

Approved 2/7/84
Date

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Representative Ron Fox at
Chairperson

3:30 ~~am~~ p.m. on January 24th, 1984 in room 519-S of the Capitol.

All members were present except:

- Representative David J. Heinemann (Excused)
- Representative Ginger Barr (Excused)

Committee staff present:

- Ramon Powers, Legislative Research
- Theresa Kiernan, Revisor of Statutes' Office
- Raney Gilliland, Legislative Research
- Pam Somerville, Committee Secretary

Conferees appearing before the committee:

- Barbara Sabol, Secretary, Kansas Department of Health and Environment (KDHE)

The Meeting was called to order by Representative Ron Fox, who chaired the meeting in the Chairman's absence. Order of business for the day was staff briefing on HB 2740 and HB 2760. Vice-Chairman Fox announced Barbara Sabol would address the committee on HB 2740.

Atch. 1

Staff began by explaining HB 2740. HB 2740 relates to hazardous wastes; amending K.S.A. 1983 Supp. 65-3430, 65-3431, 65-3432, 65-3433, 65-3435, 65-3436, 65-3437, 65-3439, 65-3441, 65-3442, 65-3443, 65-3444, 65-3445, and 65-3446. It also repeals existing sections; and repeals K.S.A. 1983 Supp. 65-3448.

Staff proceeded by reviewing each section: Section 1 defined hazardous wastes and disposal to ensure compliance with EPA regulations. Section 2 defined the general powers and duties of the secretary of the department of health and environment. Section 3 created a disposal approval board, membership, and term definition. Section 4 prohibits construction of off-site hazardous waste or disposal facilities without a permit issued by the secretary, KDHE. Section 5 defined the guidelines for granting permits. Section 6 defined guidelines for approving or rejecting applications and stated the board must state reason for rejection, if applicable. Section 7 defined data contained in the application for a permit; rules and regulations to follow; sets the criteria by which the Secretary, KDHE, may reject the application without conducting an investigation under certain instances. Section 8 states the length and term of the permit, not to exceed 10 years and deletes fees for such permit. Section 9 prohibits persons from dumping or depositing hazardous waste unless in compliance with the provisions of the act and amendments thereto. Section 10 provided that title to hazardous waste transportation, storage, treatment, or disposal must be in accordance with the provisions, and rules, regulations, and standards adopted, shall vest with the generator, transporter, or owner of the hazardous waste management facility in which the waste is located, unless specific contractual arrangements are otherwise provided. Section 11 defined the power of the secretary in determination of threat of pollution. Section 12 established the civil penalty and fine schedule, not to exceed \$25,000 for each violation. Section 13 provided the secretary may take action necessary to protect the health of persons or the environment. Section 14 set forth the fine and penalty schedule. Section 15 defined civil enforcement action.

Staff indicated to the committee that HB 2740 was essentially SB 281 from the 1983 session with amendments so the State of Kansas would be in compliance with EPA requirements.

Atch. 2

Barbara Sabol, Secretary, Kansas Department of Health and Environment (KDHE) appeared before the committee in support of HB 2740. She gave

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

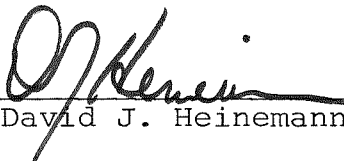
MINUTES OF THE House COMMITTEE ON Energy and Natural Resources,
room 519-S, Statehouse, at 3:30 ~~xx~~ p.m. on January 24th, 1984

a brief background of the legislation. Of great importance was the ability to comply with EPA due to the large amount of federal participation. Amendments in HB 2740, according to Ms. Sabol, are needed because EPA's requirements of KDHE for certain statutory changes which are necessary to receive full authorization. A brief question and answer period followed Ms. Sabol's presentation.

Rec'd. 3/1
Staff briefed the committee on HB 2760. HB 2760 is companion legislation to SB 333. Staff explained applicable amendments in each section. Section 2 defined the secretary's powers; she may adopt rules and regulations to govern. Section 4 provided that notice be given for public hearings. Section 6 made provisions for the secretary to enter public or private property for the purpose of determining compliance. Section 8 enjoined the practice violation. Section 9 states it is unlawful for any person to "use, distribute, sell, install, repair...any source of radiation..." Section 10 sets forth the fine schedule of not more than \$500 or less than \$25 for a misdemeanor and for a civil penalty not more than \$10,000. New Section 14 authorized the secretary to enter compact agreements with other states and New Section 15 authorized the secretary to require sureties for source material milling. Following staff briefing, a short question and answer period followed.

There being no further business before the committee, the meeting was adjourned at 4:30 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held January 25, 1984 at 3:30 p.m., Room 519-S.



Rep. David J. Heinemann, Chairman

Date January 24, 1933

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME	ADDRESS	ORGANIZATION
Ed Reinert	Topeka	Ks League Women Voters
Chas. Rooney	Lawrence	KDHE
K. A. Benflem	Junction, Ks	KDHE
Alvin Kramer	Topeka	KPC
Elmer K Noel	Abilene	Self
STEVE SCHWARTZ	Abilene	"
W. J. Grier	Abilene	"
Stan Martin	Abilene	"
DICK COMPTON	HAYS	MIDWEST ENERGY, INC.
Carl Allen	TOPEKA	KDHS
John Paul Booth	Lawrence	KDHE
Dennis Murphy	TOPEKA	KDHE
Walter Williams	Lawrence	KSU
Shanad Bhatia	Topeka	KPL
Bob Jackson	Topeka	KPI
David W. Nickel	"	KCC
Bob D. ...	"	Ks ... Assoc
Reed Walburn	"	22 - AAUP
Bob ...	"	KPC
Jack ...	Topeka	KMCA - ...
Stan ...	Abilene	...
JEFFREY COONROD	Topeka	KLHE

Date _____

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME

ADDRESS

ORGANIZATION

D. WAYNE ZIMMERMAN

TOPEKA

THE ELECTRIC CO. ASSOC. OF KS.

WALTER DANN

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EMOGA

HOUSE BILL NO. 2740

By Committee on Energy and Natural Resources

AN ACT relating to hazardous wastes; amending K.S.A. 1983 Supp. 65-3430, 65-3431, 65-3432, 65-3433, 65-3435, 65-3436, 65-3437, 65-3439, 65-3441, 65-3442, 65-3443, 65-3444, 65-3445 and 65-3446 and repealing the existing sections; also repealing K.S.A. 1983 Supp. 65-3448.

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

Section 1. K.S.A. 1983 Supp. 65-3430 is hereby amended to read as follows: 65-3430. As used in K.S.A. ~~1982-Supp.~~ 65-3430 to 65-3448 65-3447, and amendments thereto:

(a) "Board" means the "hazardous waste disposal facility approval board.

(b) "Department" means the Kansas department of health and environment.

(c) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted in into the air or discharged into any water-in-the-state waters, including groundwater.

(d) "Facility" means all contiguous land, structures and other appurtenances and improvements on the land utilized for the purpose of treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units ~~such-as-(1)-one-or-more-landfills;-(2)-surface impoundments;-(3)-treatment-units-or-(4)-combinations-of-(1);-(2) or-(3).~~

(e) "Generator" means any person ~~producing-or-bringing-into existence-hazardous-waste,~~ by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to

Attachment 1

become subject to regulation.

(f) "Hazardous waste" means waste or combination of wastes which because of its quantity, concentration or physical, chemical, biological or infectious characteristics or is otherwise determined by the secretary to be dangerous to human health or present a substantial existing or potential hazard to the environment when improperly managed. Such term shall include radioactive hazardous waste. Such term shall not include: (1) Household waste; or (2) agricultural waste returned to the soil as fertilizer; or (3) mining waste and overburden from the extraction, beneficiation and processing of ores and minerals, if returned to the mine site; or (4) drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal energy; or (5) fly ash, bottom ash, slag and flue gas emission control wastes generated primarily from the combustion of coal or other fossil fuels; or (6) cement kiln dust cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed.

(g) "Hazardous waste disposal facility" means all contiguous land, structures and other appurtenances, and improvements on the land utilized for the disposal of hazardous waste a facility or part of a facility at which hazardous waste is treated, stored or disposed and at which waste will remain after closure.

(h) "Hazardous waste storage facility" means a location where hazardous waste is held for a temporary period at the end of which the hazardous waste is treated, stored or disposed of at another location. Such term shall not include (1) a location at the place of waste generation where hazardous waste is accumulated for a period of 90 days or less in accordance with rules and regulations adopted by the secretary or (2) a transfer

facility where a transporter is storing manifested shipments of hazardous waste in containers approved by the secretary for a period of 10 days or less.

{i} "Hazardous waste treatment facility" means any location, except a publicly owned treatment works holding a permit issued under K.S.A. 65-165, where any method, technique or process is applied to hazardous waste to change its physical, biological or chemical characteristics or to render such waste nonhazardous, safer for transport or disposal, amenable for recovery or storage or reduced in volume.

{j} (h) "Hazardous waste management system" means the systematic control of the collection, source separation, storage, transportation, processing treatment, recovery and disposal of hazardous waste by any person.

{k} "License" means the document issued to a person by the secretary under the authority of K.S.A. 48-1607 and amendments thereto, which allows such person to construct and operate a radioactive hazardous waste storage or disposal facility in the state.

{l} (i) "Manifest" means the form prescribed by the secretary to be used for identifying the quantity, composition, origin and the routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage or at any point in between.

{m} (j) "Modification" means the expansion or enlargement of a facility beyond the permitted boundaries established by an existing permit issued by the secretary or any material or substantial alteration or addition to an existing permitted facility which would justify the application of permit conditions that would be materially or substantially different from the conditions of the existing permit or are absent from the existing permit.

{n} (k) "Monitoring" means all procedures used to (1) systematically inspect and collect samples or require information and copy records or data on the operational parameters of a

facility, generator or a transporter,; or (2) to systematically collect and analyze data on the quality of the air, groundwater, surface water or soil on or in the vicinity of a hazardous waste disposal,--storage--or--treatment generator, transporter or facility.

(l) "Off-site facility" means a facility where treatment, storage or disposal activities are conducted by a person or other than the hazardous waste generator.

~~(e)~~ (m) "On-site facility" means a facility which--is located--on-property-contiguous-to-or-divided-only-by-a-public-or private-way-from-the-source-of-generation--and which is solely owned and operated by the generator exclusively for the treatment, storage or disposal of wastes which have been generated on the contiguous property and includes the same or geographically contiguous property which may be divided by public or private right of way, provided the entrance and exit between the properties is at a crossroads intersection and access is by crossing and not going along the right-of-way or noncontiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access.

~~(p)~~ (n) "Permit" means the document issued to a person by the secretary which allows such person to construct and operate a hazardous waste treatment, storage or disposal facility in the state.

~~(q)~~ (o) "Person" means an individual, partnership,--firm, trust,--company,--association,--corporation,--institution,--political subdivision--or--state-or-federal-agency trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, state, municipality, commission, political subdivision of a state or any interstate body.

