HOUSE BILL No. 2200

AN ACT concerning hydrocarbons; providing for regulation of underground storage thereof; prohibiting certain acts and providing penalties for violations; relating to disposition of certain fees; amending K.S.A. 2000 Supp. 55-150, 55-155, as amended by section 190 of 2001 Senate Bill No. 15, 55-161, 55-179, 55-180, as amended by section 193 of 2001 Senate Bill No. 15, 55-182, 65-171d and 74-623 and repealing the existing sections.

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

New Section 1. (a) There is hereby established in the state treasury the well plugging assurance fund.

(b) Moneys in the well plugging assurance fund shall be used only for the purpose of paying the costs of: (1) Investigation of abandoned wells, and their well sites, drilling of which began on or after July 1, 1996; and (2) plugging, replugging or repairing abandoned wells, and remediation of the well sites, drilling of which began on or after July 1, 1996, in accordance with a prioritization schedule adopted by the state corporation commission and based on the degree of threat to public health or the environment. No moneys credited to the fund shall be used to pay administrative expenses of the commission or to pay compensation or other expenses of employing personnel to carry out the duties of the commission.

(c) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the well plugging assurance fund interest earnings based on: (1) The average daily balance of moneys in the well plugging assurance fund for the preceding month; and (2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(d) All expenditures from the well plugging assurance 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 chairperson of the state corporation commission or a person designated by the chairperson.

New Sec. 2. (a) On the effective date of this act, the chairperson of the state corporation commission shall certify to the director of accounts and reports the amount of moneys in the conservation fee fund which is equal to: (1) All amounts credited to such fund pursuant to subsections (d)(3) and (d)(4) of K.S.A. 55-155, and amendments thereto; plus (2) any amounts recovered and credited to such fund pursuant to subsection (d) of K.S.A. 55-180, and amendments thereto, for plugging, replugging or repairing an abandoned well, drilling of which began on or after July 1, 1996; minus (3) any amounts expended from such fund pursuant to K.S.A. 55-161, and amendments thereto, or subsection (a)(2) of K.S.A. 55-179, and amendments thereto, for the purpose of: (A) Investigation of abandoned wells, and their well sites, drilling of which began on or after July 1, 1996; and (B) plugging, replugging or repairing abandoned wells, and remediation of the well sites, drilling of which began on or after July 1, 1996. Upon receipt of such certification, the director of accounts and reports shall transfer the amount certified from the conservation fee fund to the well plugging assurance fund.

(b) All liabilities of the conservation fee fund which are attributable to the following are hereby transferred to and imposed on the well plugging assurance fund: (1) Investigation of abandoned wells, and their well sites, drilling of which began on or after July 1, 1996; and (2) plugging, replugging or repairing abandoned wells, and remediation of the well sites, drilling of which began on or after July 1, 1996.

New Sec. 3. Whenever there are insufficient moneys in the well plugging assurance fund or the abandoned oil and gas well fund to pay the liabilities of such fund, such liabilities shall be and are hereby imposed on the conservation fee fund, provided such liabilities were incurred in accordance with the prioritization schedules established pursuant to subsection (b)(2) of section 1, and amendments thereto, and subsection (b)(2) of K.S.A. 2000 Supp. 55-192, and amendments thereto.

Sec. 4. K.S.A. 2000 Supp. 55-155, as amended by section 190 of 2001 Senate Bill No. 15, is hereby amended to read as follows: 55-155. (a) Operators and contractors shall be licensed by the commission pursuant to this section.

(b) Every operator and contractor shall file an application or a renewal application with the commission. Application and renewal application forms shall be prescribed, prepared and furnished by the commission.

(c) No application or renewal application shall be approved until the applicant has:

(1) Provided sufficient information, as required by the commission, for purposes of identification;

(2) submitted evidence that all current and prior years' taxes for property associated with the drilling or servicing of wells have been paid;

(3) demonstrated to the commission's satisfaction that the applicant complies with all requirements of chapter 55 of the Kansas Statutes Annotated, all rules and regulations adopted thereunder and all commission orders and enforcement agreements, if the applicant is registered with the federal securities and exchange commission;

(4) demonstrated to the commission's satisfaction that the following comply with all requirements of chapter 55 of the Kansas Statutes Annotated, all rules and regulations adopted thereunder and all commission orders and enforcement agreements, if the applicant is not registered with the federal securities and exchange commission: (A) The applicant; (B) any officer, director, partner or member of the applicant; (C) any stockholder owning in the aggregate more than 5% of the stock of the applicant; and (D) any spouse, parent, brother, sister, child, parent-in-law, brother-in-law or sister-in-law of the foregoing;

(5) paid an annual license fee of $100, except that an applicant for a license who is operating one gas well used strictly for the purpose of heating a residential dwelling shall pay an annual license fee of $25;

(6) complied with subsection (d); and

(7) paid an annual license fee of $25 for each rig operated by the applicant. The commission shall issue an identification tag for each such rig which shall be displayed on such rig at all times.

