

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at
Chairperson

2:00~~xxx~~ p.m. on April 6, 1989 in room 527-S of the Capitol.

All members were present except:

Committee staff present:

- Raney Gilliland, Legislative Research
- Lynne Holt, Legislative Research
- Mary Torrence, Revisor of Statutes' Office
- Betty Ellison, Committee Secretary

Conferees appearing before the committee:

The meeting was called to order by Chairman Dennis Spaniol. Attention was called to the minutes of March 22, 23, 27, 28 and 29 which had been distributed. There have been no objections to the minutes of March 21 and they stand approved.

Sub. for Senate Bill 94 - Kansas storage tank act.

A balloon of amendments to the bill was distributed to committee members and explained by Mary Torrence of the Revisor's Office. Attachment 1. She pointed out that a number of amendments shown make it clear that underground petroleum storage tanks are talked about throughout the bill except with regard to above ground storage tanks being subject to standards set by the Secretary of Health and Environment and an annual registration fee of \$5.00. Otherwise, above ground storage tanks are not spoken to in the balloon. Other amendments were discussed in detail. It was noted that all provisions regarding storage tanks would take effect April 1, 1990. Beginning with New Section 28, essentially the provisions of House Bill 2008 were inserted.

Chairman Spaniol noted some of the changes in the provisions of House Bill 2008, and responded to related questions. This would raise a total of \$14,747,000, which was close to the \$15 million original goal. Representative Roenbaugh's amendment regarding contracting on landfills was included. No Economic Development Initiative Funding (EDIF) funds were included, principally because of disagreement between the legislative branch and the governor on whether or not that money should be used. A combination of \$2 million dedicated severance tax with \$4 million of Representative Rezac's amendment on the floor made a total of \$6 million. Concerning the tank fee, with this plan approximately 50 percent of the cost would be incurred by the operator; the other 50 percent by the general public. This was believed to be a more equal form of distribution. The Chairman commented that nine states have passed some type of trust fund legislation and most have some type of per tank fee in conjunction with the gas tax pass-through.

The Chairman listed the total dollars being raised from each source:

2¢ per thousand gal. on sale of water - - - -	\$2.4 million
2¢ per thousand gal. on industrial use - - - -	\$ 950,000
2¢ per thousand gal. on large feed lot operations	151,000
\$1.40 per ton increase on registration fees	
for fertilizers - - - - -	1,976,000
Dedication of severance tax proceeds - - - - -	\$6 million
Solid waste tipping fee - - - - - for state -	970,000
plus an additional \$970,000 for a special fund to be sent back to counties for solid landfill assistance.	
\$100,000 registration fee increase in pesticides	700,000
Miscellaneous fines and penalties estimated at	100,000
\$50 per point of diversion for irrigation - - -	1,500,000
Total - - - - -	-\$14,747,000

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

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
room 527-S, Statehouse, at 2:00 ~~xxx~~ p.m. on April 6, 1989.

Representative Freeman, seconded by Representative Grotewiel, made a motion to adopt the balloon amendments.

Representative Holmes made the following substitute motion.

At the bottom of page 2, New Sec. 28 of the balloon:

Decrease 2 cents to 1 cent--not 2 cents per thousand, but 1 percent on retail sales. He wanted to go back to the percentage because small units of government have no computers and must figure rates by hand. Local sales tax, either city or county, is a percent of the water bill. On per thousand gallons, each city would have to hand redo that for each customer on a gallonage basis; this would greatly increase the time required to figure. One percent on sale of water at retail would raise \$1.9 million rather than 2.4 million, or \$½ million less on retail sale of water.

2 cents per thousand for industrial would generate \$.95 million.

On page 3, stockwatering--no change.

Reduce from \$50 to \$25 rate on irrigation water rights.

On page 4, New Sec. 29, solid waste tipping fee--no change.

On page 7, no change on severance tax.

On page 8, Sec. 32, no change on penalties.

On page 11, item (c) registration fee on pesticides--no change.

On page 13, Sec. 35, \$1.40 changed to \$1.50.

Approximate total - - \$13.5 million

Representative Patrick clarified that the motion was to change these numbers and leave the rest of the balloon intact. He then seconded the motion.

Committee discussion followed regarding fairness, economic hardship on agriculture, EDIF funds and whether this was a rural vs. urban problem. Also a question regarding germaneness of the two bills was mentioned. It was noted that both bills protect soil and water.

