

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the matter of the petition of Daylight) Docket No. 25-CONS-3040-CMSC
Petroleum, LLC (Operator) to open a docket)
pursuant to K.S.A. 55-605(a) regarding a fluid) CONSERVATION DIVISION
leak in Section 16, Township 30 South, Range)
16 East, Wilson County, Kansas.) License No. 35639

PRE-FILED REBUTTAL TESTIMONY OF

RYAN A. HOFFMAN

ON BEHALF OF COMMISSION STAFF

JANUARY 31, 2025

1 **Q. What is your name and business address?**

2 A. Ryan A. Hoffman, 266 N. Main St., Ste. 220, Wichita, Kansas 67202.

3 **Q. By whom are you employed and in what capacity?**

4 A. I am employed by the Kansas Corporation Commission (KCC) as Director of the
5 Conservation Division.

6 **Q. Would you please briefly describe your background and work experience.**

7 A. I received my Bachelor of Arts degree in Political Science from the University of Kansas in
8 2004 and my Juris Doctorate from Washburn University School of Law in December of 2007
9 where I also achieved a Certificate in Natural Resources Law. I was a Legislative Fellow for
10 the Kansas Legislative Research Department during the 2008 legislative session where I
11 helped staff various legislative committees. I began as a Litigation Counsel with the KCC
12 Conservation Division in August of 2008. As Litigation Counsel, my duties included drafting
13 and reviewing Penalty Orders and various Applications, attending Oil and Gas Advisory
14 Committee meetings and legislative hearings, and providing advice on regulatory matters to
15 Conservation Division staff.

16 I was later promoted to Director in June of 2013. As Director, I chair the Oil and Gas
17 Advisory Committee established by K.S.A. 55-153. I also represent the KCC as a member
18 of the Executive Committee on the Board of Directors for the Groundwater Protection
19 Council, and I was appointed as the Associate Representative for Kansas on the Interstate
20 Oil and Gas Compact Commission (IOGCC) by Governor Brownback in 2014. I have served
21 as the Chair of the Legal and Regulatory Affairs Committee and as the Chair of the Council
22 of Oil and Gas Attorneys for the IOGCC. Further, I'm currently serving my second term as
23 President of the Oil, Gas, and Mineral Law Section of the Kansas Bar Association.

1 **Q. What duties does your position with the KCC Conservation Division involve?**

2 A. Generally speaking, I oversee the daily operations of the Division. I directly supervise the
3 four Professional Geologist Supervisors who oversee District Office operations, as well as
4 three Central Office Supervisors who are responsible for the Environmental Remediation
5 Department, Underground Injection Control and Production Departments, and the
6 Administrative Department. I also share oversight of the two Litigation Counsels housed
7 within the Conservation Division. When necessary, I brief the Commissioners on emerging
8 issues and provide testimony to the Legislature on matters related to the regulation of the oil
9 and gas industry in Kansas.

10 **Q. Have you previously testified before this Commission?**

11 A. Yes.

12 **Q. What is the purpose of your testimony in this matter?**

13 A. The purpose of my testimony is to respond to the assertions contained in the pre-filed
14 testimonies of Ms. Kelsee Wheeler, Mr. Art Benjamin, and Mr. Justin Wintjen to provide the
15 Commission with information that Daylight Petroleum, Inc. (Operator) has not raised a
16 sufficient legal basis to support granting its petition, and that Operator should be required to
17 plug the abandoned well beneath the building on the Johnson lease.

18 **Q. Mr. Benjamin provides a timeline of events in his testimony beginning on line 17 of Page**
19 **7 that continues to line 21 of Page 9. What stands out to you regarding this timeline?**

20 A. First, it omits the August 10, 2023, letter from Mr. Marsh to Operator regarding Operator's
21 responsibility to plug the abandoned well pursuant to K.S.A. 55-179 (see Exhibit TR-1). This
22 letter set a deadline of September 1, 2023, to locate and plug the well. Second, I believe the
23 timeline indicates a willingness from KCC staff work with the Operator as it did not

1 immediately file the Show Cause Motion on September 1, 2023, but instead continued to work
2 with Operator.