(d) In order to assure financial responsibility, each operator shall demonstrate annually compliance with one of the following provisions:

(1) The operator has obtained an individual performance bond or letter of credit, in an amount equal to $.75 times the total aggregate depth of all wells (including active, inactive, injection or disposal) of the operator.

(2) The operator has obtained a blanket performance bond or letter of credit in an amount equal to the following, according to the number of wells (including active, inactive, injection or disposal) of the operator:

(A) Wells less than 2,000 feet in depth: 1 through 5 wells, $5,000; 6 through 25 wells, $10,000; and over 25 wells, $20,000.

(B) Wells 2,000 or more feet in depth: 1 through 5 wells, $10,000; 6 through 25 wells, $20,000; and over 25 wells, $30,000.

(3) The operator: (A) Has an acceptable record of compliance, as demonstrated during the preceding 36 months, with commission rules and regulations regarding safety and pollution or with commission orders issued pursuant to such rules and regulations; (B) has no outstanding undisputed orders issued by the commission or unpaid fines, penalties or costs assessed by the commission and has no officer or director that has been or is associated substantially with another operator that has any such outstanding orders or unpaid fines, penalties or costs; and (C) pays a nonrefundable fee of $50 per year.

(4) The operator pays a nonrefundable fee equal to 3% of the amount of the bond or letter of credit that would be required by subsection (d)(1) or by subsection (d)(2).

(5) The state has a first lien on tangible personal property associated with oil and gas production of the operator that has a salvage value equal to not less than the amount of the bond or letter of credit that would be required by subsection (d)(1) or by subsection (d)(2).

(6) The operator has provided other financial assurance approved by the commission.

(e) Upon the approval of the application or renewal application, the commission shall issue to such applicant a license which shall be in full force and effect until one year from the date of issuance or until surrendered, suspended or revoked as provided in K.S.A. 55-162, and amendments thereto. No new license shall be issued to any applicant who has had a license revoked until the expiration of one year from the date of such revocation.

(f) If an operator transfers responsibility for the operation of a well~~,~~ *or* gas gathering system or ~~underground natural gas storage facility~~ *for underground porosity storage of natural gas* to another person, the trans-

fer shall be reported to the commission in accordance with rules and regulations of the commission.

(g) The commission shall remit all moneys received from fees assessed pursuant to subsection (c)(7) of this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the conservation fee fund created by K.S.A. 55-143, and amendments thereto.

(h) The commission shall remit all moneys received pursuant to subsections (d)(3) and (d)(4) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the ~~conservation fee~~ *well plugging assurance* fund.

Sec. 5. K.S.A. 2000 Supp. 55-161 is hereby amended to read as follows: 55-161. The commission shall investigate abandoned wells, and, based on actual or potential pollution problems, may select abandoned wells to be drilled out by the commission in order to test the integrity of the plugs. The cost of such testing shall be paid from the ~~conservation fee~~ *well plugging assurance* fund or the abandoned oil and gas well fund, as appropriate.

Sec. 6. K.S.A. 2000 Supp. 55-179 is hereby amended to read as follows: 55-179. (a) Upon receipt of any complaint filed pursuant to K.S.A. 55-178 and amendments thereto, the commission shall make an investigation for the purpose of determining whether such abandoned well is polluting or is likely to pollute any usable water strata or supply or causing the loss of usable water, or the commission may initiate such investigation on its own motion. If the commission determines:

(1) That such abandoned well is causing or likely to cause such pollution or loss; and

(2) (A) that no person is legally responsible for the proper care and control of such well; or (B) that the person legally responsible for the care and control of such well is dead, is no longer in existence, is insolvent or cannot be found, then, after completing its investigation, and as funds are available, the commission shall plug, replug or repair such well, or cause it to be plugged, replugged or repaired, in such a manner as to prevent any further pollution or danger of pollution of any usable water strata or supply or loss of usable water, and shall remediate pollution from the well, whenever practicable and reasonable. The cost of the investigation; the plugging, replugging or repair; and the remediation shall be paid by the commission from the ~~conservation fee~~ *well plugging assurance* fund or the abandoned oil and gas well fund, as appropriate.

(b) For the purposes of this section, a person who is legally responsible for the proper care and control of an abandoned well shall include, but is not limited to, one or more of the following: Any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water; the current or last operator of the lease upon which such well is located, irrespective of whether such operator plugged or abandoned such well; the original operator who plugged or abandoned such well; and any person who without authorization tampers with or removes surface equipment or downhole equipment from an abandoned well.

(c) Whenever the commission determines that a well has been abandoned and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, and whenever the commission has reason to believe that a particular person is legally responsible for the proper care and control of such well, the commission shall cause such person to come before it at a hearing held in accordance with the provisions of the Kansas administrative procedure act to show cause why the requisite care and control has not been exercised with respect to such well. After such hearing, if the commission finds that the person is legally responsible for the proper care and control of such well and that such well is abandoned, in fact, and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, the commission may make any order or orders prescribed in K.S.A. 55-162, and amend-

ments thereto. Proceedings for reconsideration and judicial review of any of the commission's orders may be held pursuant to K.S.A. 55-606, and amendments thereto.