~~(r)~~--"Radioactive--hazardous--waste"----means----discarded by-product-material,--source-material,--or-special-nuclear-material as-defined-by-K.S.A.-48-1603-

~~(s)~~ (p) "Secretary" means the secretary of the department

of health and environment.

{t} "Short-term storage" means (1) the accumulation of hazardous waste for a period of 90 days or less at an "on-site facility" in accordance with rules and regulations adopted by the secretary or (2) the temporary storing of manifested shipments of hazardous wastes in containers approved by the secretary on or in the property of the transporter for a period of 10 days or less.

{u} (q) "Storage" means the containment holding of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of the hazardous waste. "Short-term storage" as defined in subsection {t}, does not constitute "storage" for a temporary period at the end of which the hazardous waste is treated, disposed of or stored elsewhere.

{v} (r) "Transporter" means any person who conveys or moves hazardous waste from the point of its generation or any other point to a treatment, storage or disposal facility or any point in-between is engaged in the off-site transportation of hazardous waste by air, rail, land, highway or water.

{w} (s) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical or biological characteristics character or composition of any hazardous waste so as to neutralize such waste or as to render such waste nonhazardous, safer for transport, amenable for recovery or storage, convertible to another usable material or reduced in volume and suitable for ultimate disposal so as to recover energy or material resources from the waste, to render such waste nonhazardous, or less hazardous, safer to transport, store or dispose of or amendable for recovery, amendable for storage or reduced in volume.

{x} (t) "Waste" means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, community and agricultural activities, and

~~including--discarded--by-product--material,--source--material,--or
special-nuclear-material-as-defined--in--K.S.A.--48-1603.---Waste
does-not-include-solid-or-dissolved-materials-in-domestic-sewage,
in--irrigation--return--flows,--or-solid-or-dissolved-materials-or
industrial-discharges-which-are-point-sources-subject-to--permits
under-K.S.A.-65-165.~~

Sec. 2. K.S.A. 1983 Supp. 65-3431 is hereby amended to read as follows: 65-3431. The secretary is authorized and directed to: (a) Adopt such rules and regulations, standards and procedures relative to hazardous waste management as shall be necessary to protect the public health and environment and enable the secretary to carry out the purposes and provisions of this act.

(b) Report to the legislature on further assistance needed to administer the hazardous waste management program.

(c) Administer the hazardous waste management program pursuant to provisions of this act.

(d) Cooperate with appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the duties under this act.

(e) Develop a statewide hazardous waste management plan.

(f) Provide technical assistance, including the training of personnel, to industry, local units of government and the hazardous waste management industry to meet the requirements of this act.

(g) Initiate, conduct and support research, demonstration projects, and investigations and coordinate all state agency research programs with applicable federal programs pertaining to hazardous waste management systems.

(h) Establish policies for effective hazardous waste management systems.

(i) Authorize issuance of such permits and orders and conduct such inspections and collect samples or request information and copy records or data as may be necessary to implement the provisions of this act and the rules and

regulations and standards adopted pursuant to this act.

(j) Conduct and contract for research and investigations in the overall area of hazardous waste storage, collection, transportation, treatment, recovery and disposal including, but not limited to, new and novel procedures.

(k) Adopt rules and regulations establishing criteria and characteristics for identifying the characteristics of hazardous waste and for listing hazardous waste. ~~The criteria shall take into account toxicity, persistence in nature and degradability in nature, potential for accumulation in tissue, potential to cause irreversible physical harm and other related factors such as reactivity, ignitibility, corrosiveness and other hazardous characteristics.~~ The secretary shall prepare and keep current a listing of hazardous wastes and set of characteristics based on the rules and regulations adopted pursuant to this subsection. The listing shall identify, but shall need not be inclusive of, all the hazardous waste subject to the provisions of this act. ~~The criteria for identification and listing shall be consistent with the criteria for identification and listing adopted by the administrator of the United States environmental protection agency under the authority vested in the administrator by the Resource Conservation and Recovery Act of 1976 (42 USC 6921) as amended by the Solid Waste Disposal Act of 1980 (P.L. 94-482, October 21, 1980).~~

(1) Adopt rules and regulations establishing: (1) Appropriate measures for monitoring ~~the transportation of hazardous waste and hazardous waste storage, treatment and disposal~~ generators, transporters and facilities during operation, closure, and after closure of such facilities to insure compliance with the rules and regulations adopted under this act and any permit issued under this act; (2) procedures to suspend operation of such generators, transporters or facilities ~~or transportation~~ as may be required to protect the public health and safety or the environment; and (3) appropriate measures to insure that any use of a hazardous waste disposal facility after

closure will not endanger the public health or safety or the environment.

(m) Adopt rules and regulations establishing standards for hazardous waste generators including, but not limited to, notification of hazardous waste activity, reporting, record keeping, labeling, containerization, source separation, storage, ~~short--term-storage~~, manifests, monitoring, sampling and analysis and manner of filing notifications, reports and manifests.

(n) Adopt rules and regulations prescribing the form of the manifest and requiring such manifest to accompany any hazardous waste collected, transported, treated, recovered or disposed of, and prescribing the contents of the manifest which shall include, but not be limited to the quantity and composition of the hazardous waste, generator, transporter and destination, facility and the manner of signing and filing of the manifest by ~~generators,--transporters--and--operators--of--treatment,--disposal--and--storage--facilities,~~ and for the maintenance of records of ~~all hazardous--waste--stored,--collected,--transported,--treated--or--disposed--in--the--state.~~

(o) Adopt rules and regulations establishing standards for routes and equipment used for transporting hazardous waste within the state ~~and--requiring--the--secretary's--approval--of--such--routes, with--the--concurrence--of--the--Kansas--department--of--transportation as--to--the--structural--adequacy--of--the--roads,--highways--and--structures--making--up--such--routes.~~ Such standards shall be consistent with those of the United States and Kansas departments of transportation, with respect to transportation of hazardous materials. Motor vehicles which are used for the transportation of hazardous waste in accordance with this act shall be exempt from the requirements of K.S.A. 66-1,108 et seq., and amendments thereto, and any rules and regulations adopted thereunder pertaining to routes and the motor vehicle equipment used for the containment of hazardous waste which both shall be under the jurisdiction of the secretary as provided in this act including any rules and regulations adopted thereunder. Otherwise such

motor vehicles shall be subject to the requirements of K.S.A. 66-1,108 et seq., and amendments thereto, and any rules and regulations adopted thereunder.

(p) Adopt rules and regulations establishing standards for transporters of hazardous waste including registration, but not limited to, notification of hazardous waste transport, manifests, labeling, record keeping and the filing of reports, ~~and requiring any person transporting hazardous waste in the state to submit to the secretary satisfactory evidence of liability insurance coverage in such amount as the secretary shall specify to insure the financial responsibility of such person for any liability incurred in transporting such waste.~~

(q) Adopt rules and regulations establishing standards and procedures to protect public health and the environment from any accidental release of hazardous waste into the environment and to insure the prompt correction of any such release and damage resulting therefrom by the person transporting, handling or managing such hazardous waste.

(r) Adopt rules and regulations requiring that, for such period of time as the secretary shall specify, any assignment, sale, conveyance or transfer of all or any part of the real property upon which a hazardous waste treatment, storage or disposal facility is or has been located shall be subject to such terms and conditions as to the use of such property as the secretary shall specify to protect human health and the environment.

(s) Adopt rules and regulations establishing a permit system ~~equivalent to the permit system established by Sec. 3005 of P.L. 94-580, as in effect on the effective date of this act,~~ which includes standards for facilities and procedures for implementation of a permit system for the construction, alteration, or operation of a hazardous waste treatment, storage or disposal facility including, but not limited to, content of applications, evidence of financial responsibility, existing hydrogeological characteristics, environmental assessment,

training of personnel, maintenance of operations, qualifications of ownership, continuity of operation, public notification and participation and compliance with those standards established pursuant to subsection (t).

(t) Adopt rules and regulations establishing minimum standards for the design, location, construction, alteration, operation, termination, closing and long-term care of facilities for the treatment, storage or disposal of hazardous waste or--for storage--or--disposal--of-radioactive-hazardous-waste-for-which-a permit-or-license-has-been-issued-by-the-secretary including, but not limited to, notification of hazardous waste treatment, storage or disposal, general facility standards, contingency plans, emergency procedures, manifest system, recordkeeping, inspections, monitoring, reporting, closure and post-closure plans and financial requirements. The operator of the facility shall be responsible for long-term care of the facility for 30 years after closure of the facility except that the secretary may modify the long-term care requirements for any facility when all hazardous waste is removed from the facility at closure. The secretary may extend the long-term care responsibility of any operator of a facility as the secretary may deem necessary to protect the public health and safety or the environment. Any person acquiring rights of possession or operation of any facility permitted or--licensed by the secretary for the treatment, storage or disposal of hazardous waste or-radioactive hazardous-waste at any time after the facility has begun to accept waste and prior to the end of the required period of long-term care shall be subject to all of the requirements, terms and conditions of the permit for the facility or--of--a--license issued--under--the--authority--of--K.S.A.--48-1607-and-amendments thereto, including all requirements relating to long-term care of the facility. The sale or acquisition of a hazardous waste disposal facility during the long-term care period shall be subject to the assignment of long-term care responsibilities as determined by the secretary.

(u) Adopt rules and regulations establishing a schedule of fees to be paid to the secretary by: (1) Permittees operating hazardous waste treatment, storage or disposal facilities under ~~permits issued by the secretary;~~ ~~(2) licensees storing or disposing of radioactive hazardous wastes with a license issued under the authority of K.S.A. 48-1607 and amendments thereto;~~ ~~(3);~~ (2) hazardous waste transporters transporting hazardous wastes generated in Kansas to hazardous waste treatment, storage or disposal facilities located in Kansas, in other states or outside the continental United States; ~~and~~ ~~(4) who notified the department of their hazardous waste activity;~~ or (3) hazardous waste generators producing or bringing into existence hazardous waste in Kansas. The fees shall be for monitoring facilities both during and after operation, for monitoring generators of hazardous waste in Kansas and for monitoring the transportation of hazardous wastes generated in Kansas to hazardous waste facilities for storage, treatment and disposal. The fees shall be sufficient to reimburse the cost of the state in performing these monitoring responsibilities, except that the fee established under this subsection (u) for each hazardous waste disposal facility or for each radioactive hazardous waste disposal facility shall be not less than \$1,500 annually. In setting fees, the secretary may exempt those fees which would be payable on treatment processes which recover substantial amounts of either energy or materials from hazardous wastes. The secretary shall remit any moneys collected from such fees to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state general fund. ~~Nothing in this subsection shall be construed to relieve a permit holder, licensee or other person responsible for the operation or long-term care of a facility of any monitoring duty or requirement in effect on the effective date of this act or any such duty which may be imposed as a condition of any future permit or license issued under authority of this act or K.S.A. 48-1607 and amendments thereto.~~

(v)-(1)--Adopt rules and regulations establishing a schedule of fees to be paid to the secretary by licensees operating radioactive hazardous waste storage or disposal facilities under a license issued by the secretary under the authority of K.S.A. 48-1607 and amendments thereto. In establishing fees, the secretary shall give consideration for contamination, cost of storage or disposal, estimate future receipts and estimated future expenses to the state for maintenance, monitoring and supervision for such facilities. Fees shall be in an amount not to exceed \$1 per cubic foot of radioactive hazardous waste or material. Fees shall be collected from each licensee who operates a radioactive hazardous waste storage or disposal facility licensed under the authority of K.S.A. 48-1607 and amendments thereto. No educational institution shall be required to pay any such fee. Each licensee as an advance payment of the fees authorized under this subsection, shall remit to the secretary an amount to be established by the secretary not to exceed \$25,000 upon request and notification by the secretary that its initial application for a license or initial renewal thereof has been approved, subject to receipt of the advance payment. Commencing with the second renewal, no advance payment shall be required. The advance payment shall constitute a credit against any fee which may be assessed pursuant to this subsection.

