

Approved 2-25-86
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Senator Merrill Werts at
Chairperson

8:00 a.m./~~p.m.~~ on February 18, 1986 in room 123-S of the Capitol.

All members were present except:

Senator Eric Yost - Excused
Senator Francis Gordon - Excused

Committee staff present:

Ramon Powers - Research
Don Hayward - Revisor
Nancy Jones - Secretary

Conferees appearing before the committee:

Senator Wint Winter
Allan L. Smith, Manager, N.R. Hamm Quarry Inc., Operator, Jefferson/Douglas
County Landfill
Dennis Murphy - Manager, Waste Management, Kansas Department Health and
Environment

Motion was made by Senator Hayden to approve the minutes of the February 13, 1986 meeting, seconded by Senator Langworthy. Motion carried.

SB 566 - Relating to the disposal of solid waste.

Ramon Powers reviewed for the committee the bill being introduced as all sections are new. Section 1 relates to the intent of the bill, which is the need for adequate funds to insure proper closure of solid waste facilities and compensation for damage resulting from improper operation and closure of the facilities. The definitions in Section 2 were clarified. Section 3 requires each solid waste facility operator to establish an escrow account to be used for closures and remaining moneys after closure are to be placed in a contingency fund. The contingency fund shall be administered by the KDHE with disbursement only for damages and administrative costs. The Secretary is authorized to grant permits, the annual fee being \$50.00 and may require the permittee to provide liability insurance or surety bond to insure financial responsibility.

Senator Winter, who requested introduction of SB 566, stated operators of major solid waste disposal facilities support this legislation to assure financial security for proper closure of any facility and liability protection against any damages that may occur. He stated the difficulty in finding insurance makes it necessary to pursue this legislation. He further stated this will be a "pay as you go" mechanism and costs for required fees will be passed on to users, just as insurance costs have been in the past. Estimated cost will be 75¢ per consumer per year. The bill should provide protection for the operator, the user, and there would be no state General Fund expense. (Attachment A).

Allan Smith testified that insurance coverage for pollution liability for landfill operations is almost impossible to find and the cost is prohibitive. Mr. Smith supports this legislation as the contingency fund to be established is affordable, has a lid of \$6,000,000 with interest accrual and would be maintained with users fees. He further stated this bill would protect operators against rising liability costs and negligent public operators. (Attachment B).

During discussion Senator Winter stated liability insurance coverage simply is not available in Kansas. The contingency fund will at least partially replace it through fees paid by users. Use of the closure fund is for eventual closure of a facility.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 123-S Statehouse, at 8:00 a.m./~~p.m.~~^{XX} on February 18, 1986

A concern was expressed by Senator Hayden in regard to accountability for the fund and its use. Senator Winter suggested an adjustment could be built into the fund to authorize the Secretary to provide a higher rate for operators with a high experience of claims paid. He also suggested governmentally operated landfills should be considered in this bill as well as privately owned operations.

Dennis Murphy testified as a proponent reviewing the number of sites in Kansas and problems with liability coverage. He stated small businesses are being hurt by the lack of available liability coverage. The cost of legal defense coverage for insurers continues to rise. The Department also anticipates a substantial increase in site development cost with pending federal modifications. Mr. Murphy reviewed a ballooned copy of the bill which included recommendations of the Department for strengthening and clarifying the bill. (Attachment C).

As all proponents present were not able to testify, the hearing will continue on SB 566 at the next meeting.

Meeting adjourned. The next meeting will be February 19, 1986.

Guest List

2-18-86

| | | | |
|-------|-----------------|-----------------------|---------------------|
| | Dennis Murphey | KDHE | Topeka |
| Allan | Skert Smith | N.R. Hamm Quarry Inc | Perry, Ks. |
| | Leon Giese | PANHANDLE ENERGY | KANSAS CITY, KS |
| | Charles V. Hamm | KDHE | Forbes Field Topeka |
| | Chuck Linn | KDHE | Forbes Field Topeka |
| | Sham J. McFeath | KNRC | Topeka |
| | Ron Caches | BMAC | WICHITA |
| | BOB BRADLEY | KS Assoc. of Counties | Lawrence |



INSURANCE
MANAGEMENT
ASSOCIATES, INC.

