

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~~ **alters** the natural physical, chemical or biological properties
8 of any waters or soils of the state ~~or is likely to create a nuisance or so as~~
9 **to** render such waters or soils harmful, detrimental or injurious to public
10 health, or to the plant, animal or aquatic life of the state or to other
11 designated uses. **"Pollutant" does not include any animal or crop waste**
12 **or manure on an agricultural operation or in an agricultural facility;**
13 **and**

14 (6) "release" means any threatened or real emission, discharge,
15 spillage, leakage, pumping, pouring, emptying, escape or dumping of a
16 pollutant into or onto the waters or soil of the state, except when done in
17 compliance with the conditions of a federal or state permit or in
18 accordance with the product label **or as part of normal agricultural**
19 **activities.**

20 (b) For the purpose of preventing water and soil pollution
21 detrimental to public health or the environment, the secretary of health
22 and environment shall:

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

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

27 (3) provide minimum reportable quantities;

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

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

33 (c) The secretary may:

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

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

40 (3) perform a cleanup of a release of a pollutant if the release poses
41 an emergency.

42 (d) (1) Whenever a pollutant is released intentionally, accidentally or
43 inadvertently, the person responsible for the release shall be responsible

1 *for the cleanup of the release.*

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

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

12 (e) (1) *Upon a finding that a person has violated any provision of this*
13 *section or rules and regulations or orders adopted hereunder, the*
14 *secretary may impose a penalty not to exceed ~~\$10,000~~ **\$5,000**. In the case*
15 *of a continuing violation, ~~each day such violation continues shall be~~*
16 *~~deemed a separate violation~~ **the maximum penalty shall not exceed***
17 ***\$15,000.***

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

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

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

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