticidal products at concentrations exceeding*
6 *nonresidential levels or the property has been remediated to meet*
7 *residential levels as provided by law{.}* *It is the intent of the legislature*
8 *that ~~this provision~~ {the provisions of this subsection shall} be applied*
9 *retroactively.*

10 Sec. 2. K.S.A. 65-3455 is hereby amended to read as follows: 65-
11 3455. *Except as provided by K.S.A. 65-3453(d), and amendments thereto,*
12 *any person responsible for the discharge, abandonment or disposal of*
13 *hazardous substances which the secretary determines is necessary to be*
14 *cleaned up pursuant to K.S.A. 65-3453 and amendments thereto shall be*
15 *responsible for the payment of the costs of investigation to determine*
16 *whether remedial action is necessary at the site. If remedial action is*
17 *required to protect the public health and environment, the costs of that*
18 *remedial action shall be borne by the responsible party. If the secretary*
19 *incurs costs or expends funds for such activities, the responsible person*
20 *shall be notified of such costs and expenditures and shall make repayment*
21 *of all costs incurred for response to the site in accordance with K.S.A. 65-*
22 *3454a and amendments thereto. If the responsible person fails to pay for*
23 *such costs, such payment or repayment shall be recoverable in an action*
24 *brought by the secretary in the district court of Shawnee county. Any*
25 *money recovered under this section shall be deposited in the*
26 *environmental response fund.*

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

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