3 **Q. Are there any other items you believe should be included in this timeline?**

4 A. Yes. I think it is important to note that Mr. Marsh mailed another letter to Operator on June
5 13, 2024, again stating Operator's responsibility to plug the well and that failing to do so by
6 August 1, 2024, would result in staff following through with bringing this matter before the
7 Commission. Operator filed its petition on July 29, 2024, before staff's deadline.

8 **Q. Is there anything significant in your opinion regarding the timing of Operator's Petition**
9 **Opening Docket Pursuant to K.S.A. 55-605(a)?**

10 A. Yes. Prior to the deadline, Counsel for Operator reached out by phone to gauge staff's interest
11 in proceeding in this manner rather than staff's traditional approach of a Motion to Show
12 Cause because it was better strategically for Operator in future actions involving the
13 landowner.

14 **Q. Is it possible that other potentially responsible parties exist to plug the breakout well?**

15 A. Yes, I would point to Mr. Benjamin's testimony on Page 3, lines 8-15. He claims the
16 landowner's predecessor in interest admitted to cutting off two other wells and burying them.
17 It is also entirely possible that the prior landowner did the same to this well when it constructed
18 the building on top of it, however no documentation has been provided to Staff to date that
19 shows the landowner intentionally buried the well or intentionally built a building on top of
20 the well to make them responsible pursuant to K.S.A. 55-179(b)(6).

1 **Q. If there are other potentially responsible parties and Operator could have mitigated its**
2 **responsibility for plugging costs and damages, could it have been a better option to move**
3 **forward with staff’s Motion to Show Cause?**

4 A. I believe so. It certainly would have been the most effective use of all parties’ time. In the
5 Show Cause, the Commission could have found multiple parties to be jointly and severally
6 liable for the costs. Instead, Operator suggests the Commission should generate policy based
7 on an inaccurate interpretation of statutory language.

8 **Q. The testimony of both Ms. Wheeler and Mr. Benjamin allege that it would be economic**
9 **waste if Operator is required to locate and plug the abandoned well. Do you agree with**
10 **that allegation?**

11 A. No. Waste is prohibited under Kansas law, however the statutes concerning waste are
12 specifically found under Article 6 – Crude Oil or Petroleum; Production and Sale and Article
13 7 – Production and Conservation of Natural Gas. Specifically, the statutes that discuss waste
14 are K.S.A. 55-601, K.S.A. 55-602, K.S.A. 55-701, and K.S.A. 55-702. I have attached copies
15 of those statutes to my testimony as *Exhibit RH-1*. None of these statutes refer or apply waste
16 to locating and plugging abandoned wells. Interestingly, K.S.A. 55-702 specifically defines
17 economic waste. It provides that economic waste shall mean the use of natural gas in any
18 manner or process except for efficient light, fuel, carbon black manufacturing and
19 repressuring, or for chemical or other processes by which such gas is efficiently converted
20 into a solid or a liquid substance. The term waste shall not include the use or flaring of natural
21 gas if permitted pursuant to an order issued or rule and regulation adopted under the provisions
22 of subsection (b) of K.S.A. 55-102, and amendments thereto. If you were to apply this specific
23 definition of economic waste to oil, locating and plugging abandoned wells would not qualify.

1 **Q. Is there anything else you would like to note about K.S.A. 55-602?**

2 A. Yes. I would also like to point out that K.S.A. 55-602 specifically mentions that the state
3 corporation commission shall have authority to make rules and regulations for the prevention
4 of such waste *and* for the protection of all fresh-water strata, and oil- and gas-bearing strata
5 encountered in any well drilled for, or producing, oil. Based on the testimony provided by
6 Mr. Troy Russell, Ms. Julie Shaffer, and Mr. Levi Burnett, the clearest way to protect the
7 freshwater strata in this area is to have Operator locate and plug the abandoned wellbore
8 beneath the building on the Johnson lease.