(d) For the purpose of this section, any well which has been abandoned, in fact, and has not been plugged pursuant to the rules and regulations in effect at the time of plugging such well shall be and is hereby deemed likely to cause pollution of any usable water strata or supply.

(e) For the purpose of this section, the person legally responsible for the proper care and control of an abandoned well shall not include the landowner or surface owner unless the landowner or surface owner has operated or produced the well, has deliberately altered or tampered with such well thereby causing the pollution or has assumed by written contract such responsibility.

Sec. 7. K.S.A. 2000 Supp. 55-180, as amended by section 193 of 2001 Senate Bill No. 15, is hereby amended to read as follows: 55-180. (a) The fact that any person has initiated or supported a proceeding before the commission, or has remedied or attempted to remedy the condition of any well under the authority of this act, shall not be construed as an admission of liability or received in evidence against such person in any action or proceeding wherein responsibility for or damages from surface or subsurface pollution, or injury to any usable water or oil-bearing or gas-bearing formation, is or may become an issue; nor shall such fact be construed as releasing or discharging any action, cause of action or claim against such person existing in favor of any third person for damages to property resulting from surface or subsurface pollution, or injury to any usable water or oil-bearing or gas-bearing formation.

(b) The commission, on its own motion, may initiate an investigation into any pollution problem related to oil and gas activity. In taking such action the commission may require or perform the testing, sampling, monitoring or disposal of any source of groundwater pollution related to oil and gas activities.

(c) The commission or any other person authorized by the commission who has no obligation to plug, replug or repair any abandoned well, but who does so in accordance with the provisions of this act, shall have a cause of action for the reasonable cost and expense incurred in plugging, replugging or repairing the well against any person who is legally responsible for the proper care and control of such well pursuant to the provisions of K.S.A. 55-179, and amendments thereto, and the commission or other person shall have a lien upon the interest of such obligated person in and to the oil and gas rights in the land and equipment located thereon.

(d) Any moneys recovered by the commission in an action pursuant to subsection (c) shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the conservation fee *fund, well plugging assurance* fund or the abandoned oil and gas well fund, as appropriate based on the fund from which the costs incurred by the commission were paid.

Sec. 8. K.S.A. 2000 Supp. 55-182 is hereby amended to read as follows: 55-182. (a) Agents of the commission shall have the right of ingress and egress upon any lands where any well *or underground porosity storage of natural gas* is located and the lands adjacent thereto and to occupy such lands as are necessary in ~~making any investigation or in~~ *the permitting, monitoring, inspecting, investigating, supervising,* plugging, replugging or repairing of any *such* well or ~~in the supervision thereof~~ *underground porosity storage*. Any agent when entering upon any land to *permit, monitor, inspect, investigate, supervise,* plug, replug or repair a well~~,~~ or ~~to supervise or inspect the same~~ *underground porosity storage of natural gas*, shall not be liable for any damages necessarily resulting therefrom, except damages to growing crops, livestock or improvements on the land. *Upon completion of activities on such land, such agent shall restore the premises to the original contour and condition as nearly as practicable.*

(b) Agents of the commission shall have the right of ingress and egress upon any lands to clean up pollution resulting from oil and gas activities. Such agents shall have the power to occupy such land if necessary to investigate and clean up such pollution. Any agent entering upon any land

to conduct cleanup activities shall not be liable for any damages necessarily resulting therefrom except damages to growing crops, livestock or improvements on the land.

New Sec. 9. (a) As used in this section, K.S.A. 65-171d and sections 10 through 14, and amendments thereto:

(1) "Secretary" means the secretary of health and environment.

(2) "Underground porosity storage" means the storage of hydrocarbons in underground, porous and permeable geological strata which have been converted to hydrocarbon storage.

(b) For the purposes of protecting the health, safety and property of the people of the state, and preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, the secretary of health and environment shall adopt separate and specific rules and regulations establishing requirements, procedures and standards for the following:

(1) Salt solution mining;

(2) the safe and secure underground storage of liquid petroleum gas and hydrocarbons, other than natural gas in underground porosity storage; and

(3) the safe and secure underground storage of natural gas in bedded salt.

(c) Such rules and regulations shall include, but not be limited to:

(1) Site selection criteria;

(2) design and development criteria;

(3) operation criteria;

(4) casing requirements;

(5) monitoring and measurement requirements;

(6) safety requirements, including public notification;

(7) closure and abandonment requirements, including the financial requirements of subsection (f); and

(8) long term monitoring.

(d) (1) The secretary may adopt rules and regulations establishing fees for the following services:

(A) Permitting, monitoring and inspecting salt solution mining operators;

(B) permitting, monitoring and inspecting underground storage of liquid petroleum gas and hydrocarbons, other than natural gas in underground porosity storage; and

(C) permitting, monitoring and inspecting underground storage of natural gas in bedded salt.

