

Approved

3/27/84

Date

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Representative David J. Heinemann at
Chairperson

3:30 ~~am~~ p.m. on February 15, 1984 in room 519-S of the Capitol.

All members were present except: Representatives Kent Ott and Charlton (excused).

Committee staff present:

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

Conferees appearing before the committee:

Mr. Don Low, Kansas Corporation Commission
Barbara Sabol, Secretary, Kansas Department of Health and
Environment.

Mr. Don Low, Kansas Corporation Commission appeared before the committee and addressed the issue of mobile telephones. Mr. Low stated there was a need for regulation by KCC and that the FCC had already granted such authority. He stressed the fact that when there is a need for service and rates are to be determined, the KCC needs to have authority to examine qualifications for such cases. A brief question and answer period followed his presentation.

Business turned to a discussion of HB 2740. Barbara Sabol, Secretary, Kansas Department of Health and Environment, distributed handouts to the committee members in response to questions asked at previous meetings. (Attachments 1, 2, 3, and 4).

Committee discussion of proposed amendments began on HB 2740.
(See Attachment 5).

Representative Fox motioned to leave the original language in line 875. Representative Rosenau seconded the motion. Motion adopted.

Representative Farrar moved to strike "generate" on line 812. Representative Guldner seconded the motion. Motion adopted.

Representative Fox motioned to amend Section 2 to address provisions limiting energy recovery. Representative Webb seconded the motion. Motion adopted.

Representative Rosenau motioned to amend the language on line 0469 to place a fixed fee at 25¢ per cubic foot. Representative Farrar seconded the motion. Representative Fox argued that there were state funds to address the problem of leakage and a fixed fee was not necessary. Motion failed on a voice vote.

Representative Farrar moved to amend the language in 0469 to a fixed fee of 10¢ per cubic foot. Representative Fry seconded the motion. A division was called for and the motion failed.

Representatives Rezac and Webb asked to be recorded as voting no.

There being no further business before the committee, the meeting was adjourned at 4:45 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held February 16, 1984 at 3:30 p.m. in Room 519-S.



David J. Heinemann, Chairman



State of Kansas . . . John Carlin, Governor

DEPARTMENT OF HEALTH AND ENVIRONMENT

Barbara J. Sabol, *Secretary*

Forbes Field
Topeka, Kansas 66620
913-862-9360



The attached tables are excerpts from the report,
Comparative Assessment of Alternatives for Waste Disposal and Storage
prepared by the Battelle Memorial Institute for the State of Minnesota's
Waste Management Board.

They provided Battelle's cost estimate comparisons for disposal of
hazardous waste via conventional landfills, above-ground (mound) landfills,
above-ground storage (warehousing).

Attachment 1
2-15-84

TABLE 5-5. ESTIMATED INVESTMENT AND OPERATING COSTS
FOR CONVENTIONAL HAZARDOUS WASTE LANDFILLS
WITH TWO PLASTIC LINERS

	5,000 TPY 5-yr Life	30,000 TPY 2-yr Life	80,000 TPY 2-yr Life
Capital Investment/Waste Cell (\$1,000)	715	1,439	3,385
Annualized Costs for Cell Construction and Capping (\$1,000/yr)	184	818	1,924
Total Annualized Investment and O&M Costs (\$1,000)	986	2,140	3,865
Unit Landfilling Costs, \$/ton	197	71	48

TABLE 5-6. COMPARISON OF COSTS ASSOCIATED WITH VARIOUS
LINER CONFIGURATIONS IN CONVENTIONAL
LANDFILL DESIGN (30,000 TPY Cell Size)

	One Plastic Liner	6-Ft Compacted Clay Plus One Plastic Liner	6-Ft Compacted Clay Plus Two Plastic Liners
Capital Investment per Waste Cell (\$1,000)	1,053	1,185	1,439
Annualized Costs for Cell Construc- tion and Capping (\$1,000)	599	674	818
Total Annualized Investment and O&M Costs (\$1,000)	1,921	1,996	2,140
Unit Costs, \$/ton	64	67	71

TABLE 5-11. ESTIMATED INVESTMENT AND OPERATING COSTS
FOR MOUND HAZARDOUS WASTE LANDFILLS WITH
TWO PLASTIC LINERS

	5,000 TPY 5-yr Life	30,000 TPY 2-yr Life	60,000 TPY 2-yr Life
Capital Investment per Waste Cell (\$1,000)	790	1,455	3,120
Annualized Costs for Cell Construc- tion and Capping (\$1,000/yr)	203	827	1,774
Total Annualized Investment and O&M Costs (\$1,000)	1,010	2,173	3,812
Unit Landfilling Costs, \$/ton	202	73	48

TABLE 5-12. COMPARISON OF COSTS ASSOCIATED WITH
 MOUND ~~CONVENTIONAL~~ LANDFILL DESIGN
 (30,000 TPY Cell Size)

	Liner Configuration		
	One Plastic Liner	6-Ft Compacted Clay Plus One Plastic Liner	6-Ft Compacted Clay Plus Two Plastic Liners
Capital Investment per Waste Cell (\$1,000)	959	1,155	1,455
Annualized Costs for Cell Construc- tion and Capping (\$1,000)	545	657	827
Total Annualized Investment and O&M Costs (\$1,000)	1,896	2,008	2,178
Unit Costs, \$/ton	63	67	73

TABLE 5-17. PER-TON COSTS BASED ON 20-YEAR CUMULATIVE COSTS FOR ABOVE GROUND STORAGE^(a)
(costs in January, 1983 dollars)(with drums only)

	Annual Capacity, tons					
	Base Case, with No Reuse			Alternative Case, with Reuse ^(b)		
	5,000	30,000	80,000	5,000	30,000	80,000
Construction						
Initial ^(c)	172.1	157.4	149.9	172.1	157.4	149.9
Recurring ^(d)	529.9	484.5	461.3	209.2	191.3	182.1
Operating and Maintenance Costs (O&M)						
Total Annual O&M Costs	295.0	188.4	147.5	141.60	90.5	70.8
Closure Costs						
Disposal Costs	200	200	200	50.0	50.0	50.0
Decommissioning	--	--	--	--	--	--
Total	1,197.0	1,030.3	958.7	572.9	489.2	452.8

(a) The estimates were made based on the data given in Table 5-10.

(b) The per-ton costs for the alternative case with reuse are calculated based on the stated annual capacity and not on the actual tons of hazardous waste to be handled in the facility.

(c) Initial costs were obtained with a capital recovery factor (CRF) of 0.1095 which was based on a 9 percent interest rate.

(d) Recurring costs were considered as annual costs rather than investment-related costs.

Question Regarding H.B. 2740:

With the proposed change in the definition of "hazardous waste disposal facility" and the proposed deletion of the definition of "hazardous waste treatment facility", would landfarming operations still be regarded as treatment facilities?

ANSWER:

Yes. EPA recommended the change in the definition of "hazardous waste disposal facility" and the reason for including treatment and storage facilities is keyed to the final phrase in the definition -- "at which waste will remain after closure." This definition is merely intended to clarify that if hazardous waste remains at a treatment or storage facility after it has closed, the facility has then become a disposal site. Insertion of the word "hazardous" on line 72 between "which" and "waste" would further clarify this intent. The definition of "hazardous waste treatment facility" was recommended for deletion as cleanup of the statute since the terms "hazardous waste", "treatment", and "facility" are all defined separately. Landfarming will continue to be a hazardous waste treatment method per the definition on lines 166-176 as long as it meets the criteria thereby identified. No further amendment to H.B. 2740 is necessary to ensure this.

Attachment 2
2-15-84

Question Regarding H.B. 2740:

In Section 6 (b), Lines 658-659, why should the hazardous waste disposal facility approval board not be required to indicate the necessary changes to make a permit application acceptable whenever they deny such an application?

ANSWER:

This Section requires the board to state its reason in writing for denying an application. This Section could be changed to read "the board shall state any and all reasons in writing" so that the applicant would be assured that, if he satisfactorily addressed everything identified by the board, no further areas for change would be subsequently raised by them. This would completely satisfy the function of the board -- it is not intended to be a technical consultant to the applicant and should have no duty to specify the remedies to the problems resulting in denial of the application. In some cases, a number of alternatives may be available to the applicant and it should be his responsibility under the rules and regulations for preparing such applications to decide what changes he would implement in the application. In other cases, there may be no possible change which would make the application acceptable and the existing statutory language would place an impossible burden upon the board.

Question Regarding H.B. 2740:

How and when do industries subject to the Perpetual Care Trust Fund Fee make those payments?