9 **Q. Do increased plugging costs for a well constitute economic waste?**

10 A. Based on the statutes, no. If anything, Operator's theory that the Commission should fully
11 litigate this matter and then proceed to use the statutory process outlined for determining
12 abandoned well plugging responsibility is economic waste because it has had to refocus
13 Staff's time and resources to this matter instead of focusing on helping operators who are
14 attempting to achieve compliance. As I state above, the waste referenced in K.S.A. 55-601
15 and 55-701 specifically refers to the production and sale of crude oil and the production and
16 conservation of natural gas. There is nothing in the statutes that indicates economic waste
17 applies to plugging abandoned wells such as the abandoned well beneath the building. Thus,
18 a Commission order requiring Operator to plug the abandoned well beneath the building in
19 this instance would not conflict with the Commission's statutory mandates. While Mr. Russell
20 and Ms. Schaffer discuss the impacts to Table I in greater detail in their testimony, it does not
21 appear that maintaining the status quo at the Johnson lease protects all fresh-water strata. All
22 Operator proposes in the relief requested is to monitor the pollution occurring, not end it or
23 protect fresh and usable water.

1 **Q. On page 3 lines 6 through 8 of Mr. Benjamin’s testimony, he states that KCC Staff has**
2 **no evidence that a well actually exists beneath the commercial building and cannot**
3 **attempt to hold Daylight responsible for an abandoned well before one is even found.**
4 **Do you agree with his assertion?**

5 A. No. I believe the evidence compiled by Staff along with the knowledge and experience
6 working in this area is enough to demonstrate that there is an unplugged, abandoned well
7 beneath the building. The industry in Kansas is mature, especially in Eastern Kansas. Drilling
8 activity predates the formation of the Commission in some areas by 40-60 years. Even then,
9 my experience has been that it is entirely possible that a paper record of a well never made it
10 into the database. It is also possible that not every operator has followed the rules and may
11 have drilled a well where they did not have authority. There are enough of these possibilities
12 that the Conservation Division employs a staff member whose sole job is to search through
13 old records to try and validate the existence of actual wells. She will be employed for a long
14 time based on the number of well records we have. If we asked her to verify the existence of
15 all of the wells for which we have no records, we may have to create a whole new department.

16 **Q. On page 5, lines 9 through 13 of his testimony, Mr. Benjamin states that if the**
17 **Commission affirms its Staff’s actions and concludes that the building must be torn**
18 **down in order to look for a possible abandoned well, then Staff will need to perform an**
19 **investigation pursuant to K.S.A. 55-178 to determine if in fact a well does exist beneath**
20 **the commercial building and if a well is found, the responsible party will need to be**
21 **determined in the manner prescribed by K.S.A. 55-179. How does an operator become**
22 **responsible for an abandoned well?**

1 A. First, I would like to address Mr. Benjamin's characterization of Staff's actions. Staff has not
2 demanded Operator tear the building down. Now, as to his assertion regarding the
3 investigation, an operator can become responsible for an abandoned well through a variety of
4 ways which are defined under K.S.A. 55-179. I have attached a copy of K.S.A. 55-179 to my
5 testimony as *Exhibit RH-2*. In this instance, it appears Operator is responsible for the
6 abandoned well pursuant to K.S.A. 55-179(b)(1). That portion of the statute states that a
7 person is legally responsible for the proper care and control of an abandoned well if the person
8 causes pollution or loss of usable water through the well, including any operator of an
9 injection well, disposal well or pressure maintenance program. Operator has not contested
10 that it is not responsible for the abandoned well beneath the building. Further, there has been
11 no testimony proffered on Operator's behalf that indicates Operator is insolvent or relieved
12 from the cost of locating and plugging the abandoned well as described under K.S.A.
13 55-179(c). Additionally, Commission Staff has already identified and notified Operator of its
14 responsibility for the abandoned well pursuant to K.S.A. 55-179 (see Exhibit TR-1 and
15 Exhibit TR-5). I do not believe that Staff has identified any other potentially responsible
16 parties at this time, and Operator has not attempted to join any other potentially responsible
17 parties in this docket.