In closing, Representative Holmes went through his sheet of amendments again, emphasizing that it is 1 percent of sale of water, not a per thousand gallon charge. On industrial, it should be 2 cents per thousand, not 2 cents per hundred as written. Solid waste tipping fee should be \$1.00 rather than \$.50; half of that would stay in the state and half would revert back to local units of government as in the original bill. Attachment 2.

A vote was taken on Representative Holmes' motion to adopt his amendment. By show of hands, 9 were in favor and 11 opposed. The motion failed.

Representative Gatlin made a motion to pass Sub. for Senate Bill 94 in its original form, without any amendments. Representative Guldner seconded.

The following discussion related to right of subrogation, EPA requirements, liability for small tank owners and cost to consumers.

Representative Gatlin restated his motion to report Sub. for Senate Bill 94 favorably in its original form, as it came to this committee, with no amendments.

A vote was taken and the Chair was in doubt. By a show of hands, 11 were in favor and 9 opposed. The motion passed.

The meeting was adjourned at 3:15 p.m.

4/5/89

Substitute for SENATE BILL No. 94

By Committee on Energy and Natural Resources

3-1

concerning protection of natural resources; providing for regulation of certain petroleum storage tanks; establishing certain fees and providing for disposition thereof; prohibiting certain acts and providing penalties for violations; concerning financing of the state water plan and imposing certain fees for that purpose; amending K.S.A. 2-1205, 65-170f and 65-3415, K.S.A. 1988 Supp. 79-4227 and K.S.A. 1987 Supp. 2-2204 and 65-3419, both as amended by chapter 356 of the laws of 1988, and repealing the existing sections

~~AN ACT enacting the Kansas storage tank act; providing for the regulation of storage tanks thereunder; establishing the petroleum storage tank release trust fund; providing authorities and duties for the secretary and department of health and environment; establishing an environmental assurance fee and providing duties and authorities for the department of revenue relating thereto; prescribing unlawful acts and providing penalties therefor.~~

New Section 1. (a) Sections 1 through 26

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

New Sec. 2. As used in sections 1 through 26

~~Section 1. This act shall be known and may be cited as the Kansas storage tank act.~~

~~Sec. 2. As used in this act:~~

(a) "Above ground storage tank" means any storage tank in which greater than 90% of the tank volume, including volume of the piping, is not below the surface of the ground;

(b) "board" means the petroleum storage tank release compensation advisory board;

(c) "department" means the Kansas department of health and environment;

(d) "facility" means all contiguous land, structures and other appurtenances and improvements on the land used in connection with one or more storage tanks; underground petroleum

(e) "federal act" means the solid waste disposal act, 42 U.S.C. sections 3152 *et seq.*, as amended, particularly by the hazardous and solid waste amendments of 1984, P.L. 98-616, 42 U.S.C. sections 6991 *et seq.*, as amended by P.L. 99-499, 1986, and rules and regulations adopted pursuant to such federal laws and in effect on the effective date of this act;

(f) "financial responsibility" means insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other

Attachment 1
H Energy and NR
4-6-89

44 method satisfactory to the secretary to provide for taking corrective
 45 action, including cleanup and restoration of any damage to the land,
 46 air or waters of the state, and compensating third parties for cleanup,
 47 bodily injury or property damage resulting from a sudden or non-
 48 sudden release of a regulated substance arising from the construction,
 49 relining, ownership or operation of an underground storage tank and
 50 in the amount specified in the federal act;

51 (g) "fund" means the petroleum storage tank release trust fund;

52 ~~(h) "department" means the Kansas department of health and~~ delete and reletter remaining subsections accordingly
 53 ~~environment;~~

54 (i) "guarantor" means any person, other than an owner or op-
 55 erator, who provides evidence of financial responsibility for an owner
 56 or operator;

57 (j) "operator" means any person in control of or having respon- an underground petroleum
 58 sibility for the daily operation of a storage tank, but such term shall
 59 not include a person whose only responsibility regarding such storage
 60 tank is filling such tank with a regulated substance and who does
 61 not dispense or have control of the dispensing of regulated substances
 62 from the storage tank;

63 (k) "own" means to hold title to or possess an interest in a storage an underground petroleum
 64 tank or the regulated substance in a storage tank;

65 (l) "owner" means any person who is or was the owner of any underground petroleum
 66 storage tank which was in use on November 8, 1984, or brought
 67 into use subsequent to that date, and it also means any person who, an underground petroleum