(2)--The secretary shall remit any moneys collected to the state treasurer to be deposited in the state treasury and credited to the radioactive hazardous waste perpetual care trust fund, which fund is hereby created and from which expenditures shall be limited to the following uses:--(A)--Payment of extraordinary costs of monitoring a licensed radioactive waste storage or disposal facility after the responsibility of the operator has terminated;--(B)--payment of costs of repairing a licensed radioactive hazardous waste storage or disposal facility and costs of repairing environmental damages caused by a licensed radioactive hazardous waste storage or disposal facility, as a

result--of--a--post-closure--occurrence--which--poses--a--substantial radiation--hazard--to--public--health--and--safety--or---to---the environment.--If--an--expenditure--made--under--this--subsection--would not--have--been--necessary--had--the--person--responsible--for--the operation--or--long--term--care--of--the--licensed--radioactive--hazardous waste---storage--or--disposal--facility--had--complied--with--the requirements--of--a--plan--of--operation--approved--by--the--secretary when--the--license--was--issued,--a--cause--of--action--in--favor--of--the fund--shall--be--accrued--to--the--state--of--Kansas--against--such--person and--the--secretary--shall--take--such--action--as--is--appropriate--to enforce--this--cause--of--action--by--recovering--any--amounts--so expended.--The--net--proceeds--of--any--such--recovery--shall--be--paid into--the--fund;--and--(C)--on--an--emergency--basis--up--to--20%--of--the balance--in--the--radioactive--hazardous--waste--perpetual--care--trust fund--may--be--allocated--for--investigation,--engineering,--equipment and--construction--related--to--the--removal,--treatment--and--disposal of--radioactive--hazardous--wastes--stored--or--disposed--of--in--any radioactive--hazardous--waste--storage--or--disposal--facility--closed prior--to--the--effective--date--of--this--act--when--such--radioactive hazardous--waste--is--found--to--pose--an--imminent--and--substantial--risk to--the--public--health--and--safety--or--to--the--environment.

(3)--The--pooled--money--investment--board--may--invest--and reinvest--moneys--in--the--radioactive--hazardous--waste--perpetual--care trust--fund--established--under--this--subsection--in--obligations--of the--United--States--or--obligations--the--principal--and--interest--of which--are--guaranteed--by--the--United--States--or--in--interest--bearing time--deposits--in--any--commercial--bank--or--trust--company--located--in Kansas--or,--if--the--board--determines--that--it--is--impossible--to deposit--such--moneys--in--such--time--deposits,--in--repurchase agreements--of--less--than--30--days'--duration--with--a--Kansas--bank--for direct--obligations--of,--or--obligations--that--are--insured--as--to principal--and--interest--by--the--United--States--government--or--any agency--thereof.--Any--income--or--interest--earned--by--such--investments shall--be--credited--to--the--radioactive--hazardous--waste--perpetual care--trust--fund.

~~(4) All expenditures from the radioactive hazardous waste perpetual care trust 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 and shall be expended for the purposes set forth in this subsection.~~

~~(w)~~ (v) (1) Adopt rules and regulations establishing a schedule of fees to be paid to the secretary by permittees operating hazardous waste disposal facilities under a permit issued by the secretary under this act and amendments thereto. In establishing fees, the secretary shall give consideration to degree of hazard, costs of treatment and disposal, estimated future receipts and estimated future expenses to the state for monitoring, maintenance and supervision of the facilities after closure. Fees shall be in an amount not to exceed \$.25 per cubic foot of hazardous waste disposed of. ~~Fees shall be collected from each permittee who operates a hazardous waste disposal facility under a permit issued by the secretary under this act.~~ Each permittee, as an advance payment of the fees authorized under this subsection, shall remit to the secretary an amount to be established by the secretary not to exceed \$25,000 upon request and notification by the secretary that an initial application for a permit or initial renewal thereof has been approved, subject to receipt of the advance payment. Commencing with the second renewal, no advance payment shall be required. The advance payment shall constitute a credit against any fee which may be assessed pursuant to this subsection.

(2) The secretary shall remit any money collected to the state treasurer to be deposited in the state treasury and credited to the hazardous waste perpetual care trust fund, which fund is hereby limited to the following uses: (A) Payment of extraordinary costs of monitoring a permitted hazardous waste disposal facility after the responsibility of the operator has terminated; (B) payment of costs of repairing a hazardous waste and hazardous waste disposal facility, as a result of a post-closure occurrence which poses a substantial hazard to

public health or safety or to the environment. If an expenditure made under this subsection would not have been necessary had the person responsible for the operation or long-term care of the permitted hazardous waste disposal facility complied with the requirements of a plan of operation approved by the secretary when the permit was issued, a cause of action in favor of the fund shall be accrued to the state of Kansas against such person, and the secretary shall take such action as is appropriate to enforce this cause of action by recovering any amounts so expended. The net proceeds of any such recovery shall be paid into the fund; and (C) on an emergency basis up to 20% of the balance in the hazardous waste perpetual care trust fund may be allocated for investigation, engineering and construction related to the removal, treatment and disposal of hazardous waste disposed of in any hazardous waste disposal facility closed prior to the date of this act, when such hazardous waste is found to pose an imminent and substantial risk to the public health or safety or the environment.

(3) Effective September 30, 1983, or when the tax on hazardous waste imposed by subtitle C of public law 96-510 becomes applicable, whichever date is later, the secretary shall revise the fee schedule ~~to provide funds for the purchase or repositioning of hazardous substance response equipment or other preparations reasonably necessary for the response to a release of hazardous substances which affects the state~~ and the fee collected after the effective date shall not be used for the payment of any costs or damages or claims which may be compensated under the comprehensive environmental response, compensation and liability act of 1980, public law 96-510 as in effect on the effective date of this act.

(4) The pooled money investment board may invest and reinvest moneys in the perpetual care trust fund established under this subsection in obligations of the United States or obligations the principal and interest of which are guaranteed by the United States or in interest-bearing time deposits in any

commercial bank or trust company located in Kansas or, if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than 30 days' duration with a Kansas bank for direct obligations of, or obligations that are insured as to principal and interest by the United States government or any agency thereof. Any income or interest earned by such investments shall be credited to the hazardous waste perpetual care trust fund.

(5) All expenditures from the hazardous waste perpetual care trust 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 for the purposes set forth in this subsection.

~~(x)~~ (w) Encourage, coordinate or participate in one or more waste exchange clearing houses for the purpose of promoting reuse and recycling of industrial wastes.

~~(y)~~ (x) Adopt rules and regulations establishing the criteria to specify when a change of principal owners or management of a hazardous waste treatment, storage or disposal facility occurs and under what circumstances and procedures a new permit shall be required to be issued to the transferees of a facility which was permitted to the transferor.

Sec. 3. K.S.A. 1983 Supp. 65-3432 is hereby amended to read as follows: 65-3432. (a) The hazardous waste disposal facility approval board is hereby established to review and grant or deny final approval for each application for ~~a-radioactive-hazardous waste-disposal-facility-license-or~~ any off-site hazardous waste disposal facility permit recommended for approval by the secretary.

(b) The board shall consist of five members as follows: The secretary of health and environment, the secretary of transportation, the state geologist and two members from and representing the general public appointed by the governor. Persons appointed on or after July 1, 1982, to represent the general public on the board shall be appointed subject to

confirmation by the senate as provided in K.S.A. 1982--Supp: 75-4315b, and amendments thereto.

(c) The term of office of the general public members of the board shall be three years, except that, of the general public members first appointed to the board, one shall be appointed for a term of two years and one for a term of three years as designated by the governor at the time of appointment. Upon the expiration of the term of office of a general public member, the governor shall appoint a qualified successor. Each general public member shall serve until a successor is appointed and qualified. Whenever a vacancy occurs among the general public members of the board for any reason other than the expiration of a member's term of office, the governor shall appoint a qualified successor to fill the unexpired term. The secretary of health and environment shall serve as chairperson of the board.

(d) All budgeting, purchasing and related management functions of the board shall be administered under the direction and supervision of the secretary of administration. All vouchers shall be approved by the chairperson of the board and secretary of administration.

(e) Three members of the board shall constitute a quorum for the transaction of business by the board.

(f) The state agencies which have officers or employees serving on the board shall provide such staff assistance to the board as requested by the board.

(g) Appointed members of the board attending regular or special meetings of the board shall be paid compensation, subsistence allowance, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

Sec. 4. K.S.A. 1983 Supp. 65-3433 is hereby amended to read as follows: 65-3433. (a) After the effective date of this act, no person shall modify or construct a-hazardous-waste-treatment, storage an off-site hazardous waste or disposal facility without a permit issued by the secretary under this act. The secretary shall not issue any license--under--K.S.A.--48-1607--for--any

~~radioactive--hazardous--waste-disposal-facility-or-a~~ permit under this act for any off-site hazardous waste disposal facility unless the board has first approved the application for such a facility.

(b) Upon receipt of an application for a ~~license-or~~ permit to construct a facility which requires the approval of the board, which complies with the requirements of this section, the secretary shall:

(1) Publish a notice once per week for three consecutive weeks in a newspaper having major circulation in the county in which the facility is proposed to be located. The required published notice shall contain a map indicating the location of the proposed facility and shall contain a description of the proposed action and the location where the ~~license-or~~ permit application and related documents may be reviewed and where copies may be obtained. The notice shall describe the procedure by which the ~~license-or~~ permit may be granted. The secretary shall transmit a copy of the notice to the clerk of any city which is located within three miles of the proposed facility.

(2) Review the plans of the proposed facility to determine if the proposed operation complies with this act and the rules and regulations promulgated under this act. The review shall include but not be limited to air quality, water quality, waste management and hydrogeology. If the facility review, plan review, and the application meet the requirements of this act and the rules and regulations promulgated under this act, the secretary shall recommend approval for construction or modification of the facility which may contain conditions specifically applicable to the facility and operation. An expansion, enlargement or modification of a ~~radioactive-hazardous waste--disposal--facility--or-a-hazardous-waste-disposal~~ facility beyond the specified areas indicated in the existing ~~license--or~~ permit constitutes a new proposal for which a new construction permit ~~or-license~~ application is required.

(c) The secretary shall recommend approval or shall deny a

construction permit application within 240 days after the secretary receives an application meeting the requirements of this section except such time period shall not apply to an application for a license to be issued under the authority of K.S.A. 48-1607, and amendments thereto. If the secretary recommends approval, the secretary immediately shall notify the applicant. If the secretary recommends denial, the secretary shall notify the applicant in writing of the reasons for the denial.

