

HOUSE BILL No. 2177

By Committee on Energy and Environment

1-29

1 AN ACT concerning the secretary of health and environment; relating to
2 solid and hazardous waste; voluntary cleanup and property
3 redevelopment act; amending K.S.A. 65-34,167, 65-34,168 and 65-
4 34,169 and repealing the existing sections; also repealing K.S.A. 65-
5 34,170.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 65-34,167 is hereby amended to read as follows:
9 65-34,167. Remedial alternatives shall be based on the actual risk to
10 human health and the environment currently posed by contaminants ~~on the~~
11 ~~property~~, considering the following factors:

12 (a) The present and proposed future uses of the property and
13 surrounding properties;

14 (b) the ability of the contaminants to move in a form and manner
15 which would result in exposure to humans and the surrounding
16 environment at levels which exceed applicable state standards and
17 guidelines ~~or the results of a risk analysis if such standards and guidelines~~
18 ~~are not available~~ *which exceed acceptable contaminant concentrations as*
19 *determined by a risk analysis that evaluates the property and surrounding*
20 *properties as a whole; and*

21 (c) the potential risks associated with proposed cleanup alternatives
22 and the reliability and economic and technical feasibility of such
23 alternatives.

24 Sec. 2. K.S.A. 65-34,168 is hereby amended to read as follows: 65-
25 34,168. (a) The department shall provide formal written notification to the
26 applicant that a voluntary cleanup plan has been approved or disapproved
27 within 60 days of submittal of the voluntary cleanup plan by the applicant
28 unless the department extends the time for review to a date certain.

29 (b) The department shall approve a voluntary cleanup plan if the
30 department concludes that the plan will attain a degree of cleanup and
31 control of contaminants that complies with all applicable statutes and rules
32 and regulations.

33 (c) If a voluntary cleanup plan is not approved by the department, the
34 department shall promptly provide the applicant with a written statement
35 of the reasons for denial. If the department disapproves a voluntary
36 cleanup plan based upon the applicant's failure to submit the information

1 required, the department shall notify the applicant of the deficiencies in the
2 information submitted.

3 (d) The approval of a voluntary cleanup plan by the department
4 applies only to those contaminants and conditions identified on the
5 property based upon the statutes and rules and regulations that exist when
6 the application is submitted.

7 ~~(e) Upon determination by the department that a voluntary cleanup~~
8 ~~plan is acceptable, the department shall publish a notice of the~~
9 ~~determination in a local newspaper of general circulation in the area~~
10 ~~affected and make the voluntary cleanup plan available to the public. The~~
11 ~~public shall have 15 days from the date of publication during which any~~
12 ~~person may submit to the department written comments regarding the~~
13 ~~voluntary cleanup plan. After 15 days have elapsed, the department may~~
14 ~~hold a public information meeting if, in the department's judgment, the~~
15 ~~comments submitted warrant such a meeting or if the applicant requests~~
16 ~~such a meeting. Upon completion of the public notification and~~
17 ~~participation process, the department shall make a determination to~~
18 ~~approve the plan in accordance with this section. *The voluntary cleanup*~~
19 ~~*plan and associated documents shall be available for public review upon*~~
20 ~~*request from a member of the public. The department may choose based*~~
21 ~~*on public interest to initiate and participate in public meetings to discuss*~~
22 ~~*the voluntary cleanup plan.*~~

23 (f) Departmental approval of a voluntary cleanup plan shall be void
24 upon:

25 (1) Failure of an applicant to comply with the approved voluntary
26 cleanup plan;

27 (2) willful submission of false, inaccurate or misleading information
28 by the applicant in the context of the voluntary cleanup plan; or

29 (3) failure to initiate the plan within 6 months after approval by the
30 department, or failure to complete the plan within 24 months after
31 approval by the department, unless the department grants an extension of
32 time.

33 (g) An applicant desiring to implement a voluntary clean up plan after
34 the time limits prescribed by subsection (f)(3) have expired shall submit a
35 written petition for reapplication accompanied by written assurances from
36 the applicant that the conditions on the subject property are substantially
37 similar to those existing at the time of the original approval.
38 Reapplications shall be reviewed by the department. Any reapplication that
39 involves property upon which the condition has substantially changed
40 since approval of the original voluntary cleanup plan shall be treated as a
41 new application and shall be subject to all the requirements of this act.

42 (h) Within 45 days after the completion of the voluntary cleanup
43 described in the approved voluntary cleanup plan, the applicant shall

1 provide to the department assurance that the plan has been fully
2 implemented. A verification sampling program shall be required by the
3 department to confirm that the property has been cleaned up as described
4 in the voluntary cleanup plan.

5 Sec. 3. K.S.A. 65-34,169 is hereby amended to read as follows: 65-
6 34,169. (a) After an applicant completes the requirements of this act, the
7 department may determine that no further remedial action is required.
8 Within 60 days after such completion, unless the applicant and the
9 department agree to an extension of the time for review, the department
10 shall provide written notification that a no further action determination has
11 been made.

12 (b)-(H) The department may consider in issuing this determination
13 that contamination or a release of contamination originates from a source
14 on-adjacent *another* property upon which the necessary action which
15 protects human health and the environment is or will be taken by a viable
16 and financially capable person or entity which may or may not be legally
17 responsible for the source of contamination.

18 (2) ~~The department shall provide written notification of a no further
19 action determination.~~

20 (3) (c) The issuance of a no further action determination by the
21 department applies only to identified conditions on the property and is
22 based upon applicable statutes and rules and regulations that exist as of the
23 time of completion of the requirements.

24 (e) (d) The department may determine that the no further action
25 determination, under this section is void if:

26 (1) There is any evidence of fraudulent representation, false
27 assurances, concealment or misrepresentation of the data in any document
28 to be submitted to the department under this act;

29 (2) the applicant agrees to perform any action approved by the
30 department and fails to perform such action;

31 (3) the applicant's willful and wanton conduct contributes to known
32 environmental contamination; or

33 (4) the applicant fails to complete the voluntary actions required in
34 the voluntary cleanup plan.

35 (4) (e) If a no further action determination is not issued by the
36 department, the department shall promptly provide the applicant with a
37 written statement of the reasons for denial.

38 Sec. 4. K.S.A. 65-34,167, 65-34,168, 65-34,169 and 65-34,170 are
39 hereby repealed.

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