68 in the case of a storage tank in use prior to November 8, 1984,
 69 owned such tank immediately prior to the discontinuation of its use.
 70 Such term does not include: (1) A person who holds an interest in
 71 a petroleum storage tank solely for financial security, unless through an underground
 72 foreclosure or other related actions the holder of a security interest
 73 has taken possession of the petroleum storage tank, and (2) any city an underground
 74 or county which obtains a storage tank or regulated substance as a
 75 result of tax foreclosure proceedings;

76 (m) "person" means an individual, trust, firm, joint venture, con-
 77 sortium, joint-stock company, corporation, partnership, association,
 78 state, interstate body, municipality, commission, political subdivision
 79 or any agency, board, department or bureau of this state or of any
 80 other state or of the United States government,

1-2

81 (n) "petroleum" means petroleum, including crude oil or any
82 fraction thereof, which is liquid at standard conditions of temperature
83 and pressure (60 degrees Fahrenheit and 14.7 pound per square
84 inch absolute), including but not limited to, gasoline, gasohol, diesel
85 fuel, fuel oils and kerosene;

86 (o) "petroleum product" means petroleum other than crude oil;

87 (p) "petroleum storage tank" means any storage tank used to
88 contain an accumulation of petroleum;

89 (q) "regulated substance" means petroleum or any element, com-
90 pound, mixture, solution or substance defined in section 101(14) of
91 the Comprehensive Environmental Response, Compensation and Li-
92 ability Act of 1980 of the United States as in effect on January 1,
93 1989, but not if regulated as a hazardous waste under the Resource
94 Conservation and Recovery Act of 1976 (42 U.S.C. Secs. 6921
95 through 6939b) ~~as in effect on January 1, 1989;~~

96 (r) "release" means any spilling, leaking, emitting, discharging,
97 escaping, leaching or disposing from a storage tank into groundwater,
98 surface water or soils;

99 (s) "removal" means the process of removing and disposing of a
100 storage tank, no longer in service, and also shall mean the process
101 of abandoning such tank, in place;

102 (t) "repair" means modification or correction of a storage tank
103 through such means as relining, replacement of piping, valves, fillp-
104 ipes, vents and liquid level monitoring systems, and the maintenance
105 and inspection of the efficacy of cathodic protection devices, but the
106 term does not include the process of conducting a tightness test to
107 establish the integrity of a tank;

108 (u) "secretary" means the secretary of health and environment,

109 (v) "storage tank" means any one or combination of tanks used
110 to contain an accumulation of regulated substances, the associated
111 piping and ancillary equipment and the containment system;

112 (w) "tank" means a stationary device designed to contain an ac-
113 cumulation of substances and constructed of non-earth materials
114 such as concrete, steel or plastic, that provide structural support;

115 (x) "terminal" means a bulk storage facility for storing petroleum
116 supplied by pipeline or marine vessel;

117 (y) "trade secret" means, but is not limited to, any customer

an underground petroleum

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118 lists, any formula, compound, production data or compilation of in-
119 formation which is not patented and which is known only to certain
120 individuals within a commercial concern using it to fabricate, produce
121 or compound an article of trade, or any service having commercial
122 value, which gives its user an opportunity to obtain a business ad-
123 vantage over competitors who do not know or use it;

124 (z) "underground storage tank" means any storage tank in which
125 10% or more of the tank volume, including volume of the piping,
126 is below the surface of the ground;

127 (aa) "underground storage tank contractor" or "contractor" means
128 a business which hold itself out as being qualified to install, repair
129 or remove underground storage tanks; and

130 (bb) "underground storage tank installer" or "installer" means an
131 individual who has an ownership interest or exercises a management
132 or supervisory position with an underground storage tank contractor.

133 The term shall include the crew chief, expediter, engineer, super-
134 visor, leadman or foreman in charge of a tank installation project.

135 ~~Sec. 3. Except as provided in paragraph 13 of subsection (a) of~~
136 ~~section 5 and section 19, this act shall not apply to:~~

137 (a) Farm or residential tanks of 1,100 gallons or less capacity used
138 for storing motor fuel for noncommercial purposes;

139 (b) tanks used for storing heating oil for consumptive use on a
140 single family residential premise where stored;

141 (c) a pipeline facility, including gathering lines, regulated under:

142 (1) The Natural Gas Pipeline Safety Act of 1968, and

143 (2) the Hazardous Liquid Pipeline Safety Act of 1979; or

144 (3) state laws relating to intrastate pipelines comparable to the
145 provisions of law referred to in ~~subparagraphs~~ (1) and (2);