Sec. 5. K.S.A. 1983 Supp. 65-3435 is hereby amended to read as follows: 65-3435. The board shall not approve any application ~~for a hazardous waste disposal facility permit~~ unless the applicant has a deed to the property where the facility is to be located, in fee simple absolute, free of any liens, easements, covenants, or any other encumbrances on the title, ~~or, if the application is for a radioactive hazardous waste disposal facility license, the requirements of K.S.A. 1982 Supp. 65-3449 have been met and the state has entered into and enacted an interstate compact which regulates the management of low-level radioactive waste.~~

~~For the purposes of this section, the state has not entered into an interstate compact until such compact becomes effective by its own terms.~~

Sec. 6. K.S.A. 1983 Supp. 65-3436 is hereby amended to read as follows: 65-3436. (a) The board either shall approve or reject the application, and the secretary shall issue the license or permit or deny the application accordingly. A local ordinance, permit requirement or other requirement shall not prohibit the construction or modification of such a facility or restrict transportation to the facility.

(b) If the board denies the application, the board shall state its reason in writing ~~and indicate the necessary changes to make the application acceptable, if a new application is to be made.~~

(c) Any person aggrieved by a final decision of the board

may make an appeal to the district court within 30 days of notice of that decision.

Sec. 7. K.S.A. 1983 Supp. 65-3437 is hereby amended to read as follows: 65-3437. (a) No person shall construct, modify or operate a hazardous waste facility or otherwise dispose of hazardous waste within this state without a permit from the secretary.

(b) The application for a permit shall contain the name and address of the applicant, the location of the proposed facility and other information considered necessary by the secretary, including proof of financial capability.

(c) Before reviewing any application for permit, the secretary shall conduct a background investigation of the applicant. The secretary shall consider the financial, technical and management capabilities of the applicant as conditions for issuance of a permit. The secretary may reject the application without conducting an investigation into the merits of the application if the secretary finds that:

(1) The applicant currently holds, or in the past has held, a permit under this section and that while the applicant held a permit under this section the applicant violated a provision of subsection (a) of K.S.A. ~~1981--Supp.~~ 65-3441, and amendments thereto; or

(2) the applicant previously held a permit under this section and that permit was revoked by the secretary; or

(3) the applicant has a history of repeated violations of federal or state law.

(d) Upon receipt of a permit application meeting the requirements of this section, the secretary or an authorized representative of the secretary shall inspect the location of the proposed facility and determine if the same complies with this act and the rules and regulations promulgated under this act. An inspection report shall be filed in writing by the secretary before issuing a permit and shall be made available for public review.

Sec. 8. K.S.A. 1983 Supp. 65-3439 is hereby amended to read as follows: 65-3439. (a) Permits for hazardous waste treatment, storage and disposal facilities shall be issued for fixed terms not to exceed 10 years and shall be subject to an annual permit fee. The annual fee for a hazardous waste treatment, storage or disposal facility permit shall be \$50 and no refund shall be made in case of revocation. All fees shall be deposited in the state general fund. A city, county, other political subdivision or state agency shall be exempt from payment of the fee but shall meet all other provisions of this act.

(b) Plans, designs and relevant data for the construction of hazardous waste treatment, storage and disposal facilities shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, modification or operation of such a facility. In adopting rules and regulations, the secretary may specify sites, areas or facilities where the environmental impact is minimal and may waive the requirement that plans and designs for on-site storage or treatment facilities be prepared by a professional engineer.

(c) Each permit granted by the secretary, as provided in this act, shall be subject to such conditions as the secretary deems necessary to protect human health and the environment and to conserve the sites. Such conditions shall include approval by the secretary of the types and quantities of hazardous waste allowable for storage treatment or disposal at the permitted location.

(d) As a condition of granting a permit to operate any treatment, storage or disposal facility for hazardous waste, the secretary shall require the permittee to provide surety bond or cash bond or cash deposits to a secured trust fund and liability insurance, including coverage against nonsudden occurrences, or any combination thereof, or provide annual cash deposits to a trust fund which is hereby created in the state treasury in

amounts--to--be-determined-by-the-secretary-or-any-combination-of such-bonds,-insurance-or-cash-deposits-or--such--other--financial commitments--as--the--secretary--may--require,-in-such-amounts-or arrangements-as-determined-necessary-by-the-secretary--to--insure the--financial--responsibility-of-the-permittee-for-any-liability incurred-in-the-operation-of-the-facility-or-area-and--to--insure that,-upon--abandonment,-cessation--or--interruption--of--the operation-of-the-facility-or-area,-all-appropriate--measures--are taken--to--prevent--present-or-future-damage-to-public-health-and the-environment-and-to-provide-the-post-closure-care-required--by subsection--(t)-of-K.S.A.-1982-Supp.-65-3431.--Any-such-liability insurance-as-may-be--required--pursuant--to--this--subsection--or pursuant--to--the-rules-and-regulations-of-the-secretary-shall-be issued-by-an-insurance--company--authorized--to--do--business--in Kansas-or-by-a-licensed-insurance-agent-operating-under-authority of--K.S.A.-40-246b-and-amendments-thereto-and-shall-be-subject-to the-insurer's-policy-provisions-filed-with-and--approved--by--the commissioner---of---insurance---pursuant--to--K.S.A.-40-216--and amendments-thereto-except-as-authorized--by--K.S.A.-40-246b--and amendments-thereto.--The-pooled-money-investment-board-may-invest and-reinvest-moneys-credited-to-the-trust-fund-created-under-this subsection-in-obligations-of-the-United-States-or-obligations-the principal--and--interest--of--which--are-guaranteed-by-the-United States-or-in-interest-bearing-time--deposits--in--any--commercial bank--or-trust-company-located-in-Kansas,-or,-if-the-pooled-money investment-board-determines-that-it-is-impossible-to-deposit-such moneys-in-such-time-deposits,-in-repurchase--agreements--of--less than--30-days'-duration-with-a-Kansas-bank-for-direct-obligations of,-or-obligations-that-are-insured-as-to-principal-and--interest by,-the--United--States--government--or-any-agency-thereof.--All moneys-received-as-interest--earned--by--the--investment--of--the moneys--in--the-trust-fund-created-under-this-subsection-shall-be credited-to-such-trust-fund-and-prorated-according-to--procedures approved--by-the-director-of-accounts-and-reports-and-credited-to the-account-of-each-permittee-who--has--deposited--money--in--the

trust-fund-in-proportion-that-the-total-amount-of-money-deposited by--the--permittee-in-the-trust-fund-bears-to-the-total-amount-of money-in-the-trust-fund.--Money-in-the-trust-fund--created--under this-subsection-shall-be-expended-in-accordance-with-the-purposes for--the--deposit--of--moneys--by-a-permittee-into-the-trust-fund created-under-this-subsection.--Upon-the-cessation--of--operation of-the-facility,-the-secretary-shall-return-any-unused-portion-of the--money--deposited--by--a--permittee-in-the-trust-fund-created under-this-subsection,-including-interest-on-the-unused--portion, to--the--permittee.--All-expenditures-from-the-trust-fund-created under--this--subsection--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--of health--and--environment-or-a-person-or-persons-designated-by-the secretary.

{e} (d) Permits granted by the secretary, as provided in this act, shall be revocable or subject to suspension whenever the secretary shall determine that the hazardous waste treatment, storage or disposal facility is, or has been constructed or conducted in violation of this act or the rules and regulations or standards adopted pursuant to the act, or is creating a hazard to the public health or safety or to the environment, or for failure to make payment of any fee to any funds created under this act.

{f} (e) In case any permit is denied, suspended or revoked any person aggrieved by such decision may request a hearing before the secretary in accordance with K.S.A. 1982--Supp: 65-3440, and amendments thereto.

Sec. 9. K.S.A. 1983 Supp. 65-3441 is hereby amended to read as follows: 65-3441. (a) It shall be unlawful for any person to: (1) Dump or deposit, or permit the dumping or depositing of any hazardous waste regulated by this act into any facility except-short-term-storage which does not have-a-permit-issued--by comply with the provisions of this act or rules or regulations, standards or orders of the secretary, but this provision shall

not prohibit: (A) The use of hazardous wastes in normal farming operations or in the processing or manufacturing of other products in a manner that will not adversely affect the public health or environment, or (B) a generator who periodically produces a quantity of hazardous waste less than the quantity regulated under subsection (k) of K.S.A. 1982-Supp. 65-3431, and amendments thereto, from disposing such quantity of hazardous waste into a facility approved by the department which has a permit issued under K.S.A. 1982-Supp. 65-3407, and amendments thereto.

(2) Construct, modify or operate a hazardous waste storage, treatment or disposal facility without a permit, license or other required written approval from the secretary or to be in violation of the rules and regulations, standards or orders of the secretary.

(3) Violate any condition of any permit or license issued by the secretary.

(4) Generate, store, collect, treat or dispose of hazardous waste contrary to the rules and regulations, standards or orders of the secretary.

(5) Refuse or hinder entry, inspection, sampling and the examination or copying of records related to the purposes of this act by an agent or employee of the secretary after such agent or employee identifies and gives notice of their purpose at any time ~~when the facility is in operation or receiving or treating or disposing of hazardous wastes.~~

(6) Perform or fail to perform any act in violation of the rules and regulations, standards or orders of the secretary.

(7) Knowingly make any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with this act.

(8) Knowingly generate, store, treat, transport, dispose of or otherwise handle any hazardous waste or knowingly destroy, alter or conceal any record required to be maintained under rules

and regulations promulgated by the secretary pursuant to this act.

(9) Fail to designate on a manifest a facility which is authorized to operate under the federal hazardous waste program or under a state hazardous waste program which has received approval to operate in lieu of the federal hazardous waste program.

(10) Transport hazardous waste to a facility which is not authorized to operate under the federal hazardous waste program or under a state hazardous waste program which has received approval to operate in lieu of the federal hazardous waste program.

~~(6)~~ (11) Transport and dispose of, or cause the transportation and disposition of, hazardous waste in a manner contrary to the rules and regulations, standards or orders of the secretary. It shall not constitute a defense to the generator that the generator acted through an independent contractor in the transportation or disposition of the hazardous waste.

(b) Any person who violates any provision of paragraphs (1) to ~~(5)~~ 10, inclusive, of subsection (a) of this section shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished as provided by law. Any person who violates any provision of paragraph ~~(6)~~ (11) of subsection (a) of this section shall be guilty of a class E felony and, upon conviction thereof, shall be punished as provided by law.

(c) Any person who willfully, wantonly or recklessly violates any provisions of paragraphs (1) to ~~(6)~~ (11), inclusive, of subsection (a) shall be guilty of a class B C felony and, upon conviction thereof, shall be punished as provided by law.

(d) Any individual who violates any of the provisions of paragraphs (1) to ~~(6)~~ (11), inclusive, of subsection (a) shall be legally responsible to the same extent as if such acts were in the individual's own name or on the individual's own behalf.

