

HOUSE BILL No. 2193

AN ACT concerning the secretary of health and environment; relating to environmental remediation; risk management program act; voluntary cleanup and property redevelopment act; amending K.S.A. 65-34,167, 65-34,168 and 65-34,169 and repealing the existing sections; also repealing K.S.A. 65-34,170.

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

New Section 1. (a) (1) For a site to be eligible to participate in the risk management program, the secretary shall make a finding that the site:

(A) Is subject to an agreement or order under the authority of the secretary's bureau of environmental remediation; and

(B) poses a low risk to human health and the environment.

(2) In making eligibility determinations, the secretary shall have authority to consider such additional factors as deemed relevant.

(3) Any changes in site conditions or property use that results in a change in the risks posed by the site shall make a site ineligible for acceptance or continued participation in the risk management program.

(b) (1) Funding for the risk management plan may be satisfied by the secretary where adequate funding is supplied by federal grants, designated fee funds or other funding sources. The secretary shall remit to the state treasurer, in accordance with K.S.A. 75-4215, and amendments thereto, all moneys received from this act. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the risk management fund. Funding requirements for the risk management plan payment will be based on the size and risk of the site to which the risk management plan applies, amount of contaminated groundwater, toxicity and mobility of the contaminants, frequency of long term care activities and oversight costs, as determined by the secretary.

(2) Upon acceptance of the application, participants shall make a one-time payment for the risk management plan of a minimum of \$2,500.

(c) (1) There is hereby established in the state treasury the risk management fund. Moneys from the following sources shall be deposited in the state treasury and credited to the fund:

(A) Moneys collected from the one-time payments;

(B) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for purposes of the fund; and

(C) interest attributable to the investment of moneys in the fund.

(2) Moneys in the risk management plan fund shall be expended only for the costs of:

(A) Review of risk management applications;

(B) oversight of risk management plan requirements;

(C) implementation of the risk management plan upon failure of the participant;

(D) activities performed by the secretary to address immediate or emergency threats to human health or the environment related to properties subject to risk management plans;

(E) development, operation and maintenance of the risk management plan tracking system; and

(F) administration and enforcement of the provisions of this act.

(3) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the risk management fund interest earnings based on the:

(A) Average daily balance of moneys in the risk management fund for the preceding month; and

(B) net earnings rate of the pooled money investment portfolio for the preceding month.

(4) All expenditures from the risk management plan fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or the secretary's designee for purposes set forth in this section.

(d) (1) A risk management plan shall terminate if it is demonstrated to the secretary's satisfaction that the risk management plan is no longer necessary to protect human health or the environment. Any person shall submit a request to the secretary for approval to terminate a risk management plan. The secretary shall review the request and provide the secretary's decision to approve or deny the request within 120 days after the secretary's receipt of the request. If the secretary denies the request, justification shall be provided with a written explanation of the denial

including that the person has not provided the documentation to demonstrate that the request is protective of human health and the environment, as determined by the secretary.

(2) A risk management plan agreement shall be an enforceable contract, that may be transferred to another person upon approval by the secretary. Any risk management plan may be modified by mutual written agreement by the person and the secretary. The secretary shall not acquire any liability by virtue of approving a risk management plan or by approving expiration of all or a portion of a risk management plan.

(e) A risk management plan pursuant to this section may include or require:

(1) Prompt notification to the secretary of any transfer of property that is the subject of a risk management plan, such notice to be given by the participant;

(2) prompt notification to the secretary of any change in use of the property that is the subject of a risk management plan;

(3) maintenance of protective structures or remedial systems at the site, such as soil caps, soil covers, soil surfaces, berms, drainage structures, vegetation, monitoring wells or other structures or systems;

(4) access to the property by agents of the secretary as necessary to inspect and monitor the risk management plan activities;

(5) any other obligations necessary to reduce or eliminate risks or threats to human health and the environment from the site; or

(6) restrictions, prohibitions and zoning requirements placed on property in the site by a local or state government. Such restrictions, prohibitions and zoning requirements may be utilized in addition with any risk management plan activities approved by the secretary. This provision does not grant or expand authority of local government to restrict, prohibit, zone or regulate land.

