Approved	3-23-88	
* *	Data	

MINUTES	OF THE	SENATE	COMMITTEE ON	ENERGY	&	NATURAL	RESOURCES	

The meeting was called to order by \_\_\_\_\_\_ Senator Merrill Werts \_\_\_\_\_ a

Chairperson

8:00 a.m./pxx. on \_\_\_\_\_\_ February 17 \_\_\_\_\_, 1988 in room 123-S of the Capitol.

All members were present except: Senator Feleciano - Excussed Senator Yost - Absent

Committee staff present:

Don Hayward - Revisor Nancy Jones - Secretary

Laura Howard - Research Raney Gilliland - Research

Conferees appearing before the committee:

Discussion continued on:

SB 455 - Enacting the environmental response act.

Chairman Werts asked committee members to give attention to the definition of "contaminates". The KDHE offered suggested language in the paper, Responses to Issues, given to the committee. (Attachment I)

This language could be added to the definition of "contaminates" to relieve the concerns of some. The Committee was reminded that the Interim Committee added lines 36 & 37, Section 1, to SB 455 which requires KDHE to adopt rules and regulations listing all contaminants. Senator Hayden requested clarification of oversight and authority of the legislature on rules and regulations.

A motion was made by Senator Hayden to strike lines 36 and 37 of Section 1 (a), seconded by Senator Thiessen.

Motion failed by hand count 3 to 4.

Jim Power stated KDHE maintains a classification list of contaminants and hazardous materials using as a guide information obtained from EPA and the Federal Superfund agency as there are no regulations in place at this time listing such materials for the purpose of this act. The Department tries to update the list of contaminants each year from publications received from RCRA, Epa and the Federal Superfund, The bill being proposed will not subject additional materials to classification as hazardous, it deals primarily with materials in concentrations that would pose a hazard to the environment.

Committee members expressed concern regarding lack of adequate plans for notifying the public of the list of contaminants and making it available.

Discussion and interpretation of "significant" and "potential" in the definition section, lines 34 and 35 of (a):

Concern was expressed that the KDHE list will become too encompassing. Senator Hayden feels technology available today allows easy detection of a larger number of hazardous materials that have always been there, but restraint must be employed in determining what a contaminant is and not go overboard with a contaminant list. Senator Hayden stated "that in spite of all the known hazards to health & well being, the life span is getting longer and he doesn't know whether this is due to being made aware these things are there or avoiding them because we do know they are there."

Chairman Werts asked the Committee to give their attention to an amendment proposed by KDHE defining "cleanup standards". (Attachment II)

A motion was made by Senator Kerr to adopt the language of "cleanup standards" as a definition in SB 455, seconded by Senator Langworthy. Motion carried.

Discussion on the authority the legislature would have in determining cleanup standards and possible language clarification of the amendment was held by the committee.

### CONTINUATION SHEET

MINUTES OF THE	SENATE	COMMITTEE ON	ENERGY &	NATURAL	RESOURCES	
room <u>123-</u> \$Statel	nouse, at <u>8:00</u>	a,m./ <b>IXIX</b> . on	Februar	У	17	, 19_88

Discussion of the definition of "contaminated site":

Senator Daniels feels the language "contiguous land" gives authority that is too broad to the KDHE. Jim Power stated the intent of the language is only to be able to determine the geographic limits of contamination.

The Committee was still discussing the definition of "contaminated site" at the time of adjournment.

Meeting adjourned. The next meeting will be February 18, 1988.

2-17-88 Hart Cherry James Power Stanley Grant Now Hammerschmidt Pennis Murphey KDHE K.F.B. John Blythe Margaren Post ahrens L's Chapter Sierra Club Charlene a Stenard KNRC Mary an Brodford League of Elbonen Voters Brian La fre KLST KCC/Mined-Land Board been Correct KG 9E KS Petroleum Chal Lea Peterson Dos Marker PRIE MCGIL & ASSOCIATES ALAN STEPPAT

Prepared by Kansas Department of Health & Environment Staff for Senator Merrill Werts (CONFIDENTIAL) February 3, 1988

Responses to Issues Raised Regarding Senate Bill 455

### Cleanup Standards

Despite the concern voiced regarding duplication of effort with the Environmental Protection Agency and extensive work hours required for the state to develop specific cleanup standards, much of the basic work has been done. Target cleanup criteria assembled by the Kansas Department of Health and Environment, based upon health and environmental criteria developed by the U.S. Environmental Protection Agency, have been utilized as guidelines of "how clean is clean" in the state's negotiation of consent agreements for remediation with numerous responsible parties. These criteria and the scientific evidence supporting them would serve as the nucleus for rule and regulation development of specific cleanup standards. No comparable listing of numerical cleanup standards exists at present under federal law.

## Definition of Contaminant and Release

A concern was raised regarding "permitted releases." Language could be added which would exempt from liability those releases of contaminants which occur in compliance with permits for discharge of pollutants issued by the state or the U.S. Environmental Protection Agency.

It is important that the definition of contaminant be left intact as currently drafted. The provision of an exemption for substances harmful to public health or environment based upon the type of activity which caused the release would restrict KDHE's ability to require private parties to remediate such problems or to utilize state resources, even if the problem threatened or contaminated a public water supply. The inclusion of substances on the listing to be developed in accordance with Section 2(a) of Senate Bill 455 would not subject those substances to additional regulatory controls, such as the requirements for management of hazardous wastes. It would only require that corrective action be taken if those substances were found in the environment in concentrations and locations where they would constitute a present or potential hazard to human health or the environment.

### Innocent Landowners

One conferee expressed concerns regarding an innocent landowner being held liable as a responsible party. However, beginning on line 0340 the bill provides an affirmative defense for a variety of circumstances, including the situation where the unilateral act of a third person resulted in the contamination. Unless a contractual relationship or other association existed between the landowner and the person whose actions resulted in the contamination, the landowner would not be liable. The department does not intend to further penalize victims of contamination problems.

## Administrative/Judicial Review

A number of commenters have made general references to concerns regarding due process and opportunities for review and appeal of staff decisions. The provisions of Section 9 (beginning on line 0404) includes a right of administrative and judicial review broad enough to ensure due process for any party adversely affected by any decision or action of the secretary under this act.

# Liability for Remediation Contractors

The current draft of Senate Bill 455 does not contain language that limits the liability of contractors performing remediation activities. The limitation of liability to a negligence standard for these contractors was proposed in the original bill draft. The absence of this limitation will cause serious problems for the state and responsible parties in obtaining remediation services.

Both the state and responsible parties will have a reduced number of contractors willing to perform remediation services and increased cost for all work performed.

### KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

#### MEMORANDUM

Date:

February 16, 1988

To:

Senator Merrill Werts

From:

Stanley C. Grant

Re:

S.B. 455

Amendment to Section 5 (c) of S.B. 455

Line 0205

"Cleanup standard" means national health or environmental standard or modfication thereof which (1) has been adopted and promulgated by a nationally recognized standards producing organization; (2) has been adopted by Kansas statute or regulation; or (3) has been designated a standard by the secretary, after consultation with appropriate state and federal agencies.

If you have any questions, you can reach Jim Power at X1535 or Ron Hammerschmidt at X1662.