(e) The county or district attorney of every county shall file appropriate actions for enforcement of this section upon

request of the secretary or upon the county or district attorney's own motion after consultation with the secretary.

(f) No person shall be held responsible for failure to secure a permit under the provisions of this section for the dumping or depositing of any hazardous waste on land owned or leased by such person without their expressed or implied consent, permission or knowledge.

Sec. 10. K.S.A. 1983 Supp. 65-3442 is hereby amended to read as follows: 65-3442. (a) Title to hazardous waste transported, stored, treated or disposed of in accordance with the provisions of this act and the rules and regulations and standards adopted thereunder, shall vest ~~in~~ with the generator, transporter or owner of the hazardous waste management facility in which the waste is located, ~~treated--or--disposed--of~~ unless specific contractual arrangements are otherwise provided. Hazardous waste disposed of in ways other than in accordance with the provisions of this act remain the property of the generator and the generator is liable for removal of the waste, restoration of the area in which the wastes were disposed and the disposal of the waste in accordance with this act.

(b) A generator who transfers hazardous waste to a registered hazardous waste transporter for transport to an approved hazardous waste facility shall be relieved of liability for cleanup or disposal for such waste, except as otherwise provided in this act. This subsection shall not operate to relieve any contractual obligation owing to the operator of the approved hazardous waste facility or to the transporter by the generator.

(c) If a generator utilizes ~~an-unregistered-transporter~~ or arranges for an unapproved transportation, storage, disposal or treatment, the generator and any person aiding or abetting the generator shall be liable for all costs resulting from cleanup, disposal or treatment of the waste.

(d) The duties, responsibilities and liabilities of this section shall apply to both intrastate and interstate shipments

of hazardous waste by a generator located in the state of Kansas.

Sec. 11. K.S.A. 1983 Supp. 65-3443 is hereby amended to read as follows: 65-3443. (a) If the secretary finds that the generation, accumulation, management or discharge disposal of a hazardous waste by any person is 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 or that the provisions of this act or any rule or regulation adopted pursuant thereto, the secretary may order the person to modify the generation, accumulation or management of the hazardous waste or to provide and implement such hazardous waste management systems procedures as will prevent or remove the pollution or hazard or take any other action deemed necessary. The secretary may order any person having a permit issued under this act, and who operates a ~~public or commercial hazardous waste management system-or-any-part-thereof~~, which the secretary finds suitable to manage the hazardous waste, to provide and implement a hazardous waste management ~~system-or-part-thereof~~ procedure to prevent or remove such pollution or hazard. Such order shall specify a fair compensation to the owner or permittee for property taken or used and shall specify the terms and conditions under which the permittee shall provide the hazardous waste management services. Any order issued shall specify the length of time after receipt of the order during which the person or permittee shall provide or implement the hazardous waste management system procedures or modify the generation, accumulation or management of the hazardous waste.

(b) If the secretary after consideration of the economic impact on the generator finds that there is an environmentally more desirable procedure available other than ground burial for the disposal of a particular type of hazardous waste, the secretary shall order that the use of ground burial for the disposal of that type of hazardous waste be discontinued. The secretary in developing such consideration may require the generator to provide information and plans for potential

environmentally more desirable procedures.

(c) Any party aggrieved by an order under this section shall have the right of appeal in accordance with the provisions of K.S.A. ~~1981-Supp.~~ 65-3440, and amendments thereto.

Sec. 12. K.S.A. 1983 Supp. 65-3444 is hereby amended to read as follows: 65-3444. (a) A person who violates any provisions of this act, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed \$25,000 for every such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) In assessing the civil penalty under this section, the district court shall consider, when applicable, the following factors:

(1) The extent to which the violation presents a substantial hazard to the health of individuals;

(2) the extent to which the violation has or may have an adverse effect upon the environment to be determined by the court according to the toxicity, degradability and dispersal characteristics of the ~~substance--discharged~~ hazardous waste disposed of or the potential for such damage if no ~~substance hazardous waste~~ has been discharged disposed, the sensitivity of the receiving environment and the degree to which the ~~discharge disposal~~ degrades existing environmental quality or the potential for such degradation if no discharge disposal has occurred;

(3) the amount of the reasonable costs incurred by the state in detection, investigation and attempted correction of the violation;

(4) the economic savings realized by the person in not complying with the provision for which a violation is charged including, but not limited to, that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to comply with the provision violated;

(5) the quantity of the ~~substance-discharged--or~~ hazardous waste disposed of, if any, in a manner which constitutes a

violation; and

(6) the amount which would constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) A civil action under this section may be commenced in the name of the state by the secretary or the county or district attorney of the county in which the violation is alleged to have occurred, or at the request of the secretary of health and environment, by the attorney general.

(d) Any sum assessed under this section shall be deposited as ordered by the district court judge: (1) In the state general fund, or (2) in a perpetual care trust fund established under K.S.A. 1982-Supp. 65-3431, and amendments thereto, or (3) part in a [the] state general fund and the balance in a perpetual care trust fund. Moneys deposited in a perpetual care trust fund under this subsection (d) shall be to reimburse such fund, to the extent practicable as determined by the district court judge, for expenditures from such fund, if any, in the matter which gave rise to the civil action.

Sec. 13. K.S.A. 1983 Supp. 65-3445 is hereby amended to read as follows: 65-3445. (a) Notwithstanding any other provision of this act, upon receipt of information that the storage, transportation, treatment or disposal of any hazardous waste may present a substantial hazard to the health of persons or to the environment or for a threatened or actual violation of this act or any rules or regulations adopted pursuant thereto or any orders issued pursuant thereto or any permit conditions required thereby, the secretary may take such action as may be necessary to protect the health of persons or the environment. The action the secretary may take shall include, but not be limited to:

(1) Issuing an order directing the owner or operator of the generator, transporter, storage, treatment or disposal facility or site, or the custodian of the waste, which constitutes the hazard, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard. The action

may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Commencing an action to enjoin acts or practices specified in paragraph (1) of this subsection or requesting that the attorney general or appropriate district or county attorney commence an action to enjoin those acts or practices. Upon a showing by the secretary that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this paragraph (2) of this subsection shall have precedence over other cases in respect to order of trial.

(3) Applying to the district court in the county in which an order of the secretary under paragraph (1) of this subsection will take effect, in whole or in part, for an order of that court directing compliance with the order of the secretary. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this paragraph (3) of this subsection for a court order shall have precedence over other cases in respect to order of trial.

(b) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction or permanent injunction shall issue without such allegations and without such proof.

(c) Any person aggrieved by an order of the secretary made pursuant to this section may appeal such order in the manner provided by law, within 30 days of notice of such order.

Sec. 14. K.S.A. 1983 Supp. 65-3446 is hereby amended to read as follows: 65-3446. (a) The secretary of the department of health and environment or the director of the division of environment, if designated by the secretary, upon a finding that

a person has violated any provision of K.S.A. 1981-Supp. 65-3441, and amendments thereto, may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial 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 upon the written order of the secretary of the department of health and environment, 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 the right of appeal to the secretary of health and environment. Any such person may, within 30 days after notification, make written request to the secretary for a hearing thereon. The secretary shall hear the person within 30 days after receipt of such request and shall give not less than 10 days' written notice of the time and place of the hearing. Within 15 days after such hearing, the secretary shall affirm, reverse or modify the order of the director and shall specify the reasons therefor. Nothing in this act shall require the observance at any hearing of formal rules of pleading or evidence.

(c) Any person aggrieved by an order of the secretary made pursuant to subsection (b) of this section may appeal the order in the manner provided by law, within 30 days of notice of the order.

New Sec. 15. If the secretary brings a civil enforcement action pursuant to this act, any citizen who has an interest which is or may be adversely affected, upon timely application, shall be allowed to intervene in such action pursuant to K.S.A. 60-224, and amendments thereto.

Sec. 16. K.S.A. 1983 Supp. 65-3430, 65-3431, 65-3432, 65-3333, 65-3435, 65-3436, 65-3437, 65-3439, 65-3441, 65-3442, 65-3443, 65-3444, 65-3445, 65-3446 and 65-3448 are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Testimony on H.B. 2740

Presented January 24, 1984

This is the official position taken by the Kansas Department of Health and Environment on H.B. 2740

BACKGROUND:

A. Current Kansas Status

KDHE has conducted a hazardous waste program since 1977. The U.S. Environmental Protection Agency (EPA) later initiated the federal program in November 1980. In order to carry out the functions of the federal program, KDHE received Phase I authorization in September 1981 from EPA. This authorization allows KDHE to carry out the federal program in Kansas except for permitting of hazardous waste treatment, storage, and disposal facilities.

The U.S. Congress established a deadline of January 26, 1985, as a point where the states must assume full authorization of the federal program or all responsibility reverts back to EPA. KDHE is in the process of preparing its application to receive full authorization.

B. Rationale For Full Authorization

The stated mission of KDHE is, "to protect public health and maintain environmental quality for Kansans by assuring the proper management of solid and hazardous waste." We believe that goal can be best achieved by KDHE assuming overall responsibility for the RCRA program with financial and technical assistance from EPA. We can provide the best program for the citizens of Kansas, one which has the approval of the Legislature and is customized to our specific needs.

Currently, EPA has granted full authorization to only one state, Delaware. Approximately 42 other states have received Phase I authorization just as Kansas. These states are in various stages of applying for full authorization. Only two states have indicated that they have no intention of applying for full authorization, Hawaii and Wyoming.

If KDHE does not obtain final authorization from EPA, the impacts of having the program administered by EPA, Region VII, will be felt in four primary areas:

Fiscal Impact - \$476,501 of the Bureau of Waste Management's \$884,834 budget (53.9%) in FY 84 comes from federal grants under RCRA. In FY 85, the RCRA grant money will be \$395,050 of the Bureau's \$986,237 budget (40.0%). These figures are in addition to other federal financial assistance available such as their 100% funding of remedial investigations/feasibility studies at national priority list Superfund sites when KDHE takes the lead responsibility. Without final authorization, these funds may be lost.

Attachment 2

Staff Impact - A loss of 40% of the Bureau of Waste Management's operating budget would require a 40-50% reduction in staff. Therefore, unless the loss in federal funds could be replaced by state money, approximately 10-12 staff positions would be eliminated.

Environmental Impact - If KDHE fails to achieve final authorization, current program elements which provide significant environmental benefits for the citizens of Kansas would require non-federal funding to continue. Examples include: 1) the annual seminars held throughout the state to educate the regulated community regarding developments in the regulatory program and the field of hazardous waste management in general, 2) KDHE's efforts in working with industry to encourage and explore the use of treatment and disposal methods other than land burial for hazardous waste, 3) investigation of potential problem waste management sites which are not on the national priority list of Superfund sites, and 4) KDHE's extensive inspection program for all hazardous waste management facilities throughout the state to ensure compliance with Kansas solid and hazardous waste regulations (approximately 2,000 inspections per year).