600 IMA PLAZA
250 NORTH WATER
WICHITA, KANSAS 67202

316-267-9221
TWX 910-741-6997

February 14, 1986

Mr. Skeet Smith
N.R. HAMM CONTRACTORS, INC.
2800 Schwar
Lawrence, KS 66044

RE: POLLUTION LIABILITY - LANDFILL OPERATIONS

Dear Mr. Smith:

Per our conversation, insurance coverage for the referenced is almost impossible to find. If coverage can be located, the cost is so prohibitive that most landfill operators cannot afford the premium or the very expensive inspection fees charged before the insurance companies will advise coverage or pricing.

Also, there is no insurance company who can or will make any commitment as to availability of coverage and pricing for the ten (10) year requirement for coverage after the closing of a landfill site.

We will continue to seek coverage, but there is also a time problem - in most cases we cannot even get a response from the companies for six months or more. We will keep you advised.

Very truly yours,

Doris Barnett
EXCESS & SURPLUS LINES

cc: Velma Pollock/IMA-Topeka

DB:kmb/5-50

2-18-86
S. ENR

(A)

TESTIMONY

Regarding

S.B 566 Concerning Solid Waste Contingency Fund;

PRESENTED BY

Allan L. Smith

Business Manager, for N.R. Hamm Quarry, Inc., Landfill Operator

BEFORE THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

February 18, 1986

Mr. Chairman, we thank you and the Committee for this opportunity to present our views concerning S.B.566.

For the record, Mr. Chairman, my name is Allan L. Smith, I am Business Manager for N. R. Hsamm Quarry, Inc. a Kansas Corporation of Perry, Kansas, that among other interests, operates the Jefferson Douglas Counties Landfill. It is in relation to that activity that I appear before you today, "IN SUPPORT OF S.B. 566".

N.R. Hamm Quarry, Inc. began operation of the Jefferson/Douglas County Landfill in 1981 and since that time ~~there~~^{has} been changes in both Federal and State law regarding closure and post closure insurance responsibility. Those governmental agencies, and rightly so, have attempted to make operators accountable; however, due to the unavailability of coverage, (SEE THE ATTACHED LETTER FROM THIS OPERATORS INSURANCE AGENCY), and the apparent risk that public operators are willing to take, there really isn't the public protection out there that was intended. We like S.B. 566 for several reasons;

1. The fund would be maintained with user fees.
2. The fund would have a lid, in addition to being forever affordable.

2-18-86
S. ENR

(BT)

3. Claims experience would be generated from the low risk Kansas area, with landfills, controlled and permitted by the Kansas Health and Environment staff.

4. Once the fund "lid" is reached fees are accrued to the local Closure fund which reinforces the accountability of closure.

N.R. Hamm Quarry, Inc. has designed the landfill that serves Jefferson and Douglas Counties to have the potential life of a minimum of thirty years. Under the present situation there isn't any way that we can project liability cost for current operations irregardless of what it might cost to maintain insurance between the year 2016 and 2026, the ten years after closure. Without a solution such as S.B.566 one could foresee private corporations with no assets becoming the final operator of private landfills and the ghosts of negligent public operators haunting the societies of the future.

Thank you again for the opportunity to appear at his hearing.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON SB 566

PRESENTED TO Committee on Energy and Natural Resources

This is the official position taken by the Kansas Department of Health and Environment on SB 566.

BACKGROUND INFORMATION

Currently there are 242 sites in Kansas which would be affected by SB-566. Of these 242 sites 108 are privately owned and operated, have closure funds or permit bonds, and are insured by general comprehensive liability policies with environmental impairment endorsements. The remaining 134 sites are publicly owned and operated and are not required to carry insurance coverage nor are these required to set aside financial reserves for completion and closure of solid waste disposal sites.

The department estimates that landfills for the disposal of municipal solid wastes received 2.9 million cubic yards of solid wastes in 1984, and special use sites received an estimated 800 thousand cubic yards in 1984.