(2) The fees collected under this section by the secretary shall be remitted by the secretary to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the subsurface hydrocarbon storage fund.

(e) The secretary or the secretary's duly authorized representative may impose on any holder of a permit issued pursuant to this section such requirements relating to inspecting, monitoring, investigating, recording and reporting as the secretary or representative deems necessary to administer the provisions of this section and rules and regulations adopted hereunder.

(f) Any company or operator receiving a permit under the provisions of this act shall demonstrate annually to the department of health and environment evidence, satisfactory to the department, that such permit holders have financial ability to cover the cost of closure of such permitted facility as required by the department.

(g) The secretary may enter into contracts for services from consultants and other experts for the purposes of assisting in the drafting of rules and regulations pursuant to this section.

(h) (1) For a period of two years from July 1, 2001, or until the rules and regulations provided for in paragraph (3) of subsection (a) are adopted, the injection of working natural gas into underground storage in bedded salt is prohibited, except that cushion gas may be injected into existing underground storage in bedded salt. Natural gas currently stored in such underground storage may be extracted.

(2) Any existing underground storage of natural gas in bedded salt shall comply with the rules and regulations adopted under this section prior to the commencement of injection of working natural gas into such underground storage.

(3) Rules and regulations adopted under paragraph (3) of subsection (a) shall be adopted on or before July 1, 2003.

(i) No hydrocarbon storage shall be allowed in any underground formation if water within the formation contains less than 5,000 milligrams per liter chlorides.

New Sec. 10. (a) (1) There is hereby established in the state treasury the subsurface hydrocarbon storage fund to administer the provisions of sections 9 through 11, and amendments thereto. Such fund shall be administered by the secretary in accordance with the provisions of this section.

(2) All moneys received by the secretary as grants, gifts, bequests or state or federal appropriations for the purposes of sections 9 through 11, and amendments thereto, shall be remitted by the secretary to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of such fund. The secretary is authorized to receive from the federal government or any of its agencies or from any private or governmental source any funds made available for the purposes of sections 9 through 11, and amendments thereto.

(3) All expenditures from this fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.

(b) The secretary is authorized to use moneys from the subsurface hydrocarbon storage fund to pay the cost of:

(1) All activities related to permitting activities including but not limited to development and issuance of permits, compliance monitoring, inspections, well and well system closures, long term monitoring and enforcement actions;

(2) review and witnessing of test procedures;

(3) review and witnessing of routine workover or repair procedures;

(4) investigation of violations, complaints, pollution and events effecting public health;

(5) design and review of remedial action plans;

(6) contracting for services needed to supplement the department's staff expertise in facility investigations;

(7) consultation needed concerning remedial action at a permitted facility;

(8) mitigation of adverse environmental impacts;

(9) emergency or long-term remedial activities;

(10) legal costs, including expert witnesses, incurred in administration of the provisions of sections 9 through 11, and amendments thereto; and

(11) costs of program administration.

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

(1) The average daily balance of moneys in the subsurface hydrocarbon storage fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding months.

New Sec. 11. (a) The secretary or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of section 9, and amendments thereto, or rules and regulations adopted thereunder, may impose a penalty not to exceed $10,000 per violation which shall constitute an economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after an opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation, the penalty to be imposed and, in the case of an order of the director of the division of environment, the right to appeal to the secretary for a

hearing thereon. Any person may appeal an order of the director of the division of environment by making a written request to the secretary for a hearing within 15 days of service of such order. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Whenever the secretary or the secretary's duly authorized agents find that the soil or waters of the state are not being protected from pollution resulting from underground storage of liquid petroleum gas and hydrocarbons, other than natural gas in underground porosity storage, the secretary or the secretary's duly authorized agents shall issue an order prohibiting such underground storage. Any person aggrieved by such order may request in writing, within 15 days after service of the order, a hearing on the order. Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(d) 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.

New Sec. 12. (a) For the purposes of this section:

(1) "Person legally responsible" includes, but is not limited to: (A) Any current or former operator of the well, or successor, who has: (i) Knowingly abandoned the well; (ii) caused the pollution or hazard, or threat of pollution or hazard, by intentionally altering or tampering with the well; or (iii) assumed legal responsibility by written agreement or contract; and (B) any current or former owner of the well who is or was in the business of producing salt.

(2) "Salt solution mining well" means a well which has been drilled into subsurface saline or salt bearing deposits for the recovery of either existing brines or brines which are formed by the injection of water to dissolve such deposits.

(3) A salt solution mining well shall be deemed abandoned if no person is legally responsible for causing the pollution or hazard, or threat of pollution or hazard, or if the person legally responsible is dead, is no longer in existence, is adjudicated to be insolvent or cannot be found.