Administrative Impact - It is doubtful that EPA, Region VII, would carry out any of these functions at anything close to the scale of KDHE's efforts. Furthermore, since EPA would administer only the federal RCRA program, it would mean a relaxation of regulatory standards in some areas unless additional resources were available to KDHE to administer the additional program elements. One of the most significant areas would be the federal small generator exclusion which is 1000 kg/month. This would cause confusion for the regulated community since KDHE has a 100 kg/month level. It would be to Kansas' advantage to have full authorization to eliminate regulatory confusion and duplication of state and federal regulatory programs on the industrial sector of Kansas. Another advantage is that KDHE could use full administrative discretion in carrying out the hazardous waste regulations without the input of EPA unless it was requested.

BILL DISCUSSION:

Changes in H.B. 2740 are necessary for the following reasons:

- a. EPA's requirement of KDHE for certain statutory changes which are necessary in order to receive full authorization.
- b. KDHE initiative to separate the radioactive waste statutory references for consolidation with other state radioactive statutes.
- c. KDHE initiative to update, clarify and cleanup hazardous waste statutes due to program changes at both the state and federal level.
- d. KDHE initiative to achieve equivalent definitions with those of the federal program (recommended by EPA, but not explicitly required).

The changes in H.B. 2740 are summarized below into one of these four categories:

		<u>Amendment Code</u>
Page 1	Line 33 - 35	d
	40 - 42	d
	43 - 46	d
Page 2	Line 47 - 67	a, c, d
	68 - 72	d
	73 - 82	c
Page 3	Line 83 - 89	c
	90 - 93	d
	94 - 98	b
	99 - 103	c
	104 - 111	c
	112 - 118	a, c
	119 - 121	c
Page 4	Line 121 - 133	c, d
	138 - 143	d
	144 - 146	b
	149 - 154	c
	144 - 160	d
Page 5	Line 161 - 165	d
	166 - 176	d
	177 - 187	a, b, c
Page 6	Line 209	d
	211	d
	212 - 216	a, c
	221 - 238	a, c
Page 7	Line 239 - 250	c
	251 - 256	c
	257 - 267	a, c
Page 8	Line 268 - 286	c
	287 - 295	c
Page 9	Line 309 - 321	a, c
	322 - 351	a, b, c
Page 10	Line 352 - 385	b, c
Page 11	Line 386 - 460	b
Page 13	Line 461 - 464	c
	470 - 472	c
	488	c

Amendment Code

Page 14	Line 511 - 514	c
Page 15	Line 550 - 551	b
Page 16	Line 589 - 598	b, c
Page 17	Line 607	b
	610	b
	623 - 627	b
Page 18	Line 639	c
	642 - 649	b
	652	b
	658 - 659	c
	665 - 666	c
Page 19	Line 698 - 704	c
Page 20	Line 720	c
	721 - 776	c
Page 22	Line 792 - 795	c, d
	807	b
	810	b
	812	c
	819 - 820	a, c
	821 - 841	a, c
	857	a
Page 24	Line 872 - 884	c
	885 - 891	c
	892 - 896	c
Page 25	Line 900 - 926	a, c, d
Page 26	Line 951 - 960	a, c, d
	970 - 971	a, c, d
Page 27	Line 977	c
	996 - 999	a, c
	1002-1003	a, c
Page 28	Line 1039-1044	c
Page 29	Line 1050-1052	c
	1068-1072	a, c

FISCAL IMPACT:

House Bill 2740 would not have any measurable fiscal impact upon the regulated community in Kansas. The only fiscal impact upon state government would be the elimination of the yearly \$50 permit fees from hazardous waste treatment, storage and disposal facilities. This loss should, however, be negated because of the addition of all transporters to the monitoring fee system. Thus, no budget effect is anticipated if this Bill is enacted. Failure to pass H.B. 2740 could result in substantial loss of federal RCRA grant funds to the State of Kansas.

HOUSE BILL NO. 2760

By Committee on Energy and Natural Resources

AN ACT concerning the nuclear energy development and radiation control act; amending K.S.A. 48-1601, 48-1603, 48-1604, 48-1607, 48-1608, 48-1609, 48-1610, 48-1611, 48-1612, 48-1613 and 48-1615 and repealing the existing sections.

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

Section 1. K.S.A. 48-1601 is hereby amended to read as follows: 48-1601. It is the policy of the state of Kansas in furtherance of its responsibility to protect the public health and safety:

(a) To institute and maintain a program to permit development and utilization of sources of radiation for peaceful purposes consistent with the health and safety of the public; and

(b) to institute and maintain a regulatory program for sources of radiation so as to provide for (1) compatibility with the standards and regulatory programs of the federal government; (2) an integrated, effective system of regulation within the state; and (3) a system consonant insofar as possible with those of other states; and

(c) to provide for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within the state, except for waste generated as a result of defense or federal research and development activities, and to recognize that such radioactive waste can be most safely and efficiently managed on a regional basis.

The provisions of this act shall not be interpreted as limiting the intentional exposure of patients to radiation, for the purpose of diagnosis or therapy, by persons licensed to practice one or more of the healing arts within the authority

granted to them by the Kansas healing arts statute, or by persons licensed to practice dentistry or podiatry within the authority granted to them by Kansas licensing laws applying to dentists and podiatrists.

Sec. 2. K.S.A. 48-1603 is hereby amended to read as follows: 48-1603. As used in this act:

(a)--"Nuclear--energy"--means--all--forms--of--energy--released--in--the--course--of--nuclear--fission--or--nuclear--transformation--:

(b)--The--term--"electronic--product"--means--any--manufactured--or--assembled--product--which--when--in--operation--contains--or--acts--as--part--of--an--electronic--circuit--and--emits--(or--in--the--absence--of--effective--shielding--or--other--controls--would--emit)--electronic--product--radiation--or--any--manufactured--or--assembled--article--which--is--intended--for--use--as--a--component--part--or--accessory--of--a--product--described--in--this--subsection--and--which--when--in--operation--emits--(or--in--the--absence--of--effective--shielding--or--other--controls--would--emit)--such--radiation--:

(c)--The--term--"electronic--product--radiation"--means--any--ionizing--or--nonionizing--electromagnetic--or--particulate--radiation--or--any--sonic--infrasonic--or--ultrasonic--wave--which--is--emitted--from--an--electronic--product--as--the--result--of--the--operation--of--an--electronic--circuit--in--such--product--:

(d)--"By-product--material"--means--any--radioactive--material--(except--special--nuclear--material)--yielded--in--or--made--radioactive--by--exposure--to--the--radiation--incident--to--the--process--of--producing--or--utilizing--special--nuclear--material--:

(e)--"Source--material"--means--(1)--uranium--thorium--or--any--other--material--which--the--board--declares--by--order--to--be--source--material--after--the--United--States--atomic--energy--commission--or--any--successor--thereto--has--determined--the--material--to--be--such--or--(2)--ores--containing--one--or--more--of--the--foregoing--materials--in--such--concentration--as--the--board--declares--by--order--to--be--source--material--after--the--United--States--atomic--energy--commission--or--any--successor--thereto--has--determined--the--material--in--such--concentration--to--be--source--material--:

(f)--"Special-nuclear-material" means--(1)--plutonium, uranium 233, uranium-enriched-in-the-isotope-233-or-in-the--isotope--235, and--any--other--material-which-the-board-declares-by-order-to-be special-nuclear-material-after-the-United--States--atomic--energy commission, or-any-successor-thereto, has-determined-the-material to--be--such,--but--does--not-include-source-material, or--(2)--any material-artificially-enriched-by-any-of-the-foregoing, but--does not-include-source-material.

(g)--"Radiation"--means--(1)--ionizing--radiation--including gamma--rays,--X-rays,--alpha--particles,--beta--particles,--and including--neutrons,--(2)--any-electromagnetic-radiation-other-than ionizing-radiation-which-is-generated-during-the-operation-of--an electronic-product,--(3)--any-sonic, ultrasonic, or-infrasonic-wave which--is--emitted--from-an-electronic-product-as-a-result-of-the operation-of-an-electronic-circuit-in-such-product.

(h)--"License-----general--and--specific."--(1)--"General license"--means--a--license--effective--pursuant--to--regulations promulgated-by-the-secretary-of-health-and--environment,--without the--filing--of-an-application-to-transfer, acquire, own, possess or--use--quantities--of,--or--devices--or--equipment---utilizing by-product,---source,---special--nuclear--materials,--or--other radioactive---material---occurring---naturally---or---produced artificially.--(2)--"Specific--license"--means--a--license, issued after--application,--to--use,--manufacture,--produce,--transfer, receive,--acquire,--own,--or--possess-quantities-of, or-devices-or equipment---utilizing---by-product,---source,---special--nuclear materials,--or--other-radioactive-material-occurring-naturally-or produced-artificially.

(i)--"Registration"--means-the-reporting-of-possession--of--a source--of--radiation--and--the--furnishing--of--information-with respect-thereto, in-accordance-with-K.S.A.-48-1607.

(j)--"Person"----means----any----individual,----corporation, partnership,--firm, association, trust, estate, public-or-private institution, group, agency, political-subdivision-of-this--state, any--other--state-or-political-subdivision-or-agency-thereof, and

any legal successor, representative, agent, or agency of the foregoing, other than the United States atomic energy commission, or any successor thereto, and other than federal government agencies licensed by the United States atomic energy commission, or any successor thereto.

(k) "Board" means the secretary of health and environment.

(a) "By-product material" means: (1) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(b) "Department" means the Kansas department of health and environment.

(c) "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violations of statutes, regulations, licenses or registration certificates, but does not include criminal penalties.

(d) "Closure" or "site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance and monitoring are necessary at the site following termination of licensed operation.

(e) "Decommissioning" means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material and to carry out any other activities to prepare the site for postoperational care.

(f) "Disposal of low-level radioactive waste" means the isolation of such waste from the biosphere.

(g) "Electronic product" means any manufactured or assembled product which, when in operation, contains or acts as part of an electronic circuit and emits, or in the absence of

effective shielding or other controls would emit, electronic product radiation, or any manufactured or assembled article which is intended for use as a component part, or accessory of a product described in this subsection and which in operation emits, or in the absence of effective shielding or other controls would emit, such radiation.

(h) "Electronic product radiation" means any ionizing or nonionizing, electromagnetic or particulate radiation, or any sonic, infrasonic, or ultrasonic wave, which is emitted from an electronic product as the result of the operation of an electronic circuit in such product.

(i) "General license" means a license effective pursuant to rules and regulations promulgated by the secretary of health and environment, without the filing of an application to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(j) "High-level radioactive waste" means: (1) Irradiated reactor fuel; (2) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for uranium processing irradiated reactor fuel; and (3) solids into which such liquid wastes have been converted.

(k) "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in subsection (a)(2).

(1) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or any other state or political subdivision or agency thereof, and any legal successor, representative, agency, or agency of the foregoing, other than the United States nuclear regulatory

commission, or any successor thereto, and other than federal government agencies licensed by the United States nuclear regulatory commission, or any successor thereto.

(m) "Radiation" means: (1) Ionizing radiation including gamma rays, X-rays, alpha particles, beta particles, and including neutrons; (2) any electromagnetic radiation other than ionizing radiation which is generated during the operation of an electronic product; or (3) any sonic, ultrasonic, or infrasonic wave which is emitted from an electronic product as a result of the operation of an electronic circuit in such product.