Liability coverage for solid waste disposal sites:

A crisis is developing in the commercial insurance market. Buyers of commercial liability can expect lower limits of coverage, higher deductibles, dramatically higher rates, claims-made contracts, additional exclusions of coverage, and in some cases unavailability of certain lines of liability insurance.

The most difficult and expensive lines of liability insurance to obtain, now and in the future, will be: excess and umbrella coverages, environmental impairment liability (EIL), directors and officers liability (D&O), public entity liability, professional liability, and other lines of liability. All of these lines have reached crisis levels of availability (i.e. no coverage is available or it is offered at prohibitively high rates).

2-18-86
S. ENR

(c)

Small businesses operating in high risk environments will be particularly hurt by the commercial liability capacity shortage and high prices, because they have traditionally transferred their liability risk to insurers and have a limited number of risk financing options. There are a number of reasons for the capacity shortage:

- primary and reinsurance industry large underwriting losses (\$3.55 billion in 1984) throughout the property and casualty sector;
- a lack of actuarial data and universally applied risk analysis methods to establish premiums that adequately reflect risk;
- real and perceived losses attributed to solid waste related legal actions against ambiguous insurer occurrence-based contracts that created high potential insurer risk;
- a social perception that solid waste has not been and cannot be adequately managed; and
- resultant third party claims for virtually all policies, a subsequent insurer duty to defend against these claims, and high legal costs and policy losses due to court rulings in favor of the insured for coverage that the insurer did not intend to provide.

As a result, insurers have excluded coverage for all kinds of pollution damage. Previously sudden and accidental pollution was covered but insurers have backed away from that coverage because courts in some states ruled that "sudden and accidental" could encompass several years of pollution problems.

Indications are that another coverage reduction is pending. Insurers want to include as part of a policy's claim limit the legal fees that an insurer pays to defend the policyholder against lawsuits. Currently, unless otherwise specified, an insurer has a duty to spend an unlimited amount of money on such legal defense.

Insurers complain that they sometimes pay more for legal bills than for damage claims. The Insurance Services Office says that defense costs ate up 25% of the premiums insurers received for commercial liability policies in 1983, compared with 5% in the late 1950s.

Closure of sites:

The closure of a solid waste site may be the most important aspect of its operation. Unfortunately major closure costs occur near the end of a site's useful life when the site no longer produces sufficient income to maintain daily operations and provide closure funds. Sites which were opened in the mid 1970's as the counties' response to the solid waste management act are nearing the end of their useful lives and will need to be closed. Our estimates are that adequate closure will cost as much as \$10,000 per acre. Currently privately operated sites are required to post closure funds or post permit bonds at the time sites are opened. We anticipate that pending modifications in federal standards for solid waste facilities will substantially increase site development costs, which will in turn develop an urgent need for the reserves tied up as closure funds.

Under the current solid waste requirements sites owned and operated by public agencies are not required to provide closure fund reserves. Our concern is that many public agencies are not making provisions for the inevitable task of closing and securing landfills.

STRENGTHS

We agree with the concepts outlined in SB 566. The proposals fill a need in both the public and private sector for solid waste disposal facilities.

WEAKNESSES

We offer the attached balloon write up with our suggestions on possible revisions.

DEPARTMENT'S POSITION

The department recommends enactment of SB 566.

d1/B10

Presented by: Dennis Murphey, Manager
Bureau of Waste Management
Kansas Department of Health and
Environment

SENATE BILL No. 566

By Committee on Energy and Natural Resources

2-5

0017 AN ACT relating to the disposal of solid waste; concerning
0018 closure of solid waste disposal facilities; providing for fees
0019 and charges and the establishment of certain funds; providing
0020 duties and authorities for the secretary of health and environ-
0021 ment relating thereto; amending K.S.A. 65-3407 and repealing
0022 the existing section.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 New Section 1. The legislature finds and declares that the
0025 proper closure of solid waste disposal facilities is essential to the
0026 public health, safety and welfare; that closure activities can
0027 require capital expenditures at a time when revenues collected
0028 by owners and operators of solid waste disposal facilities are
0029 minimal or nonexistent; and that it is necessary to guarantee that
0030 adequate funds are reserved to insure such closure. The legisla-
0031 ture further finds and declares that the improper operation or
0032 closure of solid waste disposal facilities can result in the con-
0033 tamination of surface and groundwaters, including potable water
0034 supplies; that the migration of methane gas from solid waste
0035 disposal facilities poses a threat to life and property; that private
0036 insurers have withdrawn from the solid waste disposal market;
0037 that insurance when available at all is available at a cost prohib-
0038 itive to owners and operators of solid waste disposal facilities;
0039 that compensation for the damage resulting from improper
0040 operation or closure is, at best, inadequate; and that it is neces-
0041 sary to provide a mechanism for the prompt compensation for
0042 these damages.