(f) Upon receipt of information that an approved risk management plan is not being implemented as written or that property subject to an approved risk management plan presents a hazard to human health or the environment, the secretary may take such actions as may be necessary to protect human health or the environment. The action the secretary may take shall include, but not be limited to:

(1) Issuing an order directing the participant to take such steps as are necessary to correct any deficiencies and fully implement the approved risk management plan.

(2) Issuing an order retracting the approval of the risk management plan and require the participant to implement remediation of the site to a cleanup standard that will allow for unrestricted use of the site.

(3) Assessing an administrative penalty of up to \$500 per day for failure to comply with the terms of the risk management plan.

(4) Performing actions required by the risk management plan and recovering any and all costs from the person responsible for performance of such actions.

(5) Commencing an action enjoining acts or practices set forth in the approved risk management plans or requesting that the attorney general or appropriate district or county attorney commence an action to enjoin such actions that result in approved risk management plans not being implemented or not being fully or properly implemented or that present a substantial and imminent threat or hazard to human health or the environment.

(g) Prior to the secretary's approval of the risk management plan, the participant shall provide written notification to all property owners and occupants within the site and provide proof of such notification to the secretary. The secretary may choose based on public interest to initiate and participate in public meetings to discuss the pending risk management plan.

(h) Any person adversely affected by any order or decision of the secretary pursuant to this act, within 15 days after service of the order or decision, may request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(i) As used in this section:

(1) "Long term care" means any activity, approved in the risk man-

agement plan, that provides assurances that the contamination at the site is not impacting human health;

(2) “owner” means any owner of record of property or authorized representative;

(3) “participant” means any person who has submitted an application for a risk management plan and the plan has been approved by the secretary and successor in interest to the risk management plan agreement;

(4) “person” means any individual, trust, firm, joint stock company, public or private corporation, limited liability company or partnership, the federal government or any agency or instrumentality thereof, any state, state agency, instrumentality, political or taxing subdivision thereof or any interstate body;

(5) “property” means real property;

(6) “remedial activity” means any assessment, cleanup or other action necessary or appropriate to respond to a release or threat of release of environmental contamination at a site;

(7) “risk management plan” means a long term care plan approved by the secretary and intended to protect human health and the environment at a site where residual contamination is above cleanup standards;

(8) “risk management plan agreement” means an enforceable agreement between the participant and the secretary that enacts the risk management plan;

(9) “secretary” means the secretary of health and environment; and

(10) “site” means all areas and media to which environmental contamination or pollution has been released, transported, migrated or to which contamination may migrate.

(j) The secretary shall adopt rules and regulations to implement the provisions of this act.

(k) The provisions of this section are declared to be severable and if any provision, word, phrase or clause of the section or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this section or the application thereof.

Sec. 2. K.S.A. 65-34,167 is hereby amended to read as follows: 65-34,167. Remedial alternatives shall be based on the actual risk to human health and the environment currently posed by contaminants ~~on the property~~, considering the following factors:

(a) The present and proposed future uses of the property and surrounding properties;

(b) ~~the ability of the contaminants to move in a form and manner which would result in exposure to humans and the surrounding environment at levels which exceed applicable state standards and guidelines or the results of a risk analysis if such standards and guidelines are not available~~ *which exceed acceptable contaminant concentrations as determined by a risk analysis that evaluates the property and surrounding properties as a whole;* and

(c) the potential risks associated with proposed cleanup alternatives and the reliability and economic and technical feasibility of such alternatives.

Sec. 3. K.S.A. 65-34,168 is hereby amended to read as follows: 65-34,168. (a) The department shall provide formal written notification to the applicant that a voluntary cleanup plan has been approved or disapproved within 60 days of submittal of the voluntary cleanup plan by the applicant unless the department extends the time for review to a date certain.

