

## HOUSE BILL No. 2155

By Committee on Agriculture

1-27

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

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

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

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

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

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

1 oversight of the cleanup;

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

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

7 (5) "pollutant" means any substance that alters the natural physical,  
8 chemical or biological properties of any waters or soils of the state 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 or  
12 manure on an agricultural operation or in an agricultural facility; and

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

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

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

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

26 (3) provide minimum reportable quantities;

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

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

32 (c) The secretary may:

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

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

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

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

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

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

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

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

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

29       Sec. 2. K.S.A. 65-171v and 65-171w are hereby repealed.

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