0043 New Sec. 2. As used in this act:

0044 "Closing costs" or "closure" means all activities and costs
0045 associated with the design, purchase, construction or mainte-
0046 nance of all measures required by the department, pursuant to

Page 1, No comments.

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0047 law or rule and regulation, in order to prevent or minimize
 0048 pollution or health hazards resulting from solid waste disposal
 0049 facilities subsequent to the termination of operations at any
 0050 portion thereof, including, but not necessarily limited to, the
 0051 costs of the placement of engineered earthen, membrane or
 0052 vegetative cover and the installation of methane gas vents,
 0053 methane collection systems or monitors and leachate monitoring
 0054 wells or collection systems at the site of any solid waste disposal
 0055 or facility;

0056 (b) "owner or operator" means and includes, in addition to
 0057 the usual meanings thereof, every owner or record of any interest
 0058 in land whereon a solid waste disposal facility is or has been
 0059 located, and any person or corporation which owns a majority
 0060 interest in any other corporation which is the owner or operator
 0061 of any sanitary landfill facility, including political subdivisions of
 0062 the state of Kansas;

0063 (c) "solid waste disposal facility" means any site used for the
 0064 disposal of solid wastes as defined by K.S.A. 65-3402, and
 0065 amendments thereto;

0066 (d) "department" means the Kansas department of health and
 0067 environment;

0068 (e) "secretary" means the secretary of the Kansas department
 0069 of health and environment.

0070 New Sec. 3. (a) The owner or operator of every solid waste
 0071 disposal facility shall deposit, on a quarterly basis, in an inter-
 0072 est-bearing account with an accredited financial institution, an
 0073 amount equal to \$.50 per ton of solids and \$.02 per gallon of
 0074 liquids for all solid waste accepted for disposal during the
 0075 preceding quarter year at the solid waste disposal facility. In the
 0076 event that any solid waste is measured, upon acceptance for
 0077 disposal, by other than tons or gallons, the amount to be depos-
 0078 ited shall be calculated by using equivalents thereof as shall be
 0079 determined by the secretary. The account established pursuant
 0080 to this subsection shall constitute an escrow account for the
 0081 closure of that particular solid waste disposal facility, and no
 0082 withdrawals therefrom may be made without written approval of
 0083 the secretary, or as otherwise authorized by the secretary. The

Line 0057 - owner or record should read owner of record

Line 0073 and 0078 - The department suggests that the basis for the deposit be calculated on cubic yards in place rather than a per ton basis. The volume of material to be added to a disposal site can easily be measured by field measurements or topographic survey and that information once acquired is useful for disposal site planning purposes. Of the 240 or so sites covered by the amendment only a dozen are equipped with truck scales. Scales suitable for weighing incoming solid wastes cost upwards of 30 thousand dollars installed. The 50 cents per ton deposit would make it difficult to accumulate the specified funding (\$10,000/acre). In practice the in-place density of compacted solid wastes in a well operated landfill is 900 to 1,200 pounds per cubic yard, requiring a disposal site to receive 24 feet of solid wastes exclusive of daily cover to accumulate the required funding.

In addition to simplifying the calculations; modifying the method of measurement from ton to cubic yard would make it more likely that the necessary funding would be accumulated.

0034 maximum amount to be accumulated in such account shall be
 0035 \$10,000 per acre, except when the secretary shall determine that
 0036 closure measures other than the application of earth cover will
 0037 be necessary to close the facility. In those cases the maximum
 0038 amount required to be deposited shall be determined at the time
 0039 a permit is issued by the secretary for the operation of such
 0040 facility.