(b) If the secretary finds that the location or construction, or both, of an abandoned salt solution mining well causes or threatens to cause pollution of the land, air or waters of the state or is or threatens to become a hazard to persons, property or public health or safety, the secretary may, in addition to any other remedy provided by law:

(1) After completion of an investigation: (A) Order any person who is legally responsible for causing the pollution or hazard, or threat of pollution or hazard, to take such remedial action as will remove the pollution or hazard, or threat of pollution or hazard, including, but not limited to, plugging such well; or (B) as funds are available, provide for the plugging of the well and order assessment of the costs to the legally responsible person; or

(2) after completion of an investigation and as funds are available, provide for the plugging of the well, if abandoned, in a manner that remediates the pollution or hazard, whether threatened or actual.

New Sec. 13. (a) There is hereby created in the state treasury the salt solution mining well plugging fund. Such fund shall be administered by the secretary in accordance with the provisions of this section and section 12, and amendments thereto.

(b) All moneys received by the secretary as grants, gifts, bequests or state or federal appropriations for the purposes of section 12, and amendments thereto, shall be remitted by the secretary to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittence the state treasurer shall deposit the entire amount in the state treasury to the credit of the salt solution mining well plugging fund. The secretary is authorized to receive from the federal government or any of its agencies or from any private or governmental source any funds made available for the purposes of section 12, and amendments thereto.

(c) Moneys in the salt solution mining well plugging fund shall be expended only for the purpose of investigating and plugging wells, identifying responsible parties and otherwise administering the provisions of section 12, and amendments thereto.

(d) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the salt solution mining well plugging fund interest earnings based on:

(1) The average daily balance of moneys in the salt solution mining well plugging fund for the preceding month; and

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

(e) All expenditures from the salt solution mining well plugging 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 a person designated by the secretary for the purposes set forth in this section.

New Sec. 14. (a) In performing investigations or administrative functions relating to surface and subsurface water pollution, soil pollution and public health or safety, the secretary or the secretary's duly authorized representatives may enter any property or facility which is subject to the provisions of section 9 or 12, and amendments thereto, for the purpose of observing, monitoring, collecting samples, examining records and facilities to determine compliance or noncompliance with state laws and rules and regulations relating to water pollution, soil pollution or public health or safety.

(b) The representatives of the secretary shall have the right of ingress and egress upon any lands to cleanup pollution, over which the secretary has jurisdiction pursuant to sections 9 through 11, and amendments thereto, or to plug any well as authorized by section 12, and amendments thereto. Such representatives shall have the power to occupy such land if necessary to investigate and cleanup such pollution or to investigate and plug such well. Any representative entering upon any land to conduct such clean-up or well-plugging shall not be liable for any damages necessarily resulting therefrom, except damages to growing crops, livestock or improvements on the land. Upon completion of activities on such land, such representative shall restore the premises to the original contour and condition as nearly as practicable.

Sec. 15. K.S.A. 2000 Supp. 65-171d is hereby amended to read as follows: 65-171d. (a) For the purpose of preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect beneficial uses of the waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgment be necessary to: (1) ~~Protect the soil and waters of the state from pollution resulting from underground storage reservoirs of hydrocarbons and liquid petroleum gas; (2) Control~~ *Protect the soil and waters of the state from pollution resulting from underground storage of liquid petroleum gas and hydrocarbons, other than underground porosity storage of natural gas; (2) control* the disposal, discharge or escape of sewage as defined in K.S.A. 65-164 and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or facilities owned or operated, or both, by them; and (3) establish water quality standards for the waters of the state to protect their beneficial uses.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act and amendments thereto, as in effect on January 1, 1989, which the secretary is otherwise authorized by law to adopt.

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h and K.S.A. 2000 Supp. 65-1,178 through 65-1,198, and amendments thereto, and rules and regulations adopted pursuant thereto:

(1) "Pollution" means: (A) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated beneficial uses; or (B) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(2) ''Confined feeding facility'' means any lot, pen, pool or pond: (A) Which is used for the confined feeding of animals or fowl for food, fur or pleasure purposes; (B) which is not normally used for raising crops; and (C) in which no vegetation intended for animal food is growing.

(3) ''Animal unit'' means a unit of measurement calculated by adding the following numbers: The number of beef cattle weighing more than 700 pounds multiplied by 1.0; plus the number of cattle weighing less than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle multiplied by 1.4; plus the number of swine weighing more than 55 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or less multiplied by 0.1; plus the number of sheep or lambs multiplied by 0.1; plus the number of horses multiplied by 2.0; plus the number of turkeys multiplied by 0.018; plus the number of laying hens or broilers, if the facility has continuous overflow watering, multiplied by 0.01; plus the number of laying hens or broilers, if the facility has a liquid manure system, multiplied by 0.033; plus the number of ducks multiplied by 0.2. However, each head of cattle will be counted as one full animal unit for the purpose of determining the need for a federal permit. ''Animal unit'' also includes the number of swine weighing 55 pounds or less multiplied by 0.1 for the purpose of determining applicable requirements for new construction of a confined feeding facility for which a permit or registration has not been issued before January 1, 1998, and for which an application for a permit or registration and plans have not been filed with the secretary of health and environment before January 1, 1998, or for the purpose of determining applicable requirements for expansion of such facility. However, each head of swine weighing 55 pounds or less shall be counted as 0.0 animal unit for the purpose of determining the need for a federal permit.

