



**Kansas Grain and Feed Association  
Kansas Agribusiness Retailers Association  
Renew Kansas Association**

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Date: February 19, 2019  
To: Senate Committee on Agriculture  
From: Randy E. Stookey, Senior Vice President of Government Affairs  
RE: **Proponent Joint Testimony on SB 153, KDHE response operations for water and soil pollutant release, discharge or escape.**

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Chairman Kerschen and members of the Committee on Agriculture, thank you for the opportunity to provide testimony in support of Senate Bill 153. This testimony is submitted jointly on behalf of the Kansas Grain and Feed Association (KGFA), the Kansas Agribusiness Retailers Association (KARA), and Renew Kansas Association.

KGFA is the state association of the grain receiving, storage, processing and shipping industry in Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. KARA is an agribusiness industry trade association with membership of over 700 companies across Kansas. Renew Kansas Association is the trade association of the 10 ethanol processing plants in Kansas. Members of each of these associations fall under the regulatory umbrella of the Kansas Department of Health and Environment's Bureau of Environmental Remediation (department).

We understand the intent of Senate Bill 153 to allow the Secretary to clearly define, in regulation, reportable quantities and timelines for reporting spills of hazardous chemicals, and to harmonize those quantities and timelines with federal standards. The bill would also direct the Secretary to create a one-call system for spill notification. We agree with these efforts.

**Cost Recovery, Assessment:** The bill would grant the department the ability, in certain circumstances, to take necessary actions to clean up a hazardous release, and recover all "cleanup costs" incurred. However, it is unclear that the department would take a cost recovery action against the party whose actions were the proximate cause of the release. We would seek an amendment to the bill to clarify this point, and have proposed language for an amendment in our testimony.

**Civil Penalties:** The bill would grant the department civil penalty authority over persons violating "any provision of this section or rules and regulations or orders adopted hereunder." The bill authorizes a maximum civil penalty of \$10,000 per violation. For a continuing violation, each day may be considered a new violation, and there does not appear to be a maximum civil penalty. Should the bill move forward, we would seek an amendment for no more than \$5,000 per day, with a maximum cap of \$15,000 for a continuing violation. We have proposed this amendment in our testimony. We understand it is the department's intent to graduate the penalties based on the severity of the violation pursuant to a "penalty matrix" that would be adopted by regulation. We would agree with that approach.

**Cost Recovery, Pursuant to KAPA:** The bill would allow a cleanup cost recovery action for the department to be brought by the attorney general in the district court of the county where such costs were incurred. As this is an administrative action by a state agency, it would more properly be taken by the agency pursuant to the Kansas Administrative Procedures Act. We would seek an amendment to the bill to have any cost recovery action taken pursuant to an order of the Secretary, with a right to a hearing under the Kansas Administrative Procedures Act. We have proposed this amendment in our testimony.

Thank you for allowing us the opportunity to testify in support of Senate Bill 153. Please find our proposed amendments to the bill, below, which we have shared with the department. We respectfully request that the committee adopt our proposed amendments, and pass the bill out favorably. We will stand for questions at the appropriate time.

**Proposed Amendments to Senate Bill 153:**

**Amendment 1: Page 3, lines 1-7:** Ensuring cost recovery against party at fault.

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

The Secretary or the secretary's designee shall have authority to recover cleanup costs from the person responsible for the release upon receipt of detailed notice of the costs. However, the Secretary shall not have authority to recover cleanup costs from the person responsible for the substance released, unless, upon a preponderance of the evidence, the actions of the party responsible for the substance are the proximate cause of the release.

**Amendment 1: Page 3, line 8-12:** limiting maximum civil penalty to \$5,000, continuing violation \$15,000.

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

**Amendment 3: Page 3, line 27 (inserting new language):** Requiring KAPA notice and right to a hearing.

(4) No action for recovery of cleanup costs shall be imposed except after notice of the cleanup costs and an opportunity for hearing upon the written order of the secretary issued to the person against whom the cost recovery is assessed. The order shall fully describe the release incident, all cleanup actions taken by the secretary associated with release, all costs being assessed, and the right of the person to request a hearing. The request for hearing shall be in writing, directed to the secretary, and filed with the secretary within 15 calendar days after service of such order. Hearings under this subsection shall be conducted in accordance with the Kansas administrative procedure act.