18 **Q. What would the impact be if operators are not required to plug abandoned wells that**
19 **they are legally responsible for?**

20 A. The state plugging fund would not have sufficient resources to plug wells that do not have
21 responsible parties, so the plugging costs of those wells would have to be covered by current,
22 active operators or Kansas citizens.

1 **Q. What happens if the Commission determines an operator is not responsible for plugging**
2 **an abandoned well?**

3 A. Per K.S.A. 55-179(c) if the Commission determines that no person is legally responsible for
4 the proper care and control of an abandoned well, or that each legally responsible person is
5 dead, no longer in existence, insolvent or can no longer be found, then the Commission shall
6 cause such well to be plugged as funds become available. The cost of such plugging shall be
7 paid by the Commission from the abandoned oil and gas well fund created pursuant to K.S.A.
8 55-192. In the present matter, if the Commission does not require Operator to plug the well,
9 then Staff will be required to locate and plug the well. Since the plugging fund is built up by
10 production proceeds from all operators, requiring the State to pay for the costs of the well
11 through its plugging fund effectively punishes all operators and not the operator who is
12 specifically responsible for the well.

13 **Q. On page 4 line 6 of his testimony, Mr. Wintjen estimates that it will cost \$1,221,800 to**
14 **tear down and rebuild the commercial building. Do you have any reason to question that**
15 **valuation?**

16 A. First, I would hope that we would be able to work with Operator to find an alternative method
17 of plugging the well. I would feel more confident in his estimate if he would have provided
18 any tangible evidence I could review. For example, Mr. Wintjen mentions his experience with
19 similar structures but provides no documentation in support of his figures. Further, he does
20 not mention ever reviewing the blueprints or building plan or how he even came to know how
21 the building is constructed. What documents did he review to make his estimations? I'm not
22 saying they are wrong or that I would know more, but if I were asking to be treated as an

1 expert I would expect the Commission to require support for my statements beyond putting
2 words into pre-filed testimony.

3 **Q. What is the impact to the State Plugging Fund if the Commission ends up plugging this**
4 **well?**

5 A. If Mr. Wintjen's testimony is accurate, then it could have a significant impact to the State
6 Plugging Fund. The current unencumbered cash balance of the State Plugging Fund is a little
7 more than \$1.6 million, so if Staff is required to locate and plug this well, it could significantly
8 inhibit staff's ability to respond to abandoned well emergencies where there actually is no
9 responsible party.

10 **Q. In the relief requested by Ms. Wheeler and Mr. Benjamin's testimonies, both mention**
11 **entering this site into the Voluntary Cleanup and Property Redevelopment Program**
12 **administered by KDHE. Do you think this is a plausible option?**

13 A. I do not. I have several concerns that KDHE could or would allow this site into the VCPRP
14 based on my review of the online manual for the program.¹ Additionally, as I state above, if
15 the Commission does not require Operator to plug the well, then Staff could ultimately be
16 required to use money from the state abandoned well fund to locate and plug the abandoned
17 well.

18 **Q. What leads you to question whether or not KDHE would be able to oversee this site?**

19 A. First, I am not sure that KDHE would even have the ability to allow this site into the VCPRP
20 program. I have attached three pages regarding the eligibility of projects from the VCPRP
21 Manual to my testimony as *Exhibit RH-3*. Under the frequently asked questions for the
22 program, there is a question about what properties are eligible for the VCPRP. The response

¹ <https://www.kdhe.ks.gov/DocumentCenter/View/4874/Voluntary-Cleanup-and-Property-Redevelopment-Program-Manual-PDF>

1 states, “Any Kansas property with known or suspected contamination, even if the source of
2 contamination is an adjacent property, can participate unless it is: on or proposed for the
3 National Priorities List, or Superfund; Already subject to a state, local, or federal
4 environmental order or agreement; Required to have a Resource Conservation and Recovery
5 Act permit with a corrective action component; **Contaminated by an oil and gas production**
6 **release specifically regulated by the Kansas Corporation Commission; An immediate**
7 **threat to human health or the environment;** or a substantial threat to public or private
8 drinking water wells.” Generally speaking, a breakout well presents an immediate threat to
9 the environment. Due to this site being polluted by an oil and gas production release
10 specifically regulated by the KCC, it does not appear that the site would be eligible per the
11 program’s own guidelines. Additionally, assuming the Commission directs Operator to locate
12 and plug the well, the abandoned well would be subject to a state order as well.