(4) ''Animal unit capacity'' means the maximum number of animal units which a confined feeding facility is designed to accommodate at any one time.

(5) ''Habitable structure'' means any of the following structures which is occupied or maintained in a condition which may be occupied and which, in the case of a confined feeding facility for swine, is owned by a person other than the operator of such facility: A dwelling, church, school, adult care home, medical care facility, child care facility, library, community center, public building, office building or licensed food service or lodging establishment.

(6) ''Wildlife refuge'' means Cheyenne Bottoms wildlife management area, Cheyenne Bottoms preserve and Flint Hills, Quivera, Marais des Cygnes and Kirwin national wildlife refuges.

(d) In adopting rules and regulations, the secretary of health and environment, taking into account the varying conditions that are probable for each source of sewage and its possible place of disposal, discharge or escape, may provide for varying the control measures required in each case to those the secretary finds to be necessary to prevent pollution. If a freshwater reservoir or farm pond is privately owned and where complete ownership of land bordering the reservoir or pond is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards except as it relates to water discharge or seepage from the reservoir or pond to waters of the state, either surface or groundwater, or as it relates to the public health of persons using the reservoir or pond or waters therefrom.

(e) (1) Whenever the secretary of health and environment or the secretary's duly authorized agents find ~~that the soil or waters of the state are not being protected from pollution resulting from underground storage reservoirs of hydrocarbons and liquid petroleum gas or~~ that storage or disposal of salt water not regulated by the state corporation commission or refuse in any surface pond *not regulated by the state corporation commission* is causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary's duly authorized agents shall issue an order prohibiting such ~~underground storage reservoir or surface pond~~ *storage or disposal of salt water or refuse*. Any person aggrieved by such order may within 15 days of service of the order request in writing a hearing on the order.

(2) Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(3) Any action of the secretary pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(f) The secretary may adopt rules and regulations establishing fees for ~~the following services:~~

~~(1)~~ plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed $5 for each tank in place~~;~~

~~(2) permitting, monitoring and inspecting salt solution mining operators, for which the annual fee shall not exceed $1,950 per company; and~~

~~(3) permitting, monitoring and inspecting hydrocarbon storage wells and well systems, for which the annual fee shall not exceed $1,875 per company~~.

(g) Prior to any new construction of a confined feeding facility with an animal unit capacity of 300 to 999, such facility shall register with the secretary of health and environment. Facilities with a capacity of less than 300 animal units may register with the secretary. Any such registration shall be accompanied by a $25 fee. Within 30 days of receipt of such registration, the department of health and environment shall identify any significant water pollution potential or separation distance violations pursuant to subsection (h). If there is identified a significant water pollution potential, such facility shall be required to obtain a permit from the secretary. If there is no water pollution potential posed by a facility with an animal unit capacity of less than 300, the secretary may certify that no permit is required. If there is no water pollution potential nor any violation of separation distances posed by a facility with an animal unit capacity of 300 to 999, the secretary shall certify that no permit is required and that there are no certification conditions pertaining to separation distances. If a separation distance violation is identified, the secretary may reduce the separation distance in accordance with subsection (i) and shall certify any such reduction of separation distances.

(h) (1) Any new construction or new expansion of a confined feeding facility, other than a confined feeding facility for swine, shall meet or exceed the following requirements in separation distances from any habitable structure in existence when the application for a permit is submitted:

(A) 1,320 feet for facilities with an animal unit capacity of 300 to 999; and

(B) 4,000 feet for facilities with an animal unit capacity of 1,000 or more.

(2) A confined feeding facility for swine shall meet or exceed the following requirements in separation distances from any habitable structure or city, county, state or federal park in existence when the application for a permit is submitted:

(A) 1,320 feet for facilities with an animal unit capacity of 300 to 999;

(B) 4,000 feet for facilities with an animal unit capacity of 1,000 to 3,724;

(C) 4,000 feet for expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion is within the perimeter from which separation distances are determined pursuant to subsection (k) for the existing facility; and

(D) 5,000 feet for: (i) Construction of new facilities with an animal unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion extends outside the perimeter from which separation distances are determined pursuant to subsection (k) for the existing facility.

(3) Any construction of new confined feeding facilities for swine shall meet or exceed the following requirements in separation distances from any wildlife refuge:

(A) 10,000 feet for facilities with an animal unit capacity of 1,000 to 3,724; and

(B) 16,000 feet for facilities with an animal unit capacity of 3,725 or more.

(i) (1) The separation distance requirements of subsections (h)(1) and (2) shall not apply if the applicant for a permit obtains a written agreement from all owners of habitable structures which are within the separation distance stating such owners are aware of the construction or expansion and have no objections to such construction or expansion. The

written agreement shall be filed in the register of deeds office of the county in which the habitable structure is located.