(n) "Radioactive material" means any material, solid, liquid or gas, which emits ionizing radiation spontaneously. It includes accelerator produced, by-product, naturally occurring, source and special nuclear materials.

(o) "Secretary" means the secretary of the Kansas department of health and environment.

(p) "Source material" means: (1) Uranium, thorium, or any other material which the secretary declares by order to be source material after the United States nuclear regulatory commission, or any successor thereto, has determined the material to be such; or (2) ores containing one or more of the foregoing materials, in such concentration as the secretary declares by order to be source material after the United States nuclear regulatory commission, or any successor thereto, has determined the material in such concentration to be source material.

(q) "Source material mill tailings" means the tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes but not including underground ore bodies depleted by such solution extraction process.

(r) "Source material milling" means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium

or thorium therefrom and which results in the production of source material mill tailings.

(s) "Sources of radiation" means, collectively, radioactive material and radiation generating equipment.

(t) "Special nuclear material" means: (1) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the secretary declares by order to be special nuclear material after the United States nuclear regulatory commission, or any successor thereto, has determined the material to be such, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(u) "Specific license" means a license issued after application, to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(v) "Spent nuclear fuel" means irradiated nuclear fuel that has undergone at least one year's decay since being used as a source of energy in a power reactor. Spent nuclear fuel includes the special nuclear material, by-product material, source material and other radioactive material associated with fuel assemblies.

(w) "Transuranic waste" means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than five years, in excess of 10 nanocuries per gram.

Sec. 3. K.S.A. 48-1604 is hereby amended to read as follows: 48-1604. Each of the following departments and agencies of the state or their successors is directed to initiate and to pursue continuing studies as to the need for changes in the laws administered by it that would arise from the presence within the state of special nuclear, by-product, and radioactive materials, from the operation herein in this state of production or utilization facilities, and from the generation of radiation,

and, on the basis of such studies, to make such recommendations for the enactment of laws or amendments to laws administered by it, and to propose to the ~~board~~ secretary such regulations as may appear necessary and appropriate:

(a) The state department of economic development, particularly as to the promotion and development of the peaceful uses of atomic energy and related industries;

(b) the state labor department, particularly as to hazardous working conditions;

(c) the workmen's compensation director, particularly as to the time and character of proof of claims of injuries and the extent of the compensation allowable therefor;

(d) the department of transportation, particularly as to the transportation of by-product, source, special nuclear, or other radioactive materials on highways of the state;

(e) the state corporation commission, particularly as to the transportation of by-product, source, special nuclear, or other radioactive materials by common carriers not in interstate commerce and as to the participation by public utilities subject to its jurisdiction in projects looking to the development of production or utilization facilities for industrial or commercial use;

(f) the state insurance department, particularly as to the insurance of persons and property from hazards to life and property resulting from nuclear development;

(g) the ~~state--forestry~~, Kansas fish and game commission, particularly as to the hazards to the natural resources of the state, including wildlife;

(h) the state geological survey, particularly as to the possibility of disposal of radioactive wastes in subterranean areas; and

(i) such other departments and agencies as the governor may direct and for the purposes specified by ~~him-or-her~~ the governor, and such other departments and agencies as may be provided for by law. Any conflict between the aforementioned agencies and the

board secretary concerning the issuance or substance of the board's secretary's rules and regulations shall be resolved by the governor. For the purpose of enabling the departments and agencies hereinbefore mentioned or authorized to exercise the powers and duties herein imposed or conferred, said the departments and agencies may confer with technical or professional consultants as they deem necessary, and may reimburse such technical and professional personnel for the necessary and actual expenses incurred in connection with such consultations.

Sec. 4. K.S.A. 48-1607 is hereby amended to read as follows: 48-1607. The board secretary:

(a) Shall provide by rules ~~or~~ and regulations for general or specific licensing of by-product, source, radioactive material and special nuclear materials, or devices or equipment utilizing such materials. Such rules ~~or~~ and regulations shall provide for amendment, suspension, or revocation of licenses;

(b) shall develop programs, with due regard for compatibility with federal programs, for regulations and inspection of by-product, source, and special nuclear materials;

(c) is authorized to require licensing or registration of all sources of radiation;

(d) shall prescribe rules ~~or~~ and regulations pertaining to such sources of radiation;

(e) is authorized to exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the board secretary makes a finding that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public;

(f) is authorized to provide for recognition of other state or federal licenses as the board secretary may deem desirable, subject to such registration requirements as the board secretary may prescribe;

(g) shall require each person who acquires, possesses or

uses a source of radiation to maintain records relating to its receipt, storage, transfer or disposal and such other records as the board secretary may require subject to such exemptions as may be provided by rules ~~or~~ and regulations;

(h) shall require each person who acquires, possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the board secretary. Copies of these records and those required to be kept by subsection (g) of this section shall be submitted to the board secretary on request. Any person possessing or using a source of radiation shall furnish to each employee, for whom personnel monitoring is required, a copy of such employee's personal exposure record annually, at any time such employee has received excessive exposure, and upon termination of employment;

(i) shall maintain a file of (1) all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, revocations, and any administrative or judicial action pertaining thereto; (2) registrants possessing sources of radiation requiring registration under the provisions of this act and any administrative or judicial action pertaining thereto; and (3) all rules and regulations relating to regulation of sources of radiation, pending or promulgated, and proceedings thereon.

Sec. 5. K.S.A. 48-1608 is hereby amended to read as follows: 48-1608. (a) In any proceeding under this act: (1) For the issuance or modification of rules and regulations relating to control of sources of radiation; ~~or~~ (2) for granting, suspending, revoking, or amending any license, the board secretary shall afford an opportunity for a hearing on the record upon the written request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding or (3) in any proceeding for licensing ores processed primarily for their source material content and disposal of by-product material or source material mill tailings

or for licensing disposal of low-level radioactive waste, the secretary shall provide:

(A) An opportunity, after public notice, for written comments and a public hearing, with a transcript;

(B) an opportunity for cross-examination; and

(C) a written determination of the action to be taken which is based upon findings included in the determination and upon evidence presented during the public comment period, and prior to any such proceeding the secretary shall prepare, for each licensed activity which has a significant impact on the human environment, a written analysis of the impact of such licensed activity on the environment. The analysis shall be available to the public before the commencement of any such hearing and shall include an assessment of the radiological and nonradiological impacts to the public health; an assessment of any impact on any waterway and groundwater; consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted and consideration of the long-term impacts, including decommissioning, decontamination and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such decommissioning, decontamination and reclamation.

Procedure for hearings authorized in this subsection shall be established by rule or and regulation of the board secretary.

(b) When the board secretary, or any of its the secretary's duly authorized agents, determines that there are reasonable grounds to believe a violation of the provisions of this act or of the rules and regulations of the board secretary has occurred, the ~~executive secretary of the board~~ shall give written notice to the alleged violator or violators specifying the alleged violations involved. Upon receipt of notice of such alleged violations, any aggrieved person may, within ~~fifteen-(15)~~ 15 days after receipt of such notice, request a hearing thereon by mailing a request for a hearing by registered or certified mail

to the executive secretary of--the-board. If a hearing is not requested within the fifteen-~~(15)~~ 15 days after the receipt of the written notice of alleged violations, the board secretary shall issue ~~its~~ an order finding that the violation of the act or the rules and regulations of the board secretary has or has not occurred, and shall forthwith forward a copy of such order by registered or certified mail to said such person. Such order shall be final and may not be appealed from. If a hearing is requested, such hearing shall be held within ~~thirty-(30)~~ 30 days after the receipt of the request for hearing, at such time and place as is designated by the executive secretary of--the--board. Reasonable notice of the time and place for hearing shall be given to the person requesting such hearing. Hearings may be conducted by the board,~~--executive secretary of-the-board,~~ or hearing officers appointed by the board secretary. A record or summary of the proceedings of such hearings shall be taken and filed with the board secretary. On the basis of the evidence produced at such hearing, the board,~~--executive secretary or hearing officer~~ shall make a determination as to whether the act or the rules and regulations of the board secretary have been violated. The board secretary shall issue ~~its~~ an order containing such determination and findings and give written notice thereof by forwarding a copy of such order by registered mail to the alleged violator within ~~thirty-(30)~~ 30 days after the conclusion of such hearing. The order of the board secretary shall become final and may not be appealed from unless appealed as provided in subsection (d) of this section within ~~fifteen-(15)~~ 15 days after the written notice of the order has been mailed to the alleged violator.

(c) Whenever the board,~~--the--executive secretary of--the board or the director of environmental--health--services~~ the division of environment of the department finds that an emergency exists requiring immediate action to protect the public health and safety, an emergency order may be issued reciting that an emergency exists and requiring that such action be taken as is

necessary to meet the emergency. Such an order may be issued orally to the person or persons whose operation constitutes the emergency by the executive secretary or ~~his-or-her-duly~~ the secretary's authorized representative and confirmed by a copy of such order mailed within ~~twenty-four--(24)~~ 24 hours after the issuance of such oral order. Such emergency order shall be effective immediately and any person to whom such order is directed shall comply therewith immediately. Any person aggrieved by the issuance of any such emergency order shall be entitled to a hearing in the same manner as is provided in subsection (b) of this section. On the basis of such hearing, the emergency order may be continued, revoked, or modified as the circumstances may require. Time limits for giving notice and for such order to become final as provided in subsection (b) of this section shall apply.

(d) An appeal may be taken from any final order or final determination of the board secretary by any person adversely affected thereby. Jurisdiction for all such appeals shall be vested solely in the district court of Shawnee county. Notice of appeal from any such final order or determination shall be served on the ~~board-through-its-executive~~ secretary. Failure to serve such notice of appeal within ~~fifteen--(15)~~ 15 days after mailing of the order or determination appealed from shall operate as a waiver of the right to appeal. The notice of appeal shall refer to the action of the board secretary appealed from and shall specify the grounds for appeal. Copy of the original notice of appeal with proof of service on the executive secretary ~~of--the~~ board shall be filed by the appellant with the clerk of the Shawnee county district court within ~~ten--(10)~~ 10 days of the service of said the notice on the executive secretary ~~of--the~~ board and thereupon the court shall have jurisdiction of the appeal. A copy of the records of proceedings before the board secretary shall be certified ~~by-the-executive--secretary--of--the~~ board to the court in connection with each appeal. Service of a notice of appeal shall not operate as a stay; however, the

appellant shall have the right to apply to the board secretary for a stay which the ~~executive~~ secretary ~~of-the-board~~ may grant if the public health and safety is not endangered thereby. The appeal shall be heard and determined by the court, without a jury, upon the issues raised by the notice of appeal. Only the evidence offered at the hearing shall be considered, except in the case of omission or errors in the record. The court shall have the power to affirm, modify, or reverse the decision of the board secretary or remand the case for further proceedings.

Sec. 6. K.S.A. 48-1609 is hereby amended to read as follows: 48-1609. The ~~board--or--its--duly~~ secretary or the secretary's authorized representatives shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this act and rules and regulations issued hereunder, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

Sec. 7. K.S.A. 48-1610 is hereby amended to read as follows: 48-1610. The board secretary shall have the authority to impound or order the impounding of sources of radiation, in the possession of any person who is not equipped to observe or fails to observe the provisions of this act or any rules ~~or~~ and regulations issued hereunder.