13 **Q. Do you have any concerns about this matter being turned over to KDHE’s VCPRP**
14 **program?**

15 A. Yes. The biggest concern that I have is that participation in the program is entirely voluntary.
16 My limited understanding is that Operator and KDHE would agree to terms as part of an
17 application process. If the application is thereafter approved and the site becomes part of the
18 VCPRP, then that could give Operator more time to divest itself of its interests in the State of
19 Kansas. I am also concerned about KDHE’s ability to institute any enforcement action against
20 Operator if Operator fails to take the necessary steps to address the issues at the lease. Since
21 the program is voluntary, there is nothing that prevents Operator from walking away from the
22 program at any point in time.

1 My next concern is that this project would not meet the intent of the VCPRP program.
2 My understanding is that the point of any cleanup would be to eliminate the source of
3 pollution, not just monitor it. Operator seems to suggest that it would be willing to plug the
4 #6 well and that will resolve the threat; however, the channel that took the brine to the
5 breakout well still exists. This means there is now a conduit to lose usable water. The impact
6 from injecting into the Olnhausen Farms #6 may cease with plugging the well, but the threat
7 to usable water has not been resolved. Plugging the abandoned well eliminates the pathway
8 for usable water to find that channel and be lost. A lesser concern is that there was no
9 indication from their testimony that Ms. Wheeler nor Operator have discussed this situation
10 with KDHE or submitted an application to enter the site into the VCPRP program. It is
11 concerning that they are suggesting a proposal without having any clue if it would even be
12 acceptable to KDHE.

13 **Q. On page 4 lines 21 through 22 of his testimony, Mr. Benjamin states that KCC Staff has**
14 **been unwilling to discuss or even consider any long-term approach to this situation. Do**
15 **you have any concerns that Operator will be around for the long term?**

16 A. Yes. It is my understanding that Operator has submitted a request to transfer nearly all of its
17 wells to another operator. Specifically, it is my understanding that there were 54 request to
18 transfer forms submitted to the Commission for 421 of Operator's wells. The only wells that
19 Operator has not requested to transfer at this time are eleven wells on the Johnson lease, which
20 is the lease the abandoned well in this matter is located on and the Olnhausen Farms #6 well,
21 which is the injection well that caused the abandoned well to breakout on the Johnson lease.
22 It appears that Operator is attempting to divest itself from any interest in the State of Kansas
23 which could assist with walking away from this issue if the Commission requires Operator to

1 plug the well. Initiating this docket and suggesting Commission staff follow it up with a
2 K.S.A. 55-178 investigation and K.S.A. 55-179 determination further enables the operator to
3 reduce the capital available to address the problem it created.

4 **Q. What is your recommendation?**

5 A. Based on the statutes, it is clear to me that there are only two options regarding the abandoned
6 well beneath the commercial building. The Commission can require Operator to locate and
7 plug the breakout well, or it will become the Commission's responsibility to pay for locating
8 and plugging the breakout well. In my opinion, Operator has not provided any reasonable
9 alternative to locating and plugging the abandoned well beneath the building and eliminating
10 the pollution threat. Operator also has failed to show how it is not responsible for plugging
11 the abandoned well.

12 **Q. Does this conclude your testimony?**

13 A. Yes.

2024 Kansas Statutes

55-601. Waste prohibited. The production of crude oil or petroleum in the state of Kansas in such manner and under such conditions as to constitute waste is hereby prohibited and shall be unlawful.

History: L. 1931, ch. 226, § 1; May 28.