0091 (b) Any owner or operator of a solid waste disposal facility
 0092 who shall fail to deposit funds into an escrow account or uses
 0093 those funds for any purpose other than closing costs, as approved
 0094 by the secretary, shall be guilty of a class A misdemeanor. In
 0095 addition, the secretary may seek a restraining order to prevent
 0096 the owner or operator from accepting solid waste for disposal in
 0097 such facility.

0098 (c) Every owner or operator of a solid waste disposal facility
 0099 shall file with the department an annual audit of the escrow
 0100 account established for the closure of the facility pursuant to this
 0101 act. The audit shall be conducted by a certified public account-
 0102 ant, and shall be filed with the department no later than October
 0103 31 of each year.

0104 (d) Whenever circumstances such as duration of operation,
 0105 quantity of materials to be disposed of or other factors make it
 0106 impractical to establish a closure account, the secretary may
 0107 accept cash bond, surety bond, letter of credit or other financial
 0108 assurances as may be prescribed by rule and regulation of the
 0109 secretary in lieu of a closure account.

0110 (e) The secretary shall adopt rules and regulations prescrib-
 0111 ing the manner in which closure account records shall be main-
 0112 tained and how a permittee shall make deposits to and with-
 0113 draws from the account, and other matters deemed necessary to
 0114 administer this section.

0115 (f) Any moneys remaining in the escrow account of any solid
 0116 waste disposal facility subsequent to the proper and complete
 0117 closure thereof, as determined by the department shall be paid
 0118 by the owner or operator thereof into the solid waste disposal
 0119 facility contingency fund unless the owner or operator has other
 0120 ~~facilities.~~

The \$10,000 acre closure fund would appear adequate based upon the application of a minimum of 3 feet of earth cover (5,000 cubic yards) and grading, fertilization, seeding and mulching costs of \$600 per acre.

Line 0085 - After \$10,000 add "plus accrued interest".

Line 0120 - Delete the word "facilities" and add the phrase "Kansas facilities permitted for the disposal of solid wastes, in which case the secretary may authorize the transfer of unused funds into those escrow accounts".

0121 New Sec. 4. (a) The solid waste disposal facility contingency
 0122 fund is hereby established as a nonlapsing revolving fund in the
 0123 department. The fund shall be administered by the department
 0124 and shall be credited with all disposal fee revenues collected by
 0125 the department pursuant to section 5. The secretary shall remit
 0126 all disposal fee revenues collected under this subsection to the
 0127 state treasurer to be credited to such fund. The pooled money
 0128 investment board may invest moneys in the fund in obligations
 0129 of the United States or obligations the principal and interest of
 0130 which are guaranteed by the United States or in interest-bearing
 0131 time deposits in any commercial bank or trust company located
 0132 in Kansas or, if the board determines that it is impossible to
 0133 deposit such moneys in such time deposits, in repurchase
 0134 agreements of less than 30 days' duration with a Kansas bank for
 0135 direct obligations of, or obligations that are insured as to princi-
 0136 pal and interest by the United States government or any agency
 0137 thereof. Any income of interest earned by such investments shall
 0138 be credited to the fund.

0139 The maximum amount of the fund shall be \$6,000,000 plus all
 0140 interest income accruing to the fund. Whenever the secretary
 0141 determines that projected receipts for any quarter minus out-
 0142 standing claims against the fund will exceed the upper limit as
 0143 herein provided, the collection of fees authorized in section 5
 0144 shall be suspended until such time as the fund needs replenish-
 0145 ing, and no charges shall be levied for such purpose until
 0146 replenishment of the fund is needed. During any such period a
 0147 permit holder shall deposit any excess moneys that would have
 0148 been paid into the fund into the closure account established in
 0149 section 3 as provided in such section.

0150 (b) The solid waste disposal contingency fund shall be liable
 0151 for damages proximately resulting from the operation of any solid
 0152 waste disposal facility whose operator is a participant in the
 0153 fund. These damages shall include, ~~but not be limited to:~~

0154 (1) The cost of providing an individual health assessment for
 0155 any person found to be consuming a drinking water source or a
 0156 food chain product or who is exposed to an air emission found to
 0157 be contaminated by solid waste disposal facility.