ANSWER:

Upon implementation of the administrative regulations governing this fund, all existing disposal facilities were subject to pay an advance fee of up to \$25,000. The amount was prorated according to the estimated hazardous waste generation by the facility for a one year period. This advance payment will also be required of any new disposal facilities licensed in the state. Any excess fees received by KDHE will be refunded or applied toward future hazardous waste disposal activities. Subsequent to the initial fee, all disposal facilities are required to submit a monthly payment to the fund based upon the volume of hazardous waste disposed of at the facility. Hazardous wastes disposed of by land burial are subject to 25¢ per cubic foot while other disposal methods are subject to a 5¢ per cubic foot fee. The fee for each month, along with a monthly summary of disposal activity which occurred at the facility, must be submitted to the Department of Health and Environment by the 20th day of the month following the generation of the wastes.

Question:

How much money is presently in the State of Kansas Perpetual Care Trust Fund?

ANSWER:

The Perpetual Care Trust Fund presently has \$49,440. Receipts to the fund in recent months have declined considerably. This is primarily due to the closure of the state's only commercial disposal facility.

Attach 4
2-15

HOUSE BILL No. 2740

By Committee on Energy and Natural Resources

0017 AN ACT relating to hazardous wastes; amending K.S.A. 1983
0018 Supp. 65-3430, 65-3431, 65-3432, 65-3433, 65-3435, 65-3436,
0019 65-3437, 65-3439, 65-3441, 65-3442, 65-3443, 65-3444, 65-3445
0020 and 65-3446 and repealing the existing sections; also repeal-
0021 ing K.S.A. 1983 Supp. 65-3448.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 1983 Supp. 65-3430 is hereby amended to
0024 read as follows: 65-3430. As used in K.S.A. ~~1983 Supp.~~ 65-3430 to
0025 ~~65-3448~~ 65-3447, and amendments thereto:

0026 (a) "Board" means the hazardous waste disposal facility ap-
0027 proval board.

0028 (b) "Department" means the Kansas department of health
0029 and environment.

0030 (c) "Disposal" means the discharge, deposit, injection,
0031 dumping, spilling, leaking or placing of any hazardous waste into
0032 or on any land or water so that such hazardous waste or any
0033 constituent thereof may enter the environment or be emitted in
0034 into the air or discharged into any water in the state waters,
0035 including groundwater.

0036 (d) "Facility" means all contiguous land, structures and other
0037 appurtenances and improvements on the land utilized for the
0038 purpose of treating, storing, or disposing of hazardous waste. A
0039 facility may consist of several treatment, storage, or disposal
0040 operational units such as (1) one or more landfills; (2) surface
0041 impoundments; (3) treatment units or (4) combinations of (1), (2)
0042 or (3).

0043 (e) "Generator" means any person producing or bringing into
0044 existence hazardous waste, by site, whose act or process pro-
0045 duces hazardous waste or whose act first causes a hazardous

0046 waste to become subject to regulation.

0047 (f) "Hazardous waste" means waste or combination of wastes
0048 which because of its quantity, concentration or physical, chemi-
0049 cal, biological or infectious characteristics or is otherwise deter-
0050 mined by the secretary to be dangerous to human health or
0051 present a substantial existing or potential hazard to the environ-
0052 ment when improperly managed. Such term shall include radio-
0053 active hazardous waste. Such term shall not include: (1) House-
0054 hold waste; or (2) agricultural waste returned to the soil as
0055 fertilizer; or (3) mining waste and overburden from the extrac-
0056 tion, beneficiation and processing of ores and minerals; if re-
0057 turned to the mine site; or (4) drilling fluids, produced waters
0058 and other wastes associated with the exploration, development
0059 and production of crude oil, natural gas or geothermal energy; or
0060 (5) fly ash, bottom ash, slag and flue gas emission control wastes
0061 generated primarily from the combustion of coal or other fossil
0062 fuels; or (6) cement kiln dust cause, or significantly contribute to
0063 an increase in mortality or an increase in serious irreversible or
0064 incapacitating reversible illness; or pose a substantial present
0065 or potential hazard to human health or the environment when
0066 improperly treated, stored, transported or disposed of or other-
0067 wise managed.

as

Hazardous waste shall not include: (1) Household waste; (2) agricultural waste returned to the soil as fertilizer; (3) mining waste and overburden from the extraction, beneficiation and processing of ores and minerals, if returned to the mine site; (4) drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal energy; (5) fly ash, bottom ash, slag and flue gas emission control wastes generated primarily from the combustion of coal or other fossil fuels; (6) cement kiln dust; or (7) materials listed in 40 CFR 261.4.

0068 (g) "Hazardous waste disposal facility" means all contiguous
0069 land, structures and other appurtenances, and improvements on
0070 the land utilized for the disposal of hazardous waste a facility or
0071 part of a facility at which hazardous waste is treated, stored or
0072 disposed and at which waste will remain after closure.

0073 (h) "Hazardous waste storage facility" means a location
0074 where hazardous waste is held for a temporary period at the end
0075 of which the hazardous waste is treated, stored or disposed of at
0076 another location. Such term shall not include (1) a location at the
0077 place of waste generation where hazardous waste is accumulated
0078 for a period of 90 days or less in accordance with rules and
0079 regulations adopted by the secretary or (2) a transfer facility
0080 where a transporter is storing manifested shipments of hazardous
0081 waste in containers approved by the secretary for a period of 10
0082 days or less.

0083 (i) "Hazardous waste treatment facility" means any location;
0084 except a publicly owned treatment works holding a permit is-
0085 sued under K.S.A. 65-165, where any method, technique or
0086 process is applied to hazardous waste to change its physical,
0087 biological or chemical characteristics or to render such waste
0088 nonhazardous, safer for transport or disposal, amenable for re-
0089 covery or storage or reduced in volume.

0090 (j) (h) "Hazardous waste management system" means the
0091 systematic control of the collection, *source separation*, storage,
0092 transportation, *processing*/treatment, recovery and disposal of
0093 hazardous waste by any person.

0094 (k) "License" means the document issued to a person by the
0095 secretary under the authority of K.S.A. 48-1607 and amendments
0096 thereto, which allows such person to construct and operate a
0097 radioactive hazardous waste storage or disposal facility in the
0098 state.

0099 (l) (i) "Manifest" means the form prescribed by the secretary
0100 to be used for identifying the quantity, composition, origin and
0101 the, routing and destination of hazardous waste during its trans-
0102 portation from the point of generation to the point of disposal,
0103 treatment or storage or at any point in between.

0104 (m) (j) "Modification" means the expansion or enlargement
0105 of a facility beyond the permitted boundaries established by an
0106 existing permit issued by the secretary or any material or sub-
0107 stantial alteration or addition to an existing permitted facility
0108 which would justify the application of permit conditions that
0109 would be materially or substantially different from the condi-
0110 tions of the existing permit or are absent from the existing
0111 permit.

0112 (n) (k) "Monitoring" means all procedures used to (1) sys-
0113 tematically inspect and collect *samples or require information*
0114 *and copy records or data* on the operational parameters of a
0115 facility, *generator* or a transporter; or (2) to systematically collect
0116 and analyze data on the quality of the air, groundwater, surface
0117 water or soil on or in the vicinity of a hazardous waste disposal,
0118 storage or treatment generator, transporter or facility.

0119 (l) "Off-site facility" means a facility where treatment, stor-

0120 age or disposal activities are conducted by a person ~~or~~ other than
 0121 the hazardous waste generator. ~~(o)~~ (m) "On-site facility" 11

0122 means a facility which is located on property contiguous to or
 0123 divided only by a public or private way from the source of
 0124 generation and which is solely owned and operated by the
 0125 generator exclusively for the treatment, storage or disposal of
 0126 wastes which have been generated on the contiguous property
 0127 and includes the same or geographically contiguous property
 0128 which may be divided by public or private right of way, pro-
 0129 vided the entrance and exit between the properties is at a
 0130 crossroads intersection and access is by crossing and not going
 0131 along the right-of-way or noncontiguous properties owned by
 0132 the same person but connected by a right-of-way which the
 0133 person controls and to which the public does not have access.

0134 ~~(p)~~ (n) "Permit" means the document issued to a person by
 0135 the secretary which allows such person to construct and operate
 0136 a hazardous waste treatment, storage or disposal facility in the
 0137 state.

0138 (q) (o) "Person" means an individual, partnership, firm,
 0139 trust, company, association, corporation, institution, political
 0140 subdivision or state or federal agency trust, firm, joint stock
 0141 company, federal agency, corporation, including a government
 0142 corporation, partnership, state, municipality, commission, po-
 0143 litical subdivision of a state or any interstate body.

0144 (r) "Radioactive hazardous waste" means discarded by prod-
 0145 uct material, source material, or special nuclear material as
 0146 defined by K.S.A. 48-1603.

0147 (s) (p) "Secretary" means the secretary of the department of
 0148 health and environment.

