

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.

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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.

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

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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 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

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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.