Line 0153 - We suggest that the phrase "but not be limited to" be deleted. This phrase opens up the fund to a whole range of issues not related to health or environment concerns such as the devaluation or taking of property without compensation, personal injury claims resulting from accidents at the facility.

Another policy decision would be whether the legislature would want to consider an upper limit for a single claim or claims from the fund.

0158 (2) The cost of restoring, repairing or replacing any real or
 0159 personal property damaged or destroyed.

0160 (3) The cost of restoration and replacement, where possible,
 0161 of any natural resource damaged or destroyed, including any
 0162 potable water supply.

0163 (4) The costs of the design, construction, installation, opera-
 0164 tion and maintenance of any device or action deemed necessary
 0165 by the department to cleanup, remedy, mitigate, monitor or
 0166 analyze any threat to the public health, safety or welfare of the
 0167 citizens of this state, including the installation and maintenance
 0168 of methane gas monitors and vents and leachate monitoring
 0169 wells and collection systems and the sampling and analysis of
 0170 any public or private potable water supply.

0171 (c) In the event that the total of claims awarded exceeds the
 0172 current balance of the fund, the immediate award shall be paid
 0173 on a prorated basis, and all claimants paid shall be paid, as
 0174 determined by the department, on a pro rata share of all moneys
 0175 deposited in the fund until the total amount of the proven
 0176 damages is paid to the claimants. The department may also
 0177 provide, by rule and regulation, priority for the payment of
 0178 claims based on extreme hardships or extreme existing or immi-
 0179 nent hazard.

0180 (d) Claims against the fund shall be filed within one year of
 0181 the date of discovery of damage, and in the manner as shall be
 0182 prescribed by the department.

0183 (e) Moneys in the funds shall be disbursed by the depart-
 0184 ment for the following purposes and no others:

0185 (1) Administrative costs incurred by the department pursuant
 0186 to section 5 of this act; and,

0187 (2) damages as provided in paragraphs 1 to 4, inclusive.

0188 Allocation: from the fund for damages shall be reviewed and
 0189 approved by the state finance council as provided for in K.S.A.
 0190 75-3711 and 75-3711c, and amendments thereto.

0191 New Sec. 5. (a) The secretary shall establish a fee for each
 0192 owner or operator not to exceed \$.50 per ton for solids and by
 0193 \$.01 per gallon of liquids to be deposited in the solid waste
 0194 disposal facility contingency fund.

Line 0170 - After the word "supply" add the phrase "whenever these required remedial actions are necessitated by an event which occurs or is discovered at an inactive facility following approval of its closure by the department and which are in addition to the post closure operation and maintenance required of a site owner at the time the site is closed."

Comment - The department feels that this addition clarifies the intent of the legislative proposal which we see as a form of "insurance". We do not believe that the fund should be subject to claims made for operational and maintenance items which an operator is already obligated to perform under current policies and regulations.

Line 0186 - After the word "section add 4; after "5" add 6 and 8.

In addition to the costs in collecting fees (section 5) the department will incur significant administrative costs in evaluating and processing claims, and in developing rules and regulations for administering the fund (section 4). Costs of recovery of any amount due the fund from a cause of action accruing to the fund should be chargeable to the fund (section 6). And the cost of preparing and distributing the annual audit of the fund should be chargeable to the fund.

Line 0192 - Comment - For the reasons cited in section 3, we recommend that the basis of the fee collection be cubic yards in place.

In attempting to calculate potential revenues to the fund, we looked at the community sanitary landfills which report on the volumes of wastes they receive each year. (Operators report in two ways: tons and loose cubic yards as received.)

0185 (b) Every owner or operator of a solid waste disposal facility
 0186 shall or before April 20 and October 20 render a return under
 0187 oath to the secretary on such form as may be prescribed by the
 0188 secretary indicating the number of cubic yards of solid wastes
 0189 and gallons of liquid waste accepted at the solid waste disposal
 0200 facility and at such time the owner or operator shall pay the full
 0201 amount of disposal fee due.