0149 (t) "Short-term storage" means (1) the accumulation of haz-
 0150 ardous waste for a period of 90 days or less at an "on-site facility"
 0151 in accordance with rules and regulations adopted by the secre-
 0152 tary or (2) the temporary storing of manifested shipments of
 0153 hazardous wastes in containers approved by the secretary on or
 0154 in the property of the transporter for a period of 10 days or less.

0155 (u) (q) "Storage" means the containment holding of hazard-
 0156 ous waste; either on a temporary basis or for a period of years; in

0157 such a manner as not to constitute disposal of the hazardous
 0158 waste. "Short-term storage" as defined in subsection (t), does not
 0159 constitute "storage" for a temporary period at the end of which
 0160 the hazardous waste is treated, disposed of or stored elsewhere.

0161 (v) (r) "Transporter" means any person who conveys or
 0162 moves hazardous waste from the point of its generation or any
 0163 other point to a treatment, storage or disposal facility or any point
 0164 in between is engaged in the off-site transportation of hazard-
 0165 ous waste by air, rail, land, highway or water.

0166 (w) (s) "Treatment" means any method, technique, or
 0167 process, including neutralization, designed to change the phys-
 0168 ical, chemical or biological characteristics character or composi-
 0169 tion of any hazardous waste so as to neutralize such waste or as to
 0170 render such waste nonhazardous; safer for transport; amenable
 0171 for recovery or storage; convertible to another usable material or
 0172 reduced in volume and suitable for ultimate disposal so as to
 0173 recover energy or material resources from the waste, to render
 0174 such waste nonhazardous, or less hazardous, safer to transport,
 0175 store or dispose of or ~~amenable~~ for recovery, ~~amenable~~ for
 0176 storage or reduced in volume.

amenable

0177 (x) (t) "Waste" means any garbage, refuse, sludge or other
 0178 discarded material which is abandoned or committed to treat-
 0179 ment, storage or disposal, including solid, liquid, semisolid, or
 0180 contained gaseous materials resulting from industrial, commer-
 0181 cial, mining, community and agricultural activities; and includ-
 0182 ing discarded by-product material, source material, or special
 0183 nuclear material as defined in K.S.A. 48-1603. Waste does not
 0184 include solid or dissolved materials in domestic sewage, in
 0185 irrigation return flows, or solid or dissolved materials or indus-
 0186 trial discharges which are point sources subject to permits under
 0187 K.S.A. 65-165.

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, and amendments thereto.

0188 Sec. 2. K.S.A. 1983 Supp. 65-3431 is hereby amended to read
 0189 as follows: 65-3431. The secretary is authorized and directed to:
 0190 (a) Adopt such rules and regulations, standards and procedures
 0191 relative to hazardous waste management as shall be necessary to
 0192 protect the public health and environment and enable the sec-
 0193 retary to carry out the purposes and provisions of this act.

0194 (b) Report to the legislature on further assistance needed to
0195 administer the hazardous waste management program.

0196 (c) Administer the hazardous waste management program
0197 pursuant to provisions of this act.

0198 (d) Cooperate with appropriate federal, state, interstate and
0199 local units of government and with appropriate private organi-
0200 zations in carrying out the duties under this act.

0201 (e) Develop a statewide hazardous waste management plan.

0202 (f) Provide technical assistance, including the training of
0203 personnel, to industry, local units of government and the haz-
0204 ardous waste management industry to meet the requirements of
0205 this act.

0206 (g) Initiate, conduct and support research, demonstration
0207 projects, and investigations and coordinate all state agency re-
0208 search programs with applicable federal programs pertaining to
0209 hazardous waste management systems.

0210 (h) Establish policies for effective hazardous waste manage-
0211 ment systems.

0212 (i) Authorize issuance of such permits and orders and, con-
0213 duct such inspections and collect samples or ~~request~~ require informa-
0214 tion and copy records or data as may be necessary to implement
0215 the provisions of this act and the rules and regulations and
0216 standards adopted pursuant to this act.

0217 (j) Conduct and contract for research and investigations in
0218 the overall area of hazardous waste storage, collection, transpor-
0219 tation, treatment, recovery and disposal including, but not lim-
0220 ited to, new and novel procedures.

0221 (k) Adopt rules and regulations establishing criteria ~~and~~
0222 ~~characteristics~~ for identifying the characteristics of hazardous
0223 waste and for listing hazardous waste. The criteria shall take into
0224 account toxicity, persistence in nature and degradability in na-
0225 ture, potential for accumulation in tissue, potential to cause
0226 irreversible physical harm and other related factors such as
0227 reactivity, ignitibility, corrosiveness and other hazardous
0228 characteristics. The secretary shall prepare and keep current a
0229 listing of hazardous wastes and set of characteristics based on
0230 the rules and regulations adopted pursuant to this subsection.

0231 The listing shall identify, but shall *need* not be inclusive of, *all*
0232 the hazardous waste subject to the provisions of this act. The
0233 criteria for identification and listing shall be consistent with the
0234 criteria for identification and listing adopted by the administrator
0235 of the United States environmental protection agency under the
0236 authority vested in the administrator by the Resource Conserva-
0237 tion and Recovery Act of 1976 (42 USC 6921) as amended by the
0238 Solid Waste Disposal Act of 1980 (P.L. 94-482, October 21, 1980).

0239 (l) Adopt rules and regulations establishing: (1) Appropriate
0240 measures for monitoring the transportation of hazardous waste
0241 and hazardous waste storage, treatment and disposal generators,
0242 transporters and facilities during operation, closure, and after
0243 closure of such facilities to insure compliance with the rules and
0244 regulations adopted under this act and any permit issued under
0245 this act; (2) procedures to suspend operation of such generators,
0246 transporters or facilities or transportation as may be required to
0247 protect the public health and safety or the environment; and (3)
0248 appropriate measures to insure that any use of a hazardous waste
0249 disposal facility after closure will not endanger the public health
0250 or safety or the environment.

0251 (m) Adopt rules and regulations establishing standards for
0252 hazardous waste generators including, *but not limited to*, notifi-
0253 cation of hazardous waste activity, reporting, record keeping,
0254 labeling, containerization, source separation, storage, short term
0255 storage, manifests, monitoring, sampling and analysis and man-
0256 ner of filing notifications, reports and manifests.

0257 (n) Adopt rules and regulations prescribing the form of the
0258 manifest and requiring such manifest to accompany any hazard-
0259 ous waste collected, transported, treated, recovered or disposed
0260 of, and prescribing the contents of the manifest which shall
0261 include, *but not be limited to* the quantity and composition of
0262 the hazardous waste, generator, transporter and, destination,
0263 facility and the manner of signing and filing of the manifest by
0264 generators, transporters and operators of treatment, disposal and
0265 storage facilities, and for the maintenance of records of all haz-
0266 ardous waste stored, collected, transported, treated or disposed
0267 in the state.

generation

0268 (o) Adopt rules and regulations establishing standards for
0269 routes and equipment used for transporting hazardous waste
0270 within the state and requiring the secretary's approval of such
0271 routes, with the concurrence of the Kansas department of trans-
0272 portation as to the structural adequacy of the roads, highways and
0273 structures making up such routes. Such standards shall be con-
0274 sistent with those of the United States and Kansas departments of
0275 transportation, with respect to transportation of hazardous mate-
0276 rials. Motor vehicles which are used for the transportation of
0277 hazardous waste in accordance with this act shall be exempt from
0278 the requirements of K.S.A. 66-1,108 *et seq.*, and amendments
0279 thereto, and any rules and regulations adopted thereunder per-
0280 taining to routes and the motor vehicle equipment used for the
0281 containment of hazardous waste which both shall be under the
0282 jurisdiction of the secretary as provided in this act including any
0283 rules and regulations adopted thereunder. Otherwise such motor
0284 vehicles shall be subject to the requirements of K.S.A. 66-1,108
0285 *et seq.*, and amendments thereto, and any rules and regulations
0286 adopted thereunder.

0287 (p) Adopt rules and regulations establishing standards for
0288 transporters of hazardous waste including registration, but not
0289 limited to, notification of hazardous waste transport, manifests,
0290 labeling, record keeping and the filing of reports; and requiring
0291 any person transporting hazardous waste in the state to submit to
0292 the secretary satisfactory evidence of liability insurance cover-
0293 age in such amount as the secretary shall specify to insure the
0294 financial responsibility of such person for any liability incurred
0295 in transporting such waste.

0296 (q) Adopt rules and regulations establishing standards and
0297 procedures to protect public health and the environment from
0298 any accidental release of hazardous waste into the environment
0299 and to insure the prompt correction of any such release and
0300 damage resulting therefrom by the person transporting, handling
0301 or managing such hazardous waste.

0302 (r) Adopt rules and regulations requiring that, for such period
0303 of time as the secretary shall specify, any assignment, sale,
0304 conveyance or transfer of all or any part of the real property upon

0305 which a hazardous waste treatment, storage or disposal facility is
0306 or has been located shall be subject to such terms and conditions
0307 as to the use of such property as the secretary shall specify to
0308 protect human health and the environment.