2024 Kansas Statutes

55-602. Waste defined; rules and regulations; person defined. The term "waste" as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, waste of reservoir energy, and the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The state corporation commission shall have authority to make rules and regulations for the prevention of such waste and for the protection of all fresh-water strata, and oil- and gas-bearing strata encountered in any well drilled for, or producing, oil. "Person" as herein used shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator and a fiduciary of any kind.

History: L. 1931, ch. 226, § 2; L. 1933, ch. 214, § 1; L. 1939, ch. 227, § 1; March 30.

2024 Kansas Statutes

55-701. Waste of natural gas prohibited. The production of natural gas in the state of Kansas in such manner and under such conditions and for such purposes as to constitute waste is hereby prohibited.

History: L. 1935, ch. 213, § 1; L. 1945, ch. 233, § 1; March 24.

2024 Kansas Statutes

55-702. Definitions. The term "waste", in addition to its ordinary meaning, shall include economic waste, underground waste and surface waste. Economic waste shall mean the use of natural gas in any manner or process except for efficient light, fuel, carbon black manufacturing and repressuring, or for chemical or other processes by which such gas is efficiently converted into a solid or a liquid substance. The term waste shall not include the use or flaring of natural gas if permitted pursuant to an order issued or rule and regulation adopted under the provisions of subsection (b) of K.S.A. 55-102, and amendments thereto. The term "common source of supply" shall include that portion lying within this state of any gas reservoir lying partly within and partly without this state. The term "commission" shall mean the state corporation commission of the state of Kansas, its successors, or such other commission or board as may hereafter be vested with jurisdiction over the subject matter of this act.

History: L. 1935, ch. 213, § 2; L. 1945, ch. 233, § 2; L. 1983, ch. 183, § 2; July 1.

2024 Kansas Statutes

55-179. Same; responsibility for remedial actions; hearings; orders; plugging. (a) If the commission determines that a well is an abandoned well and has reason to believe that any person is legally responsible for the proper care and control of such well, the commission shall cause any such person to come before the commission in accordance with the provisions of the Kansas administrative procedure act. If the commission finds that any person is, in fact, legally responsible for the proper care and control of such well, the commission may issue any orders obligating any such person to plug the well or to otherwise cause such well to be brought into compliance with all rules and regulations of the commission and may order any other remedies as may be just and reasonable. Proceedings for reconsideration and judicial review of any order shall be conducted in the manner provided pursuant to K.S.A. 55-606, and amendments thereto.

(b) A person that is legally responsible for the proper care and control of an abandoned well shall be limited to one or more of the following:

(1) Any person causing pollution or loss of usable water through the well, including any operator of an injection well, disposal well or pressure maintenance program;

(2) the most recent operator to produce from or inject or dispose into the well, but if no production or injection has occurred, the person that caused the well to be drilled.

A person shall not be legally responsible for a well pursuant to this paragraph if: (A) Such person can demonstrate that the well was physically operating or was in compliance with temporary abandonment regulations immediately before such person transferred or assigned the well to an operator with an active operator's license; and (B) a completed report of transfer was filed pursuant to commission regulations if transferred or assigned after August 28, 1997;

(3) the person that most recently accepted responsibility for the well by accepting an assignment or by signing an agreement or other written document, between private parties, in which the person accepted responsibility. Accepting an assignment of a lease, obtaining a new lease or signing an agreement or any other written document between private parties shall not in and of itself create responsibility for a well located upon the land covered thereby unless such instrument adequately identifies the well and expressly transfers responsibility for such well;

(4) the operator that most recently filed a completed report of transfer with the commission in which such operator accepted responsibility for the well or, if no completed report of transfer has been filed, the operator that most recently filed a well inventory with the commission in which such operator accepted responsibility for the well. Any modification made by commission staff of any such documents shall not alter legal responsibility unless the operator was informed of such modification and approved of the modification in writing;

(5) the operator that most recently plugged the well, if no commission funds were used; and

(6) any person that does any of the following to an abandoned well without authorization from the commission: (A) Tamper with or removes surface or downhole equipment that was physically attached to the well or inside the well bore; (B) intentionally destroys, buries or damages the well; (C) intentionally alters the physical status of the well in a manner that will result in more than a de minimis increase in plugging costs; or (D) conducts any physical operations upon the well.