0202 (c) If a return required by this act is not filed or, if a return
 0203 when filed is incorrect or insufficient in the opinion of the
 0204 secretary, the amount of fee due shall be determined by the
 0205 secretary from such information as may be available. Notice of
 0206 such determination shall be given the person liable for the fees.
 0207 Such determination shall finally and unrevocably fix the fee
 0208 unless the person shall apply to the secretary for a hearing or
 0209 unless the secretary shall redetermine the same.

0210 (d) The solid waste disposal facility permit of any person
 0211 liable for the fee shall be cancelled if any fee remains unpaid for
 0212 a period of 60 days past its due date, and the secretary may begin
 0213 proceedings in any court of competent jurisdiction to recover any
 0214 amounts due the fund. Past due amounts shall bear interest at
 0215 12% per annum. For any site permitted for less than six-months'
 0216 duration, an estimated disposal fee shall be billed and collected
 0217 at the time the permit is issued.

0218 (e) Any person failing to file a return, failing to pay, or filing
 0219 or causing to be filed, or making or causing to be made, or giving
 0220 or causing to be given, any return, certificate, affidavit, repre-
 0221 sentation, information, testimony or statement required or claim
 0222 authorized by this act, or rules and regulations adopted hereun-
 0223 der, which is ~~willfully~~ false, or failing to keep any records
 0224 required by this act, or rules and regulations adopted hereunder,
 0225 shall, in addition to any other penalties prescribed, be guilty of a
 0226 class A misdemeanor.

0227 (f) The certification of the secretary to the effect that a fee has
 0228 not been paid, that a return has not been filed, that information
 0229 has not been supplied or that inaccurate information has been
 0230 supplied pursuant to this act or rules and regulations adopted
 0231 hereunder shall be presumptive evidence thereof.

(continued from page 5)

Solid Wastes Received 1984

| | |
|------------------------------|---------------------------------|
| 769,856-Tons - equivalent to | 1.46 million cubic yards |
| *loose cubic yards 4,423,840 | <u>1.47 million cubic yards</u> |
| Total | 2.93 million cubic yards |

*A loose cubic yard is estimated to compact to 1/3 volume in the landfill.

Line 0223 - Delete the word "willfully" and substitute "knowingly".

Comment - "willfully" implies proof of intent which requires a much higher standard of proof than knowingly.

0232 New Sec. 6. Payment of any damages from the solid waste
0233 disposal facility contingency fund shall be conditioned upon the
0234 department acquiring, by subrogation, all rights of the claimant
0235 to recovery of the damages from any owner or operator of a solid
0236 waste disposal facility.

0237 New Sec. 7. Nothing in this act shall be deemed to preclude
0238 the pursuit of any other civil or injunctive remedy by any person.
0239 The remedies provided in this act are in addition to those
0240 provided by existing statutory or common law, but no person
0241 who received compensation for damages pursuant to any other
0242 state or federal law shall be permitted to receive compensation
0243 for the same damages or cleanup costs under this act.

0244 New Sec. 8. The secretary shall prepare an annual report on
0245 the condition of the solid waste disposal contingency fund on
0246 September 1 of each year. The report shall list receipts to, and
0247 disbursements from the fund, claims processed and pending and
0248 any other information relevant to the fund. The report shall be
0249 sent to all depositors to the fund.

0250 Sec. 9. K.S.A. 65-3407 is hereby amended to read as follows:
0251 65-3407. (a) It shall be unlawful for any person to construct, alter
0252 or operate a solid waste processing facility or a solid waste
0253 disposal area of a solid waste management system without first
0254 obtaining a permit from the secretary.

0255 (b) Every person desiring to obtain a permit to construct,
0256 alter or operate a solid waste storage, treatment or processing
0257 facility or disposal area shall make application for such a permit
0258 on forms provided for such purpose by the rules and regulations
0259 of the secretary and shall provide the secretary with such infor-
0260 mation as necessary to show that the facility or service will
0261 comply with the purpose of this act. Upon receipt of any appli-
0262 cation and payment of the fee, the secretary, with advice and
0263 counsel from the local health authorities and the county com-
0264 mission, shall make an investigation of the proposed solid waste
0265 processing facility or disposal area and determine whether it
0266 complies with the provisions of this act and any rules and
0267 regulations and standards adopted thereunder. When the inves-
0268 tigation reveals that the facility or area does conform with the

New Section 9. The secretary shall adopt rules and regulations necessary to administer the solid waste disposal contingency fund.