146 (d) surface impoundments, pits, ponds, septic tanks or lagoons;

147 (e) storm water or waste water collection systems;

148 (f) flow-through process tanks;

149 (g) liquid traps, storage tanks or associated gathering lines directly
150 related to oil or gas production and gathering operations; and

151 (h) storage tanks situated in an underground area, such as a
152 basement, cellar, mine working, drift, shaft or tunnel, if the storage
153 tank is situated upon or above the surface of the floor;

154 (i) above ground storage tanks of agricultural materials regulated] strike

petroleum

an underground petroleum storage

New Sec. 3. Except as provided in section 19, sections 1 through 26

7-1

155 [by the state board of agriculture; and

156 (j) above ground storage tanks located at a petroleum refining strike
157 facility.]

158 Sec. 4. (a) Each owner of a storage tank shall notify the de- petroleum
159 partment of the tank's existence, including age, size, type, location,
160 associated equipment and uses.

161 (b) In addition and to the extent known, each owner of an un-
162 derground storage tank which has not been removed, but was taken
163 out of service after January 1, 1974 and prior to May 8, 1986, shall
164 notify the department of the date the tank was taken out of operation,
165 the age of the tank on the date taken out of operation, the capacity,
166 type and location of the tank, and the type and quantity of substances
167 stored in the tank on the date taken out of operation.

168 (c) Notice shall be made on an approved form provided by the
169 department.

170 Sec. 5. (a) The secretary is authorized and directed to adopt rules
171 and regulations necessary to administer and enforce the provisions
172 of this act. Any rules and regulations so adopted shall be reasonably
173 necessary to preserve, protect and maintain the waters and other
174 natural resources of this state, and reasonably necessary to provide
175 for the prompt investigation and cleanup of sites contaminated by a
176 release from a storage tank. In addition, any rules and regulations
177 or portions thereof which pertain to underground storage tanks or
178 the owners and operators thereof shall be adopted for the purpose
179 of enabling the secretary and the department to implement the
180 federal act, and such rules and regulations so adopted shall be con-
181 sistent with the federal act. Consistent with these purposes, the
182 secretary shall adopt rules and regulations:

183 (1) Establishing performance standards for underground storage petroleum
184 tanks first brought into use on or after the effective date of this act.
185 The performance standards for new underground storage tanks shall
186 include, but are not limited to, design, construction, installation,
187 release detection and product compatibility standards;

188 (2) establishing performance standards for above ground storage
189 tanks brought into use after the effective date of this act. The per-
190 formance standards for new above ground storage tanks shall include,
191 but are not limited to, design, construction, installation, release

1-5

192 detection and product compatibility standards;

193 (3) establishing performance standards for the inground repair of
194 underground storage tanks. The performance standards shall include,
195 but are not limited to, specifying under what circumstances an un-
196 derground storage tank may be repaired and specifying design, con-
197 struction, installation, release detection, product compatibility
198 standards and warranty;

199 (4) establishing performance standards for maintaining spill and
200 overfill equipment, leak detection systems and comparable systems
201 or methods designed to prevent or identify releases. In addition,
202 the secretary shall establish standards for maintaining records and
203 reporting leak detection monitoring, inventory control and tank test-
204 ing or comparable systems;

205 (5) establishing requirements for reporting a release and for re-
206 porting and taking corrective action in response to a release;

207 (6) establishing requirements for maintaining evidence of financial
208 responsibility to be met by owners and operators of underground
209 storage tanks;

210 (7) establishing requirements for the closure of underground stor-
211 age tanks including the removal and disposal of underground storage
212 tanks and regulated substance residues contained therein to prevent
213 future releases of regulated substances into the environment;

214 (8) for the approval of tank tightness testing methods, including
215 determination of the qualifications of persons performing or offering
216 to perform such testing;

217 (9) establishing site selection and clean-up criteria regarding cor-
218 rective actions related to a release and which address the following:
219 The physical and chemical characteristics of the released substance,
220 including toxicity, persistence and potential for migration; the hy-
221 drogeologic characteristics of the release site and the surrounding
222 land; the proximity, quality and current and future uses of ground-
223 water; an exposure assessment; the proximity, quality and current
224 and future use of surface water; and the level of the released sub-
225 stance allowed to remain on the facility following cleanup;

226 (10) prescribing fees for the [registration of storage tanks, the] — strike
227 issuance of permits, the approval of plans for new installations and
228 the conducting of inspection. [The total amount of] fees shall not
of underground petroleum storage tanks, which