0309 (s) Adopt rules and regulations establishing a permit system
0310 equivalent to the permit system established by Sec. 3005 of P.L.
0311 04-580, as in effect on the effective date of this act, which
0312 includes standards for facilities and procedures for implemen-
0313 tation of a permit system for the construction, alteration, or
0314 operation of a hazardous waste treatment, storage or disposal
0315 facility including, but not limited to, content of applications,
0316 evidence of financial responsibility, existing hydrogeological
0317 characteristics, environmental assessment, training of personnel,
0318 maintenance of operations, qualifications of ownership, conti-
0319 nuity of operation, *public notification and participation* and
0320 compliance with those standards established pursuant to sub-
0321 section (t).

0322 (t) Adopt rules and regulations establishing minimum stan-
0323 dards for the *design, location, construction, alteration, opera-*
0324 *tion, termination, closing and long-term care of facilities for the*
0325 *treatment, storage or disposal of hazardous waste or for storage or*
0326 *disposal of radioactive hazardous waste for which a permit or*
0327 *license has been issued by the secretary including, but not*
0328 *limited to, notification of hazardous waste treatment, storage or*
0329 *disposal, general facility standards, contingency plans, emer-*
0330 *gency procedures, manifest system, recordkeeping, inspections,*
0331 *monitoring, reporting, closure and post-closure plans and fi-*
0332 *nancial requirements.* The operator of the facility shall be re-
0333 sponsible for long-term care of the facility for 30 years after
0334 closure of the facility except that the secretary may modify the
0335 long-term care requirements for any facility when all hazardous
0336 waste is removed from the facility at closure. The secretary may
0337 extend the long-term care responsibility of any operator of a
0338 facility as the secretary may deem necessary to protect the public
0339 health and safety or the environment. Any person acquiring
0340 rights of possession or operation of any facility permitted or
0341 licensed by the secretary for the treatment, storage or disposal of

0342 hazardous waste ~~or radioactive hazardous waste~~ at any time after
0343 the facility has begun to accept waste and prior to the end of the
0344 required period of long-term care shall be subject to all of the
0345 requirements, terms and conditions of the permit for the facility
0346 ~~or of a license issued under the authority of K.S.A. 48-1607 and~~
0347 ~~amendments thereto~~, including all requirements relating to
0348 long-term care of the facility. The sale or acquisition of a haz-
0349 ardous waste disposal facility during the long-term care period
0350 shall be subject to the assignment of long-term care responsibil-
0351 ities as determined by the secretary.

0352 (u) Adopt rules and regulations establishing a schedule of
0353 fees to be paid to the secretary by: (1) Permittees operating
0354 hazardous waste treatment, storage or disposal facilities under
0355 ~~permits issued by the secretary; (2) licensees storing or disposing~~
0356 ~~of radioactive hazardous wastes with a license issued under the~~
0357 ~~authority of K.S.A. 48-1607 and amendments thereto; (3); (2)~~
0358 hazardous waste transporters transporting hazardous wastes
0359 generated in Kansas to hazardous waste treatment, storage or
0360 disposal facilities located in Kansas, in other states or outside the
0361 continental United States; and (4) ~~who notified the department~~
0362 ~~of their hazardous waste activity; or (3) hazardous waste gener-~~
0363 ators producing or bringing into existence hazardous waste in
0364 Kansas. The fees shall be for monitoring facilities both during
0365 and after operation, for monitoring generators of hazardous waste
0366 in Kansas and for monitoring the transportation of hazardous
0367 wastes generated in Kansas to hazardous waste facilities for
0368 storage, treatment and disposal. The fees shall be sufficient to
0369 reimburse the cost of the state in performing these monitoring
0370 responsibilities, except that the fee established under this sub-
0371 section ~~(u) for each hazardous waste disposal facility or for each~~
0372 ~~radioactive hazardous waste disposal facility~~ shall be not less
0373 than \$1,500 annually. In setting fees, the secretary may exempt
0374 those fees which would be payable on treatment processes
0375 which recover substantial amounts of either energy or materials
0376 from hazardous wastes. The secretary shall remit any moneys
0377 collected from such fees to the state treasurer. Upon receipt of
0378 any such remittance, the state treasurer shall deposit the entire

0379 amount thereof in the state general fund. Nothing in this sub-
0380 section shall be construed to relieve a permit holder, licensee or
0381 other person responsible for the operation or long-term care of a
0382 facility of any monitoring duty or requirement in effect on the
0383 effective date of this act or any such duty which may be imposed
0384 as a condition of any future permit or license issued under
0385 authority of this act or K.S.A. 48-1607 and amendments thereto.

0386 (v) (1) Adopt rules and regulations establishing a schedule of
0387 fees to be paid to the secretary by licensees operating radioactive
0388 hazardous waste storage or disposal facilities under a license
0389 issued by the secretary under the authority of K.S.A. 48-1607 and
0390 amendments thereto. In establishing fees, the secretary shall
0391 give consideration for contamination, cost of storage or disposal,
0392 estimate future receipts and estimated future expenses to the
0393 state for maintenance, monitoring and supervision for such fa-
0394 cilities. Fees shall be in an amount not to exceed \$1 per cubic
0395 foot of radioactive hazardous waste or material. Fees shall be
0396 collected from each licensee who operates a radioactive hazard-
0397 ous waste storage or disposal facility licensed under the author-
0398 ity of K.S.A. 48-1607 and amendments thereto. No educational
0399 institution shall be required to pay any such fee. Each licensee
0400 as an advance payment of the fees authorized under this subsec-
0401 tion, shall remit to the secretary an amount to be established by
0402 the secretary not to exceed \$25,000 upon request and notification
0403 by the secretary that its initial application for a license or initial
0404 renewal thereof has been approved, subject to receipt of the
0405 advance payment. Commencing with the second renewal, no
0406 advance payment shall be required. The advance payment shall
0407 constitute a credit against any fee which may be assessed pursu-
0408 ant to this subsection.

0409 (2) The secretary shall remit any moneys collected to the
0410 state treasurer to be deposited in the state treasury and credited
0411 to the radioactive hazardous waste perpetual care trust fund,
0412 which fund is hereby created and from which expenditures shall
0413 be limited to the following uses: (A) Payment of extraordinary
0414 costs of monitoring a licensed radioactive waste storage or dis-
0415 posal facility after the responsibility of the operator has termi-

0416 nated; (B) payment of costs of repairing a licensed radioactive
0417 hazardous waste storage or disposal facility and costs of repairing
0418 environmental damages caused by a licensed radioactive haz-
0419 ardous waste storage or disposal facility; as a result of a post-clo-
0420 sure occurrence which poses a substantial radiation hazard to
0421 public health and safety or to the environment. If an expenditure
0422 made under this subsection would not have been necessary had
0423 the person responsible for the operation or long-term care of the
0424 licensed radioactive hazardous waste storage or disposal facility
0425 had complied with the requirements of a plan of operation
0426 approved by the secretary when the license was issued; a cause
0427 of action in favor of the fund shall be accrued to the state of
0428 Kansas against such person and the secretary shall take such
0429 action as is appropriate to enforce this cause of action by recov-
0430 ering any amounts so expended. The net proceeds of any such
0431 recovery shall be paid into the fund; and (C) on an emergency
0432 basis up to 20% of the balance in the radioactive hazardous waste
0433 perpetual care trust fund may be allocated for investigation,
0434 engineering, equipment and construction related to the removal,
0435 treatment and disposal of radioactive hazardous wastes stored or
0436 disposed of in any radioactive hazardous waste storage or dis-
0437 posal facility closed prior to the effective date of this act when
0438 such radioactive hazardous waste is found to pose an imminent
0439 and substantial risk to the public health and safety or to the
0440 environment.

0441 (3) The pooled money investment board may invest and
0442 reinvest moneys in the radioactive hazardous waste perpetual
0443 care trust fund established under this subsection in obligations
0444 of the United States or obligations the principal and interest of
0445 which are guaranteed by the United States or in interest-bearing
0446 time deposits in any commercial bank or trust company located
0447 in Kansas or, if the board determines that it is impossible to
0448 deposit such moneys in such time deposits, in repurchase
0449 agreements of less than 30 days' duration with a Kansas bank for
0450 direct obligations of, or obligations that are insured as to princi-
0451 pal and interest by the United States government or any agency,
0452 thereof. Any income or interest earned by such investments shall

0453 be credited to the radioactive hazardous waste perpetual care
0454 trust fund.

0455 (4) All expenditures from the radioactive hazardous waste
0456 perpetual care trust fund shall be made in accordance with
0457 appropriation acts upon warrants of the director of accounts and
0458 reports issued pursuant to vouchers approved by the secretary
0459 and shall be expended for the purposes set forth in this subsec-
0460 tion.

