

SENATE BILL No. 153

By Committee on Agriculture and Natural Resources

2-12

1 AN ACT concerning the department of health and environment; relating to
2 water and soil pollutants; spill program; amending K.S.A. 65-171v and
3 repealing the existing section.
4

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

6 Section 1. K.S.A. 65-171v is hereby amended to read as follows: 65-
7 171v. ~~Whenever a water or soil pollutant is discharged intentionally,~~
8 ~~accidentally or inadvertently and the secretary of health and environment~~
9 ~~or the secretary's authorized representative determines that the discharged~~
10 ~~material must be collected, retained or rendered innocuous, and if a~~
11 ~~discharger refuses to undertake cleanup operations or if the responsible~~
12 ~~discharger is unknown at the time, the secretary or the secretary's~~
13 ~~authorized representative may enter into an agreement with a person to~~
14 ~~conduct the necessary cleanup operations with payment for such cleanup~~
15 ~~work to be provided from the pollutant discharge cleanup fund. Any~~
16 ~~person responsible for or causing the discharge of materials which are~~
17 ~~determined necessary to cleanup under the provisions of this act shall be~~
18 ~~responsible for repayment of the costs of cleanup work upon reasonably~~
19 ~~detailed notification by the secretary or the secretary's authorized~~
20 ~~representative. If the responsible person fails to promptly submit payment~~
21 ~~for costs of the cleanup operations when so notified, such payment shall be~~
22 ~~recoverable in an action brought by the attorney general on behalf of the~~
23 ~~people of the state of Kansas in the district court of the county in which~~
24 ~~such costs were incurred. Any moneys recovered under this section shall~~
25 ~~be remitted to the state treasurer in accordance with the provisions of~~
26 ~~K.S.A. 75-4215, and amendments thereto. Upon receipt of each such~~
27 ~~remittance, the state treasurer shall deposit the entire amount in the state~~
28 ~~treasury to the credit of the pollutant discharge cleanup fund~~

29 *(a) As used in this section:*

30 *(1) "Cleanup" means all actions necessary to contain, collect,*
31 *control, identify, analyze, treat, disperse, remove or dispose of a pollutant*
32 *necessary to restore the environment to the extent practicable and*
33 *minimize the harmful effects from the release;*

34 *(2) "cleanup costs" means all costs incurred by the state during a*
35 *cleanup of a release of a pollutant, including costs necessary for regulator*
36 *oversight of the cleanup;*

1 (3) "emergency" means any release that poses an imminent risk to
2 public health or the environment;

3 (4) "person" means any individual, owner, operator, corporation,
4 limited liability company, partnership, association, municipality, interstate
5 agency, state agency or federal agency;

6 (5) "pollutant" means any substance that causes contamination or
7 alteration of the natural physical, chemical or biological properties of any
8 waters or soils of the state or is likely to create a nuisance or render such
9 waters or soils harmful, detrimental or injurious to public health, or to the
10 plant, animal or aquatic life of the state or to other designated uses; and

11 (6) "release" means any threatened or real emission, discharge,
12 spillage, leakage, pumping, pouring, emptying, escape or dumping of a
13 pollutant into or onto the waters or soil of the state, except when done in
14 compliance with the conditions of a federal or state permit or in
15 accordance with the product label.

16 (b) For the purpose of preventing water and soil pollution
17 detrimental to public health or the environment, the secretary of health
18 and environment shall:

19 (1) Adopt rules and regulations that, in the secretary's judgment, are
20 necessary to respond to and report the release of a pollutant;

21 (2) designate a 24-hour statewide telephone number whereby the
22 notice of any release of a pollutant may be made;

23 (3) provide minimum reportable quantities;

24 (4) order a person responsible for the release of a pollutant to
25 perform a cleanup of the release; and

26 (5) take necessary action to perform a cleanup of a release if the
27 person responsible for the release cannot be identified within a reasonable
28 period of time.

29 (c) The secretary may:

30 (1) Provide technical guidance, oversight and assistance to other
31 state agencies, political subdivisions of the state and other persons for the
32 cleanup of and response to the release of a pollutant;

33 (2) take necessary action to perform a cleanup of a release of a
34 pollutant if a person responsible for the release fails to take reasonable
35 actions required by the secretary to perform a cleanup of the release; and

36 (3) perform a cleanup of a release of a pollutant if the release poses
37 an emergency.

38 (d) (1) Whenever a pollutant is released intentionally, accidentally or
39 inadvertently, the person responsible for the release shall be responsible
40 for the cleanup of the release.

41 (2) The person responsible for the release of any pollutant, regardless
42 of phase or physical state, shall give notice to the department of health
43 and environment when the release exceeds reportable quantities.

1 (3) *The person responsible for the release shall be responsible for*
2 *repayment of the cleanup costs incurred by the department upon*
3 *reasonably detailed notice by the secretary or the secretary's designee. If*
4 *the responsible party fails to submit payment for costs of the cleanup*
5 *operations promptly after giving notice, repayment costs shall be*
6 *recoverable in an action brought by the attorney general in the district*
7 *court of the county where such costs were incurred.*

8 (e) (1) *Upon a finding that a person has violated any provision of this*
9 *section or rules and regulations or orders adopted hereunder, the*
10 *secretary may impose a penalty not to exceed \$10,000. In the case of a*
11 *continuing violation, each day such violation continues shall be deemed a*
12 *separate violation.*

13 (2) *Any moneys recovered under this section shall be remitted to the*
14 *state treasurer in accordance with K.S.A. 75-4215, and amendments*
15 *thereto. Upon each such remittance, the state treasurer shall deposit the*
16 *entire amount in the state treasury to the credit of the emergency response*
17 *activities account in the natural resources damages trust fund established*
18 *pursuant to K.S.A. 75-5672(f), and amendments thereto.*

19 (3) *No penalty shall be imposed except after notice of the violation*
20 *and an opportunity for hearing upon the written order of the secretary*
21 *issued to the person who committed the violation. The order shall state the*
22 *violation, the penalty to be imposed and the right to request a hearing. The*
23 *request for hearing shall be in writing, directed to the secretary and filed*
24 *with the secretary within 15 calendar days after service of such order.*
25 *Hearings under this subsection shall be conducted in accordance with the*
26 *Kansas administrative procedure act.*

27 Sec. 2. K.S.A. 65-171v is hereby repealed.

28 Sec. 3. This act shall take effect and be in force from and after its
29 publication in the statute book.