(c) If the commission determines that no person is legally responsible for the proper care and control of an abandoned well, or that each legally responsible person is dead, no longer in existence, insolvent or can no longer be found, then the commission shall cause such well to be plugged as funds become available. The cost of such plugging shall be paid by the commission from the abandoned oil and gas well fund created pursuant to K.S.A. 55-192, and amendments thereto.

(d) The validity of any order issued by the commission prior to July 1, 2021, shall not be affected by the provisions of this section but shall apply to any determination of responsibility regarding any abandoned well.

(e) As used in this section, "abandoned well" means a well that is not claimed on an operator's license that is active with the commission and is unplugged, improperly

plugged or no longer effectively plugged.

History: L. 1986, ch. 201, § 31; L. 1988, ch. 356, § 165; L. 1993, ch. 62, § 1; L. 1996, ch. 263, § 7; L. 2001, ch. 191, § 6; L. 2021, ch. 28, § 6; July 1.

education, experience, or licensure sufficient to prepare a competent environmental site assessment and conform to federal standards for “All Appropriate Inquiries.”

Assessments that may be provided for eligibility review include: Phase I ESAs, Phase II ESAs, Brownfields Targeted Assessments, and Site Assessments conducted by KDHE’s Site Assessment Program.

Submitted assessments should include:

- A legal description and map identifying the property location, boundaries, and size
- A physical description of the property and nearby areas, including any surface water bodies and groundwater aquifers
- A list of water wells on or within one half-mile of the property, and how they are used
- A history of how the property has been used over time and the current use of adjacent areas
- Present and proposed uses of the property
- Information concerning the nature and extent of any contamination, and releases of contaminants at or near the property
- Any sampling results or other data with respect to soil, groundwater, surface water, sediment, or air
- A description of potential human and environmental exposures to contamination based upon the property’s current or future use

Eligibility Review

Eligible applicants include any person, corporation, non-profit, or unit of government that has title to, control of, or access to a property with threatened, suspected, or known environmental contamination.

KDHE may review agency files about the property and surrounding properties, as well as the information submitted with the application package.

Properties that are eligible to participate in the VCPRP:

- The source of the contamination may be off-site, or the source or extent of contamination is not yet known
- Contaminant levels identified do not pose an immediate and/or significant risk of harm to human health or the environment
- Contaminant levels identified are not a substantial threat to public or private drinking water wells
- Are owned, controlled, or can be accessed by the voluntary party
- Are not eligible for reimbursement under a KDHE trust fund program: or; are eligible but chose not to be addressed under a KDHE trust fund program
- May include residential properties affected by a release of hazardous material

Properties that are **NOT** eligible to participate in the VCPRP may:

- Be listed or proposed for listing on the federal National Priorities List (Superfund)
- Be under an existing environmental enforcement action, order, or agreement with a local, state, or federal government agency
- Have or should have a Resource, Conservation, and Recovery Act permit containing a corrective action component

- Have been contaminated by oil and gas activities regulated by the Kansas Corporation Commission
- Present an immediate and significant risk to human health and the environment, including risk to public and private drinking water supplies

If part of a large property is not eligible, the rest still may be. Contact the VCPRP Coordinator for an eligibility determination.



VCPRP Activities Since 1997

KDHE publishes an Annual Program Report for the VCPRP in the Kansas Register. <http://www.kssos.org/>

Early Coordination with Other Programs



The VCPRP coordinates with other federal and state programs to ensure the best outcome for each contaminated property. Upon reviewing the application, KDHE may direct the applicant to another, more appropriate program. For example, a site that is eligible for reimbursement through one of KDHE's Trust Fund programs will be directed to that program; sites conducting work under the VCPRP will not be reimbursed.