0461 (w) (v) (1) Adopt rules and regulations establishing a sched-
0462 ule of fees to be paid to the secretary by permittees operating
0463 hazardous waste disposal facilities under a permit issued by the
0464 secretary under this act and amendments thereto. In establishing
0465 fees, the secretary shall give consideration to degree of hazard,
0466 costs of treatment and disposal, estimated future receipts and
0467 estimated future expenses to the state for monitoring, mainte-
0468 nance and supervision of the facilities after closure. Fees shall be
0469 in an amount not to exceed \$.25 per cubic foot of hazardous waste
0470 disposed of. Fees shall be collected from each permittee who
0471 operates a hazardous waste disposal facility under a permit
0472 issued by the secretary under this act. Each permittee, as an
0473 advance payment of the fees authorized under this subsection,
0474 shall remit to the secretary an amount to be established by the
0475 secretary not to exceed \$25,000 upon request and notification by
0476 the secretary that an initial application for a permit or initial
0477 renewal thereof has been approved, subject to receipt of the
0478 advance payment. Commencing with the second renewal, no
0479 advance payment shall be required. The advance payment shall
0480 constitute a credit against any fee which may be assessed pursu-
0481 ant to this subsection.

0482 (2) The secretary shall remit any money collected to the state
0483 treasurer to be deposited in the state treasury and credited to the
0484 hazardous waste perpetual care trust fund, which fund is hereby
0485 limited to the following uses: (A) Payment of extraordinary costs
0486 of monitoring a permitted hazardous waste disposal facility after
0487 the responsibility of the operator has terminated; (B) payment of
0488 costs of repairing a hazardous waste and hazardous waste dis-
0489 posal facility, as a result of a post-closure occurrence which poses

pursuant to this subsection

0490 a substantial hazard to public health or safety or to the environ-
0491 ment. If an expenditure made under this subsection would not
0492 have been necessary had the person responsible for the opera-
0493 tion or long-term care of the permitted hazardous waste disposal
0494 facility complied with the requirements of a plan of operation
0495 approved by the secretary when the permit was issued, a cause of
0496 action in favor of the fund shall be accrued to the state of Kansas
0497 against such person, and the secretary shall take such action as is
0498 appropriate to enforce this cause of action by recovering any
0499 amounts so expended. The net proceeds of any such recovery
0500 shall be paid into the fund; and (C) on an emergency basis up to
0501 20% of the balance in the hazardous waste perpetual care trust
0502 fund may be allocated for investigation, engineering and con-
0503 struction related to the removal, treatment and disposal of haz-
0504 ardous waste disposed of in any hazardous waste disposal facility
0505 closed prior to the date of this act, when such hazardous waste is
0506 found to pose an imminent and substantial risk to the public
0507 health or safety or the environment.

0508 (3) Effective September 30, 1983, or when the tax on hazard-
0509 ous waste imposed by subtitle C of public law 96-510 becomes
0510 applicable, whichever date is later, the secretary shall revise the
0511 fee schedule to provide funds for the purchase or repositioning
0512 of hazardous substance response equipment or other prepara-
0513 tions reasonably necessary for the response to a release of haz-
0514 ardous substances which affects the state and the fee collected
0515 after the effective date shall not be used for the payment of any
0516 costs or damages or claims which may be compensated under the
0517 comprehensive environmental response, compensation and lia-
0518 bility act of 1980, public law 96-510 as in effect on the effective
0519 date of this act.

0520 (4) The pooled money investment board may invest and
0521 reinvest moneys in the perpetual care trust fund established
0522 under this subsection in obligations of the United States or
0523 obligations the principal and interest of which are guaranteed by
0524 the United States or in interest-bearing time deposits in any
0525 commercial bank or trust company located in Kansas or, if the
0526 board determines that it is impossible to deposit such moneys in

0527 such time deposits, in repurchase agreements of less than 30
 0528 days' duration with a Kansas bank for direct obligations of, or
 0529 obligations that are insured as to principal and interest by the
 0530 United States government or any agency thereof. Any income or
 0531 interest earned by such investments shall be credited to the
 0532 hazardous waste perpetual care trust fund.

0533 (5) All expenditures from the hazardous waste perpetual care
 0534 trust fund shall be made in accordance with appropriation acts
 0535 upon warrants of the director of accounts and reports issued
 0536 pursuant to vouchers approved by the secretary for the purposes
 0537 set forth in this subsection.

0538 ~~(*)~~ (w) Encourage, coordinate or participate in one or more
 0539 waste exchange clearing houses for the purpose of promoting
 0540 reuse and recycling of industrial wastes.

0541 ~~(*)~~ (x) Adopt rules and regulations establishing the criteria to
 0542 specify when a change of principal owners or management of a
 0543 hazardous waste treatment, storage or disposal facility occurs and
 0544 under what circumstances and procedures a new permit shall be
 0545 required to be issued to the transferees of a facility which was
 0546 permitted to the transferor.

0547 Sec. 3. K.S.A. 1983 Supp. 65-3432 is hereby amended to read
 0548 as follows: 65-3432. (a) The hazardous waste disposal facility
 0549 approval board is hereby established to review and grant or deny
 0550 final approval for each application for a radioactive hazardous
 0551 waste disposal facility license or any off-site hazardous waste
 0552 disposal facility permit recommended for approval by the secre-
 0553 tary.

0554 (b) The board shall consist of five members as follows: The
 0555 secretary of health and environment, the secretary of transporta-
 0556 tion, the state geologist and two members from and representing
 0557 the general public appointed by the governor. Persons appointed
 0558 on or after July 1, 1982, to represent the general public on the
 0559 board shall be appointed subject to confirmation by the senate as
 0560 provided in K.S.A. 1982 Supp. 75-4315b, and amendments
 0561 thereto.

0562 (c) The term of office of the general public members of the
 0563 board shall be three years, except that, of the general public

(y) Adopt rules and regulations concerning the types of hazardous waste for which any method, technique or process to recover energy will be considered hazardous waste treatment. Such rules and regulations should specify a minimum heat value of the waste so as to ensure that a legitimate energy recovery will occur, and should consider other characteristics of the waste appropriate to ensure that such method, techniques, or processes for energy recovery will not pose a threat to the public health or environment.

0564 members first appointed to the board, one shall be appointed for
0565 a term of two years and one for a term of three years as desig-
0566 nated by the governor at the time of appointment. Upon the
0567 expiration of the term of office of a general public member, the
0568 governor shall appoint a qualified successor. Each general pub-
0569 lic member shall serve until a successor is appointed and quali-
0570 fied. Whenever a vacancy occurs among the general public
0571 members of the board for any reason other than the expiration of
0572 a member's term of office, the governor shall appoint a qualified
0573 successor to fill the unexpired term. The secretary of health and
0574 environment shall serve as chairperson of the board.

0575 (d) All budgeting, purchasing and related management func-
0576 tions of the board shall be administered under the direction and
0577 supervision of the secretary of administration. All vouchers shall
0578 be approved by the chairperson of the board and secretary of
0579 administration.

0580 (e) Three members of the board shall constitute a quorum for
0581 the transaction of business by the board.

0582 (f) The state agencies which have officers or employees
0583 serving on the board shall provide such staff assistance to the
0584 board as requested by the board.

0585 (g) Appointed members of the board attending regular or
0586 special meetings of the board shall be paid compensation, sub-
0587 sistence allowance, mileage and other expenses as provided in
0588 K.S.A. 75-3223, and amendments thereto.

0589 Sec. 4. K.S.A. 1983 Supp. 65-3433 is hereby amended to read
0590 as follows: 65-3433. (a) After the effective date of this act, no
0591 person shall modify or construct a ~~hazardous waste treatment,~~
0592 ~~storage an off-site hazardous waste or disposal facility~~ without a
0593 permit issued by the secretary under this act. The secretary shall
0594 not issue any license under ~~K.S.A. 48-1607~~ for any radioactive
0595 ~~hazardous waste disposal facility or a permit~~ under this act for
0596 any off-site hazardous waste disposal facility unless the board
0597 has first approved the application for such a facility.

0598 (b) Upon receipt of an application for a license or permit to
0599 construct a facility which requires the approval of the board,
0600 which complies with the requirements of this section, the secre-

0601 tary shall:

0602 (1) Publish a notice once per week for three consecutive
0603 weeks in a newspaper having major circulation in the county in
0604 which the facility is proposed to be located. The required pub-
0605 lished notice shall contain a map indicating the location of the
0606 proposed facility and shall contain a description of the proposed
0607 action and the location where the license or permit application
0608 and related documents may be reviewed and where copies may
0609 be obtained. The notice shall describe the procedure by which
0610 the license or permit may be granted. The secretary shall trans-
0611 mit a copy of the notice to the clerk of any city which is located
0612 within three miles of the proposed facility.