(2) (A) The secretary may reduce the separation distance requirements of subsection (h)(1) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to public notice; or (ii) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances.

(B) The secretary may reduce the separation distance requirements of subsection (h)(2)(A) or (B) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection (l); (ii) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances; or (iii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

(C) The secretary may reduce the separation distance requirements of subsection (h)(2)(C) or (D) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection (l); or (ii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

(j) (1) The separation distances required pursuant to subsection (h)(1) shall not apply to:

(A) Confined feeding facilities which were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities which existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility, including any expansion for which an application was pending on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(2) The separation distances required pursuant to subsections (h)(2)(A) and (B) shall not apply to:

(A) Confined feeding facilities for swine which were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities for swine which existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility which existed on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(3) The separation distances required pursuant to subsections (h)(2)(C) and (D) and (h)(3) shall not apply to the following, as determined in accordance with subsections (a), (e) and (f) of K.S.A. 2000 Supp. 65-1,178 and amendments thereto:

(A) Expansion of an existing confined feeding facility for swine if an application for such expansion has been received by the department before March 1, 1998; and

(B) construction of a new confined feeding facility for swine if an application for such facility has been received by the department before March 1, 1998.

(k) The separation distances required by this section for confined feeding facilities for swine shall be determined from the exterior perimeter of any buildings utilized for housing swine, any lots containing swine,

any swine waste retention lagoons or ponds or other manure or wastewater storage structures and any additional areas designated by the applicant for future expansion. Such separation distances shall not apply to offices, dwellings and feed production facilities of a confined feeding facility for swine.

(l) The applicant shall give the notice required by subsections (i)(2)(B) and (C) by certified mail, return receipt requested, to all owners of habitable structures within the separation distance. The applicant shall submit to the department evidence, satisfactory to the department, that such notice has been given.

(m) All plans and specifications submitted to the department for new construction or new expansion of confined feeding facilities may be, but are not required to be, prepared by a professional engineer or a consultant, as approved by the department. Before approval by the department, any consultant preparing such plans and specifications shall submit to the department evidence, satisfactory to the department, of adequate general commercial liability insurance coverage.

Sec. 16. K.S.A. 2000 Supp. 74-623 is hereby amended to read as follows: 74-623. (a) The state corporation commission shall have the exclusive jurisdiction and authority to regulate oil and gas activities. The state corporation commission's jurisdiction shall include: (1) All practices involved in the exploration for and gathering of oil and gas and the drilling, production, lease storage, treatment, abandonment and postabandonment of oil and gas wells~~, except refining, treating or storing of oil or gas after transportation of the same~~; *(2) underground porosity storage of natural gas, as defined in section 17, and amendments thereto;* and ~~(2)~~ *(3)* prevention and cleanup of pollution of the soils and waters of the state from oil and gas activities described in (1) *or (2).*

The state corporation commission shall not have jurisdiction over the refining, treating or storing of oil or gas after transporting of such oil or gas, except for the storing of natural gas described in (2).

(b) All jurisdiction and authority of the Kansas department of health and environment relating to the cleanup of pollution of the soils and waters of the state from oil and gas activities described in subsection (a)~~(1)~~ is hereby transferred to the state corporation commission.

(c) The state corporation commission shall be the successor in every way to the powers, duties and functions of the Kansas department of health and environment relating to the cleanup of pollution of the soils and waters of the state from oil and gas activities described in subsection (a)~~(1)~~. Every act performed in the exercise of such powers, duties and functions by or under authority of the state corporation commission shall be deemed to have the same force and effect as if performed by the department of health and environment.

(d) Whenever the Kansas department of health and environment, or words of like effect, is referred to or designated by a statute, contract or other document relating to the cleanup of pollution of the soils and waters of the state from oil and gas activities described in subsection (a)~~(1)~~, such reference shall be deemed to apply to the state corporation commission.

(e) All rules and regulations of the secretary of health and environment which are in existence on July 1, 1995, and relate to the cleanup of pollution of the soils and waters of the state from oil and gas activities described in subsection (a)~~(1)~~ shall continue to be effective and shall be deemed to be the duly adopted rules and regulations of the state corporation commission until revised, amended, revoked or nullified pursuant to law.

(f) All orders and directives of the Kansas department of health and environment which are in existence on July 1, 1995, and relate to the cleanup of pollution of the soils and waters of the state from oil and gas activities described in subsection (a)~~(1)~~ shall continue to be effective and shall be deemed to be orders and directives of the state corporation commission until revised, amended, revoked or nullified pursuant to law.

New Sec. 17. (a) On or before July 1, 2002, the state corporation commission shall adopt rules and regulations governing underground porosity storage of natural gas. Such rules and regulations shall include the permitting, monitoring and inspecting of underground porosity storage of natural gas and the closure and abandonment of such underground porosity storage of natural gas. Such rules and regulations may establish

fees for permitting, monitoring, inspecting and closing or abandoning underground porosity storage of natural gas.