The **Petroleum Storage Tank Release Trust Fund** provides financial assistance for facilities where contamination from underground and aboveground petroleum storage tanks has occurred. Information on eligible entities and how to apply is available at http://www.kdheks.gov/tanks/trust_fund/index.html.

The **Kansas Dry Cleaning Facility Release Trust Fund** was developed as a mechanism for conducting state-led investigation and remediation of sites that have applied and been accepted into the Dry Cleaning Facility Release Trust Fund. More information about this fund is available at http://www.kdheks.gov/dryclean/dryclean_trust_fund.htm.

Voluntary Agreement and Deposits

The Voluntary Agreement is non-negotiable and must be signed by the applicant and the Secretary of KDHE before any work can be done under the VCPRP. The applicant must also provide the requested initial deposit to KDHE before VCPRP work can begin.

A deposit amount of \$2,000 to \$5,000 will be required for each site that enters the program. The voluntary party will typically be invoiced quarterly for costs associated with the VCPRP. KDHE will draw upon the deposit to cover KDHE's oversight activities until the deposit remaining is approximately \$2,000, then KDHE will initiate invoicing for the project. If the applicant enters multiple properties in the program, KDHE can provide some flexibility as to the total amount of the deposit; questions about grouped properties should be directed to the VCPRP Coordinator.

The VCPRP is a "pay to use" program, meaning voluntary parties reimburse for KDHE's oversight of program requirements. Oversight activities include:

- Reviewing documents, studies, and test results
- Collecting confirmatory duplicate environmental samples, sampling supplies, and laboratory analysis
- Visits to the property, including travel and per diem

Appendix A: Frequently Asked Questions

What is the Voluntary Cleanup and Property Redevelopment Program?

The VCPRP was established in 1997 to address contaminated properties that do not pose an immediate threat to human health and the environment. The program establishes a streamlined process to address these properties in an expedited manner, encouraging their redevelopment or enhancement. This practice promotes the use of established industrial tracts rather than building on pristine land. The program is voluntary and is designed to encourage industry to propose properties that need attention, addressing them in a timely manner through a local/state partnership. These properties and their owners benefit from an administrative process that may provide environmental liability relief in months, rather than years or decades, restoring a property's value and productive use.

Who can participate in the Kansas VCPRP?

Just about any person or entity with adequate access to or control of a property can enroll that property in the VCPRP. This includes property owners or purchasers, facility owners and operators, trustees, and local governments who acquired the property through abandonment, delinquency, or other circumstances.

Why should I consider the VCPRP?

Known or suspected contamination makes a property less attractive to purchasers and drives down property values. State and federal cleanup programs typically concentrate on highly contaminated sites, and properties with low or moderate levels of contamination may never be addressed. The VCPRP removes uncertainty, cleans up the property, decreases potential liability, and supports property values.

What properties are eligible for the VCPRP?

Any Kansas property with known or suspected contamination, even if the source of contamination is an adjacent property, can participate unless it is:

- On or proposed for the National Priorities List, or Superfund
- Already subject to a state, local, or federal environmental order or agreement
- Required to have a Resource Conservation and Recovery Act permit with a corrective action component
- Contaminated by an oil and gas production release specifically regulated by the Kansas Corporation Commission
- An immediate threat to human health or the environment.
- A substantial threat to public or private drinking water wells

If part of a large property is not eligible, the rest still may be. Contact the VCPRP Coordinator for an eligibility determination.

I want to sell my property. Can the VCPRP provide a buyer and their lending institution an evaluation of existing environmental conditions?

No. While your purchaser or their lender may already require a "due diligence" site assessment, the VCPRP only becomes involved in a property when contamination is known to be present. However, in certain cases your property may be eligible for assessment through KDHE's Brownfields Program.

Prospective purchasers of contaminated properties may be eligible to receive a Certificate of Environmental Liability Release (CELR) from KDHE. Additional questions regarding the CELR

CERTIFICATE OF SERVICE

25-CONS-3040-CMSC

I, the undersigned, certify that a true and correct copy of the attached Testimony has been served to the following by means of electronic service on January 31, 2025.

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