0613 (2) Review the plans of the proposed facility to determine if
0614 the proposed operation complies with this act and the rules and
0615 regulations promulgated under this act. The review shall include
0616 but not be limited to air quality, water quality, waste manage-
0617 ment and hydrogeology. If the facility review, plan review, and
0618 the application meet the requirements of this act and the rules
0619 and regulations promulgated under this act, the secretary shall
0620 recommend approval for construction or modification of the
0621 facility which may contain conditions specifically applicable to
0622 the facility and operation. An expansion, enlargement or modifi-
0623 cation of a radioactive hazardous waste disposal facility or a
0624 hazardous waste disposal facility beyond the specified areas
0625 indicated in the existing license or permit constitutes a new
0626 proposal for which a new construction permit or license appli-
0627 cation is required.

0628 (c) The secretary shall recommend approval or shall deny a
0629 construction permit application within 240 days after the secre-
0630 tary receives an application meeting the requirements of this
0631 section except such time period shall not apply to an application
0632 for a license to be issued under the authority of K.S.A. 48-1607,
0633 and amendments thereto. If the secretary recommends approval,
0634 the secretary immediately shall notify the applicant. If the sec-
0635 retary recommends denial, the secretary shall notify the appli-
0636 cant in writing of the reasons for the denial.

0637 Sec. 5. K.S.A. 1983 Supp. 65-3435 is hereby amended to read

0638 as follows: 65-3435. The board shall not approve any application
 0639 ~~for a hazardous waste disposal facility permit unless the appli-~~
 0640 ~~cant has a deed to the property where the facility is to be located,~~
 0641 ~~in fee simple absolute, free of any liens, easements, covenants, or~~
 0642 ~~any other encumbrances on the title; or, if the application is for a~~
 0643 ~~radioactive hazardous waste disposal facility license, the re-~~
 0644 ~~quirements of K.S.A. 1982 Supp. 65-3440 have been met and the~~
 0645 ~~state has entered into and enacted an interstate compact which~~
 0646 ~~regulates the management of low-level radioactive waste.~~

0647 For the purposes of this section, the state has not entered into
 0648 an interstate compact until such compact becomes effective by
 0649 its own terms.

0650 Sec. 6. K.S.A. 1983 Supp. 65-3436 is hereby amended to read
 0651 as follows: 65-3436. (a) The board either shall approve or reject
 0652 the application, and the secretary shall issue the license or
 0653 permit or deny the application accordingly. A local ordinance,
 0654 permit requirement or other requirement shall not prohibit the
 0655 construction or modification of such a facility or restrict trans-
 0656 portation to the facility.

0657 (b) If the board denies the application, the board shall state
 0658 its reason in writing and indicate the necessary changes to make
 0659 the application acceptable, if a new application is to be made.

0660 (c) Any person aggrieved by a final decision of the board may
 0661 make an appeal to the district court within 30 days of notice of
 0662 that decision.

0663 Sec. 7. K.S.A. 1983 Supp. 65-3437 is hereby amended to read
 0664 as follows: 65-3437. (a) No person shall construct, modify or
 0665 operate a hazardous waste facility or otherwise dispose of haz-
 0666 ardous waste within this state without a permit from the secre-
 0667 tary.

0668 (b) The application for a permit shall contain the name and
 0669 address of the applicant, the location of the proposed facility and
 0670 other information considered necessary by the secretary, in-
 0671 cluding proof of financial capability.

0672 (c) Before reviewing any application for permit, the secretary
 0673 shall conduct a background investigation of the applicant. The
 0674 secretary shall consider the financial, technical and management

fee simple title

0675 capabilities of the applicant as conditions for issuance of a
0676 permit. The secretary may reject the application without con-
0677 ducting an investigation into the merits of the application if the
0678 secretary finds that:

0679 (1) The applicant currently holds, or in the past has held, a
0680 permit under this section and that while the applicant held a
0681 permit under this section the applicant violated a provision of
0682 subsection (a) of K.S.A. 1981 Supp. 65-3441, and amendments
0683 thereto; or

0684 (2) the applicant previously held a permit under this section
0685 and that permit was revoked by the secretary; or

0686 (3) the applicant has a history of repeated violations of fed-
0687 eral or state law.

0688 (d) Upon receipt of a permit application meeting the re-
0689 quirements of this section, the secretary or an authorized repre-
0690 sentative of the secretary shall inspect the location of the pro-
0691 posed facility and determine if the same complies with this act
0692 and the rules and regulations promulgated under this act. An
0693 inspection report shall be filed in writing by the secretary before
0694 issuing a permit and shall be made available for public review.

0695 Sec. 8. K.S.A. 1983 Supp. 65-3439 is hereby amended to read
0696 as follows: 65-3439. (a) Permits for hazardous waste treatment,
0697 storage and disposal facilities shall be issued for fixed terms not
0698 to exceed 10 years and shall be subject to an annual permit fee.
0699 The annual fee for a hazardous waste treatment, storage or
0700 disposal facility permit shall be \$50 and no refund shall be made
0701 in case of revocation. All fees shall be deposited in the state
0702 general fund. A city, county, other political subdivision or state
0703 agency shall be exempt from payment of the fee but shall meet
0704 all other provisions of this act.

0705 (b) Plans, designs and relevant data for the construction of
0706 hazardous waste treatment, storage and disposal facilities shall
0707 be prepared by a professional engineer licensed to practice in
0708 Kansas and shall be submitted to the department for approval
0709 prior to the construction, modification or operation of such a
0710 facility. In adopting rules and regulations, the secretary may
0711 specify sites, areas or facilities where the environmental impact

0712 is minimal and may waive the requirement that plans and de-
0713 signs for on-site storage or treatment facilities be prepared by a
0714 professional engineer.

0715 (c) Each permit granted by the secretary, as provided in this
0716 act, shall be subject to such conditions as the secretary deems
0717 necessary to protect human health and the environment and to
0718 conserve the sites. Such conditions shall include approval by the
0719 secretary of the types and quantities of hazardous waste allow-
0720 able for *storage* treatment or disposal at the permitted location.

0721 (d) As a condition of granting a permit to operate any treat-
0722 ment, storage or disposal facility for hazardous waste, the secre-
0723 tary shall require the permittee to provide surety bond or cash
0724 bond or cash deposits to a secured trust fund and liability
0725 insurance, including coverage against nonsudden occurrences,
0726 or any combination thereof, or provide annual cash deposits to a
0727 trust fund which is hereby created in the state treasury in
0728 amounts to be determined by the secretary or any combination of
0729 such bonds, insurance or cash deposits or such other financial
0730 commitments as the secretary may require, in such amounts or
0731 arrangements as determined necessary by the secretary to insure
0732 the financial responsibility of the permittee for any liability
0733 incurred in the operation of the facility or area and to insure that,
0734 upon abandonment, cessation or interruption of the operation of
0735 the facility or area, all appropriate measures are taken to prevent
0736 present or future damage to public health and the environment
0737 and to provide the post-closure care required by subsection (t) of
0738 K.S.A. 1982 Supp. 65-3431. Any such liability insurance as may
0739 be required pursuant to this subsection or pursuant to the rules
0740 and regulations of the secretary shall be issued by an insurance
0741 company authorized to do business in Kansas or by a licensed
0742 insurance agent operating under authority of K.S.A. 40-246b and
0743 amendments thereto and shall be subject to the insurer's policy
0744 provisions filed with and approved by the commissioner of
0745 insurance pursuant to K.S.A. 40-216 and amendments thereto
0746 except as authorized by K.S.A. 40-246b and amendments thereto.
0747 The pooled money investment board may invest and reinvest
0748 moneys credited to the trust fund created under this subsection

0740 in obligations of the United States or obligations the principal
0750 and interest of which are guaranteed by the United States or in
0751 interest bearing time deposits in any commercial bank or trust
0752 company located in Kansas; or, if the pooled money investment
0753 board determines that it is impossible to deposit such moneys in
0754 such time deposits, in repurchase agreements of less than 30
0755 days' duration with a Kansas bank for direct obligations of, or
0756 obligations that are insured as to principal and interest by, the
0757 United States government or any agency thereof. All moneys
0758 received as interest earned by the investment of the moneys in
0759 the trust fund created under this subsection shall be credited to
0760 such trust fund and prorated according to procedures approved
0761 by the director of accounts and reports and credited to the
0762 account of each permittee who has deposited money in the trust
0763 fund in proportion that the total amount of money deposited by
0764 the permittee in the trust fund bears to the total amount of money
0765 in the trust fund. Money in the trust fund created under this
0766 subsection shall be expended in accordance with the purposes
0767 for the deposit of moneys by a permittee into the trust fund
0768 created under this subsection. Upon the cessation of operation of
0769 the facility, the secretary shall return any unused portion of the
0770 money deposited by a permittee in the trust fund created under
0771 this subsection, including interest on the unused portion, to the
0772 permittee. All expenditures from the trust fund created under
0773 this subsection shall be made in accordance with appropriation
0774 acts upon warrants of the director of accounts and reports issued
0775 pursuant to vouchers approved by the secretary of health and
0776 environment or a person or persons designated by the secretary.