(b) No hydrocarbon storage shall be allowed in any underground formation if water within the formation contains less than 5,000 milligrams per liter chlorides.

(c) The provisions of K.S.A. 55-162 and 55-164, and amendments thereto, shall apply to violations of the rules and regulations adopted pursuant to this section.

(d) As used in this section and K.S.A. 55-150, 55-155, 55-182 and 74-623, and amendments thereto, ''underground porosity storage'' means the storage of hydrocarbons in underground, porous and permeable geological strata which have been converted to hydrocarbon storage.

New Sec. 18. (a) There is hereby created in the state treasury the natural gas underground storage fee fund.

(b) All moneys received by the state corporation commission as grants, gifts, bequests or state or federal appropriations for the purposes of section 17, and amendments thereto, shall be remitted by the commission to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittence the state treasurer shall deposit the entire amount in the state treasury to the credit of the natural gas underground storage fee fund. The commission is authorized to receive from the federal government or any of its agencies or from any private or governmental source any funds made available for the purposes of section 17, and amendments thereto.

(c) All moneys credited to the natural gas underground storage fee fund shall be for the use of the state corporation commission in administering the provisions of section 17, and amendments thereto. All expenditures from the natural gas underground storage fee 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 chairperson of the state corporation commission or by a person or persons designated by the chairperson. The corporation commission, with the approval of the director of accounts and reports, shall formulate a system of accounting procedures to account for the money credited to the natural gas underground storage fee fund pursuant to this section.

(d) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the natural gas underground storage fee fund interest earnings based on:

(1) The average daily balance of moneys in the natural gas underground storage fee fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding months.

(e) Whenever the state corporation commission determines that the unencumbered balance of moneys credited to the natural gas underground storage fee fund at the end of a fiscal year is more than necessary, when considered in relation to the amount of revenues and expenditures estimated for the ensuing fiscal year and an appropriate unencumbered balance in the fund at the end of the ensuing fiscal year, the commission shall proportionally reduce all fees and assessments which are charged, taxed or assessed by the commission as authorized or required by law, other than fees or assessments in amounts prescribed by statute or any penalties authorized by statute, and which are collected and deposited to the credit of the natural gas underground storage fee fund, in order to reduce such unencumbered ending balance in the fund to an appropriate amount.

Sec. 19. K.S.A. 2000 Supp. 55-150 is hereby amended to read as follows: 55-150. As used in this act unless the context requires a different meaning:

(a) ''Commission'' means the state corporation commission.

(b) ''Contractor'' means any person who acts as agent for an operator as a drilling, plugging, service rig or seismograph contractor in such operator's oil and gas, cathodic protection, gas gathering or underground natural gas storage operations.

(c) ''Fresh water'' means water containing not more than 1,000 milligrams per liter, total dissolved solids.

(d) ''Gas gathering system'' means a natural gas pipeline system used primarily for transporting natural gas from a wellhead, or a metering point

for natural gas produced by one or more wells, to a point of entry into a main transmission line, but shall not mean or include: (1) Lead lines from the wellhead to the connection with the gathering system which are owned by the producing person; and (2) gathering systems under the jurisdiction of the federal energy regulatory commission.

(e) "Operator" means a person who is responsible for the physical operation and control of a well, gas gathering system or underground *porosity storage of* natural gas ~~storage facility~~.

(f) "Person" means any natural person, partnership, governmental or political subdivision, firm, association, corporation or other legal entity.

(g) "Rig" means any crane machine used for drilling or plugging wells.

(h) *"Underground porosity storage" has the meaning provided by section 17, and amendments thereto.*

(i) "Usable water" means water containing not more than 10,000 milligrams per liter, total dissolved solids.

~~(i)~~ *(j)* "Well" means a hole drilled or recompleted for the purpose of:

(1) Producing oil or gas;

(2) injecting fluid, air or gas in the ground in connection with the exploration for or production of oil or gas;

(3) obtaining geological information in connection with the exploration for or production of oil or gas by taking cores or through seismic operations;

(4) disposing of fluids produced in connection with the exploration for or production of oil or gas;

(5) providing cathodic protection to prevent corrosion to lines; or

(6) injecting or withdrawing natural gas.

Sec. 20. K.S.A. 2000 Supp. 55-150, 55-155, as amended by section 190 of 2001 Senate Bill No. 15, 55-161, 55-179, 55-180, as amended by section 193 of 2001 Senate Bill No. 15, 55-182, 65-171d and 74-623 are hereby repealed.

Sec. 21. 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

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HOUSE adopted
Conference Committee Report ________________________

____
Speaker of the House.

____
Chief Clerk of the House.

Passed the SENATE
as amended ________________________

SENATE adopted
Conference Committee Report ________________________

____
President of the Senate.

____
Secretary of the Senate.

APPROVED ________________________

____
Governor.