(b) The department shall approve a voluntary cleanup plan if the department concludes that the plan will attain a degree of cleanup and control of contaminants that complies with all applicable statutes and rules and regulations.

(c) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. If the department disapproves a voluntary cleanup plan based upon the applicant’s failure to submit the information required, the department shall notify the applicant of the deficiencies in the information submitted.

(d) The approval of a voluntary cleanup plan by the department ap-

plies only to those contaminants and conditions identified on the property based upon the statutes and rules and regulations that exist when the application is submitted.

(e) (1) Upon determination by the department that a voluntary cleanup plan is acceptable, the department shall publish a notice of the determination in a local newspaper of general circulation in the area affected and make the voluntary cleanup plan available to the public. The public shall have 15 days from the date of publication during which any person may submit to the department written comments regarding the voluntary cleanup plan. After 15 days have elapsed, the department may hold a public information meeting if, in the department's judgment, the comments submitted warrant such a meeting or if the applicant requests such a meeting. Upon completion of the public notification and participation process, the department shall make a determination to approve the plan in accordance with this section.

(2) *The voluntary cleanup plan and associated documents shall be available for public review upon request from a member of the public.*

(3) *Such cleanup plan and any associated documents shall be indexed and posted on the website of the Kansas department of health and environment upon determination by the department that a voluntary cleanup plan is acceptable and for at least five years following the no further action determination.*

(f) Departmental approval of a voluntary cleanup plan shall be void upon:

(1) Failure of an applicant to comply with the approved voluntary cleanup plan;

(2) willful submission of false, inaccurate or misleading information by the applicant in the context of the voluntary cleanup plan; or

(3) failure to initiate the plan within 6 months after approval by the department, or failure to complete the plan within 24 months after approval by the department, unless the department grants an extension of time.

(g) An applicant desiring to implement a voluntary clean up plan after the time limits prescribed by subsection (f)(3) have expired shall submit a written petition for reapplication accompanied by written assurances from the applicant that the conditions on the subject property are substantially similar to those existing at the time of the original approval. Reapplications shall be reviewed by the department. Any reapplication that involves property upon which the condition has substantially changed since approval of the original voluntary cleanup plan shall be treated as a new application and shall be subject to all the requirements of this act.

(h) Within 45 days after the completion of the voluntary cleanup described in the approved voluntary cleanup plan, the applicant shall provide to the department assurance that the plan has been fully implemented. A verification sampling program shall be required by the department to confirm that the property has been cleaned up as described in the voluntary cleanup plan.

Sec. 4. K.S.A. 65-34,169 is hereby amended to read as follows: 65-34,169. (a) After an applicant completes the requirements of this act, the department may determine that no further remedial action is required. Within 60 days after such completion, unless the applicant and the department agree to an extension of the time for review, the department shall provide written notification that a no further action determination has been made.

~~(b)-(1) The department may consider in issuing this determination that contamination or a release of contamination originates from a source on adjacent another property upon which the necessary action which protects human health and the environment is or will be taken by a viable and financially capable person or entity which may or may not be legally responsible for the source of contamination.~~

~~—(2) The department shall provide written notification of a no further action determination.~~

~~(3)-(c)~~ (c) The issuance of a no further action determination by the department applies only to identified conditions on the property and is based upon applicable statutes and rules and regulations that exist as of the time of completion of the requirements.

~~(e)~~(d) The department may determine that the no further action determination, under this section is void if:

(1) There is any evidence of fraudulent representation, false assurances, concealment or misrepresentation of the data in any document to be submitted to the department under this act;

(2) the applicant agrees to perform any action approved by the department and fails to perform such action;

(3) the applicant's willful and wanton conduct contributes to known environmental contamination; or

(4) the applicant fails to complete the voluntary actions required in the voluntary cleanup plan.

~~(d)~~(e) If a no further action determination is not issued by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial.

Sec. 5. K.S.A. 65-34,167, 65-34,168, 65-34,169 and 65-34,170 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.