0777 (e) (d) Permits granted by the secretary, as provided in this
0778 act, shall be revocable or subject to suspension whenever the
0779 secretary shall determine that the hazardous waste treatment,
0780 storage or disposal facility is, or has been constructed or con-
0781 ducted in violation of this act or the rules and regulations or
0782 standards adopted pursuant to the act, or is creating a hazard to
0783 the public health or safety or to the environment, or for failure to
0784 make payment of any fee to any funds created under this act.

0785 (f) (e) In case any permit is denied, suspended or revoked

0786 any person aggrieved by such decision may request a hearing
0787 before the secretary in accordance with K.S.A. 1982 Supp. 65-
0788 3440, and amendments thereto.

0789 Sec. 9. K.S.A. 1983 Supp. 65-3441 is hereby amended to read
0790 as follows: 65-3441. (a) It shall be unlawful for any person to: (1)
0791 Dump or deposit, or permit the dumping or depositing of any
0792 hazardous waste regulated by this act into any facility ~~except~~
0793 ~~short-term storage~~ which does not have a permit issued by
0794 *comply with the provisions of this act or rules or regulations,*
0795 *standards or orders of the secretary,* but this provision shall not
0796 prohibit: (A) The use of hazardous wastes in normal farming
0797 operations or in the processing or manufacturing of other prod-
0798 ucts in a manner that will not adversely affect the public health
0799 or environment, or (B) a generator who periodically produces a
0800 quantity of hazardous waste less than the quantity regulated
0801 under subsection (k) of K.S.A. 1982 Supp. 65-3431, and amend-
0802 *ments thereto,* from disposing such quantity of hazardous waste
0803 into a facility approved by the department which has a permit
0804 issued under K.S.A. 1982 Supp. 65-3407, and amendments
0805 *thereto.*

0806 (2) Construct, modify or operate a hazardous waste storage,
0807 treatment or disposal facility without a permit, license or other
0808 required written approval from the secretary or to be in violation
0809 of the rules and regulations, standards or orders of the secretary.

0810 (3) Violate any condition of any permit or license issued by
0811 the secretary.

0812 (4) ~~Generate, store,~~ collect, treat or dispose of hazardous
0813 waste contrary to the rules and regulations, standards or orders of
0814 the secretary.

0815 (5) Refuse or hinder entry, inspection, sampling and the
0816 examination or copying of records related to the purposes of this
0817 act by an agent or employee of the secretary after such agent or
0818 employee identifies and gives notice of their purpose at any time
0819 ~~when the facility is in operation or receiving or treating or~~
0820 ~~disposing of hazardous wastes.~~

0821 (6) *Perform or fail to perform any act in violation of the*
0822 *rules and regulations, standards or orders of the secretary.*

Store

0823 (7) Knowingly make any false material statement or repre-
0824 sentation in any application, label, manifest, record, report,
0825 permit or other document filed, maintained or used for purposes
0826 of compliance with this act.

0827 (8) Knowingly generate, store, treat, transport, dispose of or
0828 otherwise handle any hazardous waste or knowingly destroy,
0829 alter or conceal any record required to be maintained under
0830 rules and regulations promulgated by the secretary pursuant to
0831 this act.

0832 (9) Fail to designate on a manifest a facility which is autho-
0833 rized to operate under the federal hazardous waste program or
0834 under a state hazardous waste program which has received
0835 approval to operate in lieu of the federal hazardous waste
0836 program.

0837 (10) Transport hazardous waste to a facility which is not
0838 authorized to operate under the federal hazardous waste pro-
0839 gram or under a state hazardous waste program which has
0840 received approval to operate in lieu of the federal hazardous
0841 waste program.

(12) 0842 ~~(6) (11)~~ Transport and dispose of, or cause the transportation
0843 and disposition of, hazardous waste in a manner contrary to the
0844 rules and regulations, standards or orders of the secretary. It shall
0845 not constitute a defense to the generator that the generator acted
0846 through an independent contractor in the transportation or dis-
0847 position of the hazardous waste.

11 0848 (b) Any person who violates any provision of paragraphs (1)
0849 to ~~(5) 10~~, inclusive, of subsection (a) of this section shall be guilty
0850 of a class A misdemeanor and, upon conviction thereof, shall be
0851 punished as provided by law. Any person who violates any
0852 provision of paragraph ~~(6) (11)~~ of subsection (a) of this section
0853 shall be guilty of a class E felony and, upon conviction thereof,
0854 shall be punished as provided by law.

0855 (c) Any person who willfully, wantonly or recklessly violates
0856 any provisions of paragraphs (1) to ~~(6) (11)~~, inclusive, of subsec-
0857 tion (a) shall be guilty of a class D C felony and, upon conviction
0858 thereof, shall be punished as provided by law.

0859 (d) Any individual who violates any of the provisions of

(✓)

(11) Add, mix or blend any hazardous waste with fuel oil or any other fuel intended for use by residential consumers.

12

12

0860 paragraphs (1) to ~~(6) (11)~~, inclusive, of subsection (a) shall be
 0861 legally responsible to the same extent as if such acts were in the
 0862 individual's own name or on the individual's own behalf.

0863 (e) The county or district attorney of every county shall file
 0864 appropriate actions for enforcement of this section upon request
 0865 of the secretary or upon the county or district attorney's own
 0866 motion after consultation with the secretary.

0867 (f) No person shall be held responsible for failure to secure a
 0868 permit under the provisions of this section for the dumping or
 0869 depositing of any hazardous waste on land owned or leased by
 0870 such person without their expressed or implied consent, per-
 0871 mission or knowledge.

0872 Sec. 10. K.S.A. 1983 Supp. 65-3442 is hereby amended to
 0873 read as follows: 65-3442. (a) Title to hazardous waste transported,
 0874 stored, treated or disposed of in accordance with the provisions
 0875 of this act and the rules and regulations and standards adopted
 0876 thereunder, shall vest ~~in with the generator, transporter or~~
 0877 owner of the hazardous waste management facility in which the
 0878 waste is located, ~~treated or disposed of~~ unless specific contrac-
 0879 tual arrangements are otherwise provided. Hazardous waste dis-
 0880 posed of in ways other than in accordance with the provisions of
 0881 this act remain the property of the generator and the generator is
 0882 liable for removal of the waste, restoration of the area in which
 0883 the wastes were disposed and the disposal of the waste in
 0884 accordance with this act.

0885 (b) A generator who transfers hazardous waste to a registered
 0886 hazardous waste transporter for transport to an approved hazard-
 0887 ous waste facility shall be relieved of liability for cleanup or
 0888 disposal for such waste, except as otherwise provided in this act.
 0889 This subsection shall not operate to relieve any contractual
 0890 obligation owing to the operator of the approved hazardous
 0891 waste facility or to the transporter by the generator.

0892 (c) If a generator utilizes an unregistered transporter or ar-
 0893 ranges for an unapproved transportation, storage, disposal or
 0894 treatment, the generator and any person aiding or abetting the
 0895 generator shall be liable for all costs resulting from cleanup,
 0896 disposal or treatment of the waste.

with the

with the generator or contractor

0897 (d) The duties, responsibilities and liabilities of this section
0898 shall apply to both intrastate and interstate shipments of hazard-
0899 ous waste by a generator located in the state of Kansas.

0900 Sec. 11. K.S.A. 1983 Supp. 65-3443 is hereby amended to
0901 read as follows: 65-3443. (a) If the secretary finds that the
0902 generation, accumulation, management or discharge disposal of
0903 a hazardous waste by any person is or threatens to cause pollu-
0904 tion of the land, air, or waters of the state or is or threatens to
0905 become a hazard to persons, property or public health or safety or
0906 that the provisions of this act or any rule or regulation adopted

have been otherwise violated

0907 pursuant thereto, the secretary may order the person to modify
0908 the generation, accumulation or management of the hazardous
0909 waste or to provide and implement such hazardous waste man-
0910 agement systems procedures as will prevent or remove the
0911 pollution or hazard or take any other action deemed necessary.

0912 The secretary may order any person having a permit issued
0913 under this act, and who operates a public or commercial hazard-
0914 ous waste management system or any part thereof, which the

facility

0915 secretary finds suitable to manage the hazardous waste, to pro-
0916 vide and implement a hazardous waste management system or
0917 part thereof procedure to prevent or remove such pollution or

procedures

0918 hazard. Such order shall specify a fair compensation to the owner
0919 or permittee for property taken or used and shall specify the
0920 terms and conditions under which the permittee shall provide
0921 the hazardous waste management services. Any order issued
0922 shall specify the length of time after receipt of the order during
0923 which the person or permittee shall provide or implement the
0924 hazardous waste management system procedures or modify the
0925 generation, accumulation or management of the hazardous
0926 waste.