Sec. 8. K.S.A. 48-1611 is hereby amended to read as follows: 48-1611. Whenever, in the judgment of the board secretary, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this act or any rule, and regulation or order issued thereunder, the attorney general shall be empowered to make application to the district court of the county in which such acts or practices may be performed, for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the board secretary that such person has

engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. If the attorney general shall present a verified application for a restraining order which alleges an immediate danger to the public health and safety, such restraining order shall issue forthwith.

Sec. 9. K.S.A. 48-1612 is hereby amended to read as follows: 48-1612. It shall be unlawful for any person to use, manufacture, produce, transport, transfer, (distribute, sell, install, repair,) receive, acquire, own or possess any source of radiation unless licensed by or registered with the board secretary in accordance with the provisions of this act.

Sec. 10. K.S.A. 48-1613 is hereby amended to read as follows: 48-1613. (a) Any person who violates any of the provisions of this act or rules ~~or~~ and regulations issued pursuant to this act, or who violates any order of the board secretary issued pursuant to this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ~~twenty-five-dollars-(\$25)~~ \$25 nor more than ~~five-hundred-dollars-(\$500)~~ \$500 or by imprisonment not to exceed six ~~(6)~~ months or by both such fine and imprisonment, and in addition thereto, may be enjoined from continuing such violation. Each day of such violation shall constitute a separate violation.

(b) Any person who (1) violates any licensing or registration provision of this act or any rule and regulation, or order issued thereunder, or any term condition or limitation of any license or registration certificate issued thereunder; or (2) commits any violation for which a license or registration certificate may be revoked under rules and regulations issued pursuant to this act may be subject to a penalty, to be imposed by the secretary, not to exceed \$10,000. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The secretary shall have the power to compromise, mitigate or remit such penalties. Whenever the secretary

proposes to subject a person to the imposition of a civil penalty under the provisions of this section the secretary shall notify such person in writing:

(1) Setting forth the date, facts, and nature of each act or omission with which the person is charged;

(2) specifically identifying the particular provision or provisions of the section, rule and regulation, order, license or registration certificate involved in the violation; and

(3) advising of each penalty which the secretary proposes to impose and its amount.

Such written notice shall be sent by registered or certified mail by the secretary to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the secretary shall by rule and regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the secretary, if any, the penalty may be collected by civil action. Any person upon whom a civil penalty is imposed may appeal such action in the manner provided in K.S.A. 48-1608, and amendments thereto.

(c) On the request of the secretary, the attorney general is authorized to institute a civil action to collect any penalty imposed pursuant to this section. The attorney general shall have the exclusive power to compromise, mitigate or remit such civil penalties as are referred for collection.

(d) All moneys collected from civil penalties shall be paid to the state treasurer for deposit in the general fund. Moneys collected from civil penalties shall not be used for normal operating expenses of the department except as appropriations are made from the general fund in the normal budgetary process.

Sec. 11. K.S.A. 48-1615 is hereby amended to read as follows: 48-1615. The board secretary is authorized to enter into, subject to the approval of the governor, an agreement or agreements with the federal government, other states or

interstate agencies, whereby this state will perform on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of radiation.

New Sec. 12. The hazardous waste disposal facility approval board shall review and grant or deny final approval for each commercial low-level radioactive waste disposal facility license in the same manner as provided in K.S.A. 65-3433 et seq., and amendments thereto.

New Sec. 13. (a) Any radioactive materials license issued or renewed after the effective date of this act for any activity which results in the production of by-product material or source material mill tailings shall contain such terms and conditions as the secretary determines to be necessary to assure that, prior to termination of such license:

(1) The licensee will comply with decontamination, decommissioning and reclamation standards prescribed by the secretary which shall be equivalent, to the extent practicable, or more stringent than those of the United States nuclear regulatory commission for sites: (A) At which ores were processed primarily for their source material content; and (B) at which such by-product material or mill tailings are deposited; and

(2) ownership of any disposal site and such by-product material or mill tailings which resulted from the licensed activity shall, subject to the provisions of subsection (b), be transferred to: (A) The United States; or (B) the state, if the state exercises the option to acquire land used for the disposal of such by-product material or mill tailings. Any license which is in effect on the effective date of this act and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) of this subsection (a) upon termination.

(b) (1) The secretary shall require by rule and regulation, or order that, prior to the termination of any license which is issued after the effective date of this act, title to the land, including any interests therein, other than land held in trust by

the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States or land already owned by the United States or by the state, which is used pursuant to such license for the disposal of by-product material or source material tailings shall be transferred to: (A) The United States; or (B) the state, unless the United States nuclear regulatory commission determines prior to such termination that transfer of title to such land and such by-product material or mill tailings is not necessary or desirable to protect the public health, safety or welfare or to minimize danger to life or property.

(2) If transfer to the state of title to such by-product material or mill tailings and land is required, the secretary shall, following the United States nuclear regulatory commission's determination that the licensee has complied with applicable standards and requirements under the license, assume title to such by-product material or mill tailings and land and maintain such by-product and mill tailings and land in such manner as will protect the public health and safety and the environment.

(3) The secretary is authorized to undertake such monitoring, maintenance and emergency measures as are necessary to protect the public health and safety for those materials and property for which custody has been assumed pursuant to this act.

(4) The transfer of title to land or by-product materials or source material mill tailings to the United States or the state shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(5) By-product material and mill tailings and land transferred to the United States or the state in accordance with this subsection: (A) Shall be transferred without cost to the United States or the state other than administrative and legal costs incurred by the United States or the state in carrying out such transfer; or (B) in licensing and regulation of by-product material and source material tailings or of any activity which

results in the production of by-product material and such tailings, the secretary shall require compliance with applicable standards promulgated by the secretary which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the United States nuclear regulatory commission for the same purpose, including requirements and standards promulgated by the United States environmental protection agency.

New Sec. 14. (a) The secretary if authorized to enter into negotiations for a compact with other states for the establishment and operation of a regional low-level radioactive waste disposal site which, before being put into effect, shall be ratified by the legislatures of three states and consented to by the Congress of the United States.

(b) The state is authorized to accept or acquire, by gift, transfer or purchase, from another governmental agency or private person, suitable sites including land and appurtenances for the disposal of low-level radioactive waste. Sites received by gift or transfer are subject to approval and acceptance by the legislature.

(c) Lands and appurtenances which are used for the disposal of low-level radioactive waste shall be acquired in fee simple absolute and used exclusively for such purpose, unless or until the secretary determines that such exclusive use is not required to protect the public health, safety, welfare or environment. Before such site is leased for other use, the secretary shall require and assure that the radioactive waste history of the site be recorded in the permanent land records of the site. All radioactive material accepted by the site operator or by any agent of the site operator for disposal on a radioactive waste disposal site shall become the property of the state.

(d) The state is authorized to arrange for the availability of a service for disposal of low-level radioactive waste by contract operation of a disposal site acquired pursuant to subsection (b) or already owned by the state. A contract operator shall be subject to the surety and long-term care

funding provisions of this act and to appropriate licensing by the United States nuclear regulatory commission or by the secretary under K.S.A. 48-1607, and amendments thereto.

(e) The secretary shall not approve any application for a license to receive radioactive waste from other persons for disposal on land not owned by the state or federal government.

New Sec. 15. (a) For licensed activities involving source material milling, source material mill tailings and disposal of low-level radioactive waste, the secretary shall, and for other classes of licensed activity, the secretary may establish by rule and regulation standards and procedures to ensure that the licensee will provide an adequate surety or other financial arrangement to permit the completion of all requirements established by the secretary for the decontamination, closure, decommissioning and reclamation of site, structures and equipment used in conjunction with such licensed activity, in case the licensee should default for any reason in performing such requirements.

(b) All sureties required pursuant to subsection (a) which are forfeited shall be paid to the secretary for deposit by the state treasurer in a special fund called the radiation site closure and reclamation fund which is hereby established. All moneys in this fund are hereby appropriated and may be expended by the secretary as necessary to complete such requirements on which licensees have defaulted. Moneys in this fund shall not be used for normal operating expenses of the secretary or the department.

(c) For license activities involving the disposal of source material, mill tailings and disposal of low-level radioactive waste, the secretary shall, and for other classes of licensed activity when radioactive material which will require surveillance or care is likely to remain at the site after the licensed activities cease the secretary may, establish by rule and regulation standards and procedures to ensure that the licensee, before termination of the license, will make available

such funding arrangements as may be necessary to provide for long-term site surveillance and care.

(d) All funds collected from licensees pursuant to subsection (c) shall be paid to the secretary for deposit by the state treasurer in a special fund called the radiation long-term care fund which is hereby established. All funds accrued as interest on moneys deposited in this fund are hereby appropriated and may be expended by the secretary for continuing long-term surveillance maintenance and other care of facilities from which such funds are collected as necessary for protection of the public health, safety and environment. Notwithstanding any other provision of this subsection, if title to and custody of any radioactive material and its disposal site are transferred to the United States upon termination of any license for which funds have been collected for such long-term care, the collected funds and interest accrued thereon shall be transferred to the United States.

(e) The sureties or other financial arrangement and funds required by subsections (a) and (b) shall be established in amounts sufficient to ensure compliance with those standards, if any, established by the United States nuclear regulatory commission pertaining to decontamination, closure, decommissioning, reclamation and long-term site surveillance and care of such facilities and sites.

(f) In order to provide for the proper care and surveillance of sites subject to subsection (c) of this section which are not subject to section 13 or 14, the state may acquire by gift or transfer from other governmental agencies or private persons, any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or transfer is subject to approval and acceptance by the state legislature.

(g) The secretary may provide by contract, agreement, lease or license with any person, including another state agency, for the decontamination, closure, decommissioning, reclamation, surveillance or other care of a site subject to this section as

needed to carry out the purposes of this section.

(h) In the event a person licensed by any governmental agency, other than the secretary, desires to transfer a site to the state for the purpose of administering or providing long-term care, a lump sum deposit shall be made to the radiation long-term care fund. The amount of such deposit shall be determined by the secretary taking into account the factors stated in subsections (c) and (e) of this section.

(i) All state, local or other governmental agencies, shall be exempt from the requirements of subsections (a) and (c).

New Sec. 16. (a) The secretary is authorized to enter into an agreement or agreements with the United States nuclear regulatory commission pursuant to section 274(c) of the atomic energy act of 1954, as amended, other federal agencies, as authorized by law, other states or interstate agencies, whereby this state will perform on a cooperative basis with the commission, other federal governmental agencies, other state or interstate agencies, inspections or other functions relating to control of sources of radiation.

(b) The secretary may institute training programs for the purpose of qualifying personnel to carry out the provisions of this act, and may make such personnel available for participation in any program or programs of the federal government, other states or interstate agencies in furtherance of the purposes of this act.

Sec. 17. K.S.A. 48-1601, 48-1603, 48-1604, 48-1607, 48-1608, 48-1609, 48-1610, 48-1611, 48-1612, 48-1613 and 48-1615 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.