Make Section 9 into a new Section 10.

260 provisions of the act and the rules and regulations and standards
261 adopted thereunder the secretary shall approve the application
271 and shall issue a permit for the operation of each solid waste
272 processing or disposal facility or area set forth in the application.
273 In the event that the facility or area fails to meet the rules and
274 regulations and standards required by this act the secretary shall
275 issue a report to the applicant stating the deficiencies in the
276 application. The secretary may issue temporary permits condi-
277 tioned upon corrections of construction methods being com-
278 pleted and implemented.

279 (c) The annual fee for a solid waste processing or disposal
280 permit shall be \$50 and no refund shall be made in case of
281 revocation. All fees shall be deposited in the general fund in the
282 state treasury. A city, county, other political subdivision or state
283 agency shall be exempt from payment of the fee but shall meet
284 all other provisions of this act.

285 (d) Plans, designs and relevant data for the construction of
286 solid waste processing facilities and disposal sites shall be pre-
287 pared by a professional engineer licensed to practice in Kansas
288 and shall be submitted to the department for approval prior to
289 the construction, alteration or operation of such facility or area.
290 In adopting rules and regulations, the secretary may specify
291 sites, areas or facilities where the environmental impact is min-
292 imal and may waive such preparation requirements provided
293 that a review of such plans is conducted by a professional
294 engineer licensed to practice in Kansas.

295 (e) Each permit granted by the secretary, as provided in this
296 act, shall be subject to such conditions as the secretary deems
297 necessary to protect human health and the environment and to
298 conserve the sites. Such conditions shall include approval by the
299 secretary of the types and quantities of solid waste allowable for
300 processing or disposal at the permitted location.

301 (f) As a condition of granting a permit to operate any proc-
302 essing facility or disposal area for solid waste, the secretary shall
303 may require the permittee to provide surety bond, cash bond or a
304 secured trust fund and liability insurance, including coverage
305 against non-sudden occurrences, or any combination thereof, in

0306 such amount as determined necessary by the secretary to insure
0307 the financial responsibility of the permittee for any liability
0308 incurred in the operation of the facility or area and to insure that,
0309 upon abandonment, cessation or interruption of the operation of
0310 the facility or area, all appropriate measures are taken to prevent
0311 present or future damage to human health and the environment.
0312 Any such liability insurance as may be required pursuant to this
0313 subsection or pursuant to the rules and regulations of the secre-
0314 tary shall be issued by an insurance company authorized to do
0315 business in Kansas or by a licensed insurance agent operating
0316 under authority of K.S.A. 40-246b, *and amendments thereto*, and
0317 shall be subject to the insurer's policy provisions filed with and
0318 approved by the commissioner of insurance pursuant to K.S.A.
0319 40-216, *and amendments thereto*, except as authorized by K.S.A.
0320 40-246b, *and amendments thereto*. Nothing contained in this
0321 subsection shall be deemed to apply to any political subdivision,
0322 state agency, department or agency of the federal government or
0323 to any independent contractor operating a solid waste disposal
0324 area as a part of an approved solid waste management plan for
0325 which equivalent surety is provided to a political subdivision or
0326 federal or state agency.

0327 (g) Permits granted by the secretary, as provided in this act,
0328 shall be revoked or subject to suspension whenever the secre-
0329 tary shall determine that the solid waste processing or disposal
0330 facility or area is, or has been constructed or conducted in
0331 violation of the act or the rules and regulations or standards
0332 adopted pursuant to the act, or is creating a hazard to persons or
0333 property in the area or to the environment, or is creating a public
0334 nuisance.

0335 (h) In case any permit is denied, suspended or revoked the
0336 person, city, county or other political subdivision or state agency
0337 may request a hearing before the secretary in accordance with
0338 K.S.A. 65-3412, *and amendments thereto*.

0339 Sec. 10. K.S.A. 65-3407 is hereby repealed.

0340 Sec. 11. This act shall take effect and be in force from and
0341 after its publication in the statute book.