0927 (b) If the secretary after consideration of the economic im-
0928 pact on the generator finds that there is an environmentally more
0929 desirable procedure available other than ground burial for the
0930 disposal of a particular type of hazardous waste, the secretary
0931 shall order that the use of ground burial for the disposal of that
0932 type of hazardous waste be discontinued. The secretary in de-
0933 veloping such consideration may require the generator to pro-

0934 vide information and plans for potential environmentally more
0935 desirable procedures.

0936 (c) Any party aggrieved by an order under this section shall
0937 have the right of appeal in accordance with the provisions of
0938 K.S.A. 1981 Supp. 65-3440, and amendments thereto.

0939 Sec. 12. K.S.A. 1983 Supp. 65-3444 is hereby amended to
0940 read as follows: 65-3444. (a) A person who violates any provi-
0941 sions of this act, shall incur, in addition to any other penalty
0942 provided by law, a civil penalty in an amount not to exceed
0943 \$25,000 for every such violation and, in the case of a continuing
0944 violation, every day such violation continues shall be deemed a
0945 separate violation.

0946 (b) In assessing the civil penalty under this section, the
0947 district court shall consider, when applicable, the following
0948 factors:

0949 (1) The extent to which the violation presents a substantial
0950 hazard to the health of individuals;

0951 (2) the extent to which the violation has or may have an
0952 adverse effect upon the environment to be determined by the
0953 court according to the toxicity, degradability and dispersal
0954 characteristics of the substance discharged hazardous waste
0955 disposed of or the potential for such damage if no substance
0956 hazardous waste has been discharged disposed, the sensitivity of
0957 the receiving environment and the degree to which the dis-
0958 charge disposal degrades existing environmental quality or the
0959 potential for such degradation if no discharge disposal has oc-
0960 curred;

0961 (3) the amount of the reasonable costs incurred by the state in
0962 detection, investigation and attempted correction of the viola-
0963 tion;

0964 (4) the economic savings realized by the person in not com-
0965 plying with the provision for which a violation is charged in-
0966 cluding, but not limited to, that sum which a person would be
0967 required to expend for the planning, acquisition, siting, con-
0968 struction, installation and operation of facilities necessary to
0969 comply with the provision violated;

0970 (5) the quantity of the substance discharged or hazardous

0971 waste disposed of, if any, in a manner which constitutes a
0972 violation; and

0973 (6) the amount which would constitute an actual and sub-
0974 stantial economic deterrent to the violation for which it is as-
0975 sessed.

0976 (c) A civil action under this section may be commenced in
0977 the name of the state by *the secretary* or the county or district
0978 attorney of the county in which the violation is alleged to have
0979 occurred, or at the request of the secretary ~~of health and envi-~~
0980 ~~ronment~~, by the attorney general.

0981 (d) Any sum assessed under this section shall be deposited as
0982 ordered by the district court judge: (1) In the state general fund,
0983 or (2) in a perpetual care trust fund established under K.S.A. 1982
0984 Supp. 65-3431, and amendments thereto, or (3) part in a ~~the~~
0985 state general fund and the balance in a perpetual care trust fund.
0986 Moneys deposited in a perpetual care trust fund under this
0987 subsection (d) shall be to reimburse such fund, to the extent
0988 practicable as determined by the district court judge, for ex-
0989 penditures from such fund, if any, in the matter which gave rise
0990 to the civil action.

0991 Sec. 13. K.S.A. 1983 Supp. 65-3445 is hereby amended to
0992 read as follows: 65-3445. (a) Notwithstanding any other provision
0993 of this act, upon receipt of information that the storage, trans-
0994 portation, treatment or disposal of any hazardous waste may
0995 present a substantial hazard to the health of persons or to the
0996 environment *or for a threatened or actual violation of this act or*
0997 *any rules or regulations adopted pursuant thereto or any orders*
0998 *issued pursuant thereto or any permit conditions required*
0999 *thereby*, the secretary may take such action as may be necessary
1000 to protect the health of persons or the environment. The action
1001 the secretary may take shall include, but not be limited to:

1002 (1) Issuing an order directing the *owner* or operator of the
1003 ~~generator, transporter~~, storage, treatment or disposal facility or
1004 site, or the custodian of the waste, which constitutes the hazard,
1005 to take such steps as are necessary to prevent the act or eliminate
1006 the practice which constitutes the hazard. The action may in-
1007 clude, with respect to a facility or site, permanent or temporary

(✓)
the

generator, transporter

1008 cessation of operation.

1009 (2) Commencing an action to enjoin acts or practices speci-
1010 fied in paragraph (1) of this subsection or requesting that the
1011 attorney general or appropriate district or county attorney com-
1012 mence an action to enjoin those acts or practices. Upon a show-
1013 ing by the secretary that a person has engaged in those acts or
1014 practices, a permanent or temporary injunction, restraining order
1015 or other order may be granted by any court of competent juris-
1016 diction. An action for injunction under this paragraph (2) of this
1017 subsection shall have precedence over other cases in respect to
1018 order of trial.

1019 (3) Applying to the district court in the county in which an
1020 order of the secretary under paragraph (1) of this subsection will
1021 take effect, in whole or in part, for an order of that court directing
1022 compliance with the order of the secretary. Failure to obey the
1023 court order shall be punishable as contempt of the court issuing
1024 the order. The application under this paragraph (3) of this sub-
1025 section for a court order shall have precedence over other cases
1026 in respect to order of trial.

1027 (b) In any civil action brought pursuant to this section in
1028 which a temporary restraining order, preliminary injunction or
1029 permanent injunction is sought, it shall not be necessary to
1030 allege or prove at any stage of the proceeding that irreparable
1031 damage will occur should the temporary restraining order, pre-
1032 liminary injunction or permanent injunction not be issued or that
1033 the remedy at law is inadequate, and the temporary restraining
1034 order, preliminary injunction or permanent injunction shall issue
1035 without such allegations and without such proof.

1036 (c) ~~Any person aggrieved by an order of the secretary made~~
1037 ~~pursuant to this section may appeal such order in the manner~~
1038 ~~provided by law, within 30 days of notice of such order.~~

1039 Sec. 14. K.S.A. 1983 Supp. 65-3446 is hereby amended to
1040 read as follows: 65-3446. (a) The *secretary of the department of*
1041 *health and environment or the director of the division of envi-*
1042 *ronment, if designated by the secretary, upon a finding that a*
1043 *person has violated any provision of K.S.A. 1981 Supp. 65-3441,*
1044 *and amendments thereto, may impose a penalty not to exceed*

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

1045 \$10,000 which shall constitute an actual and substantial eco-
 1046 nomic deterrent to the violation for which it is assessed and, in
 1047 the case of a continuing violation, every day such violation
 1048 continues shall be deemed a separate violation.

1049 (b) No penalty shall be imposed pursuant to this section
 1050 except upon the written order of the *secretary of the department*
 1051 *of health and environment, or the director of the division of*
 1052 *environment, if designated by the secretary* to the person who
 1053 committed the violation. The order shall state the violation, the
 1054 penalty to be imposed and the right of appeal to the secretary of
 1055 health and environment. Any such person may, within 30 days
 1056 after notification, make written request to the secretary for a
 1057 hearing thereon. The secretary shall hear the person within 30
 1058 days after receipt of such request and shall give not less than 10
 1059 days' written notice of the time and place of the hearing. Within
 1060 15 days after such hearing, the secretary shall affirm, reverse or
 1061 modify the order of the director and shall specify the reasons
 1062 therefor. Nothing in this act shall require the observance at any
 1063 hearing of formal rules of pleading or evidence.

1064 (c) ~~Any person aggrieved by an order of the secretary made~~
 1065 ~~pursuant to subsection (b) of this section may appeal the order in~~
 1066 ~~the manner provided by law, within 30 days of notice of the~~
 1067 ~~order.~~

1068 New Sec. 15. If the secretary brings a civil enforcement
 1069 action pursuant to this act, any ~~citizen~~ who has an interest which
 1070 is or may be adversely affected, upon timely application, shall be
 1071 allowed to intervene in such action pursuant to K.S.A. 60-224,
 1072 and amendments thereto.

1073 Sec. 16. K.S.A. 1983 Supp. 65-3430, 65-3431, 65-3432, 65-
 1074 3333, 65-3435, 65-3436, 65-3437, 65-3439, 65-3441, 65-3442, 65-
 1075 3443, 65-3444, 65-3445, 65-3446 and 65-3448 are hereby re-
 1076 pealed.

1077 Sec. 17. This act shall take effect and be in force from and
 1078 after its publication in the statute book.

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

person