— petroleum

— strike

229 exceed the amount of revenue required for the proper administration and
230 of the provisions of this act. All fees shall be deposited in the state
231 general fund;

232 (11) for determining the qualifications, adequacy of performance
233 and financial responsibility of persons desiring to be licensed as
234 underground storage tank installers or contractors. In adopting rules
235 and regulations, the secretary may specify classes of specialized ac-
236 tivities, such as the installation of corrosion protection devices or
237 inground relining of underground storage tanks, and may require
238 persons wishing to engage in such activities to demonstrate additional
239 qualifications to perform these services;

petroleum

240 (12) prescribing fees for the issuance of licenses to underground
241 storage tank installers and contractors. The fees shall not exceed the
242 amount of revenue determined by the secretary to be required for
243 administration of the provisions of section 10; and

244 (13) requiring the registration with the department of any class
245 of storage tank otherwise exempted from regulation by this act except
246 tanks specified in subsections (i) and (j) of section 3 and crude oil
247 storage tanks located on oil and gas production leases. Such regis-
248 tration shall not require the payment of any registration fee; and

strike and renumber (14) accordingly

underground petroleum

249 (14) adopting schedules requiring the retrofitting of storage tanks
250 in existence on the effective date of this act and for the retirement
251 from service of underground storage tanks placed in service prior to
252 the effective date of this act. Such schedules shall be based on the
253 age and location of the storage tank and the type of substance stored.
254 Such retrofitting shall include secondary containment, corrosion pro-
255 tection, linings, leak detection equipment and spill and overfill
256 equipment.

257 (b) In adopting rules and regulations under this section, the sec-
258 retary shall take notice of rules and regulations pertaining to fire
259 prevention and safety adopted by the state fire marshal pursuant to
260 ~~K.S.A. 31-133(a)(1)~~ and amendments thereto.

subsection (a)(1) of K.S.A. 31-133

261 (c) Nothing in this section shall interfere with the right of a city
262 or county having authority to adopt a building or fire code from
263 imposing requirements more stringent than those adopted by the
264 secretary pursuant to ~~paragraphs (1), (2), (3), (7) and (14) of subsection~~
265 ~~(c)~~ or affect the exercise of powers by cities, counties and townships

subsections (a)(1), (2), (3), (7) and (14)

6-1

266 regarding the location of storage tanks and the visual compatibility
267 of above ground storage tanks with surrounding property.

268 Sec. 6. (a) On and after the effective date of this act, no person
269 shall construct, modify or operate an underground storage tank unless petroleum
270 a permit or other approval is obtained from the secretary. [On and
271 after January 1, 1990, no person shall construct, modify or operate
272 an above ground storage tank unless a permit or other approval is strike
273 obtained from the secretary.] Applications for permits shall include
274 proof that the required performance standards will be met and evi-
275 dence of financial responsibility. For purposes of administering this
276 section, any storage tank registered with the department on the
277 effective date of this act shall be deemed to be a permitted storage
278 tank so long as the owner or operator shall comply with all applicable
279 provisions of this act.

280 (b) Permits may be transferred upon acceptance of the permit
281 obligations by the person who is to assume the ownership or op- underground petroleum
282 erational responsibility of the storage tank from the previous owner
283 or operator. The department shall furnish a transfer of permit form
284 providing for acceptance of the permit obligations. A transfer of
285 permit form shall be submitted to the department not less than
286 seven days prior to the transfer of ownership or operational respon-
287 sibility of the storage tank.

288 (c) The secretary may deny, suspend or revoke any permit issued
289 or authorized pursuant to this act if the secretary finds, after notice
290 and the opportunity for a hearing conducted in accordance with the
291 Kansas administrative procedure act, that the person has:

292 (1) Fraudulently or deceptively obtained or attempted to obtain an underground petroleum
293 storage tank permit;

294 (2) failed at any time to maintain the storage tank in accordance with the requirements of this act or any rule and regulation pro- underground petroleum
295 mulgated hereunder;

296 (3) failed at any time to comply with the requirements of this
297 act or any rule and regulation promulgated hereunder; or

298 (4) failed at any time to make any retrofit or improvement to an underground petroleum
299 storage tank which is required by this act or any rule and regulation
300 promulgated hereunder.

301 (d) Any person aggrieved by an order of the secretary may appeal
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8-1

303 the order in accordance with provisions of the act for judicial review
304 and civil enforcement of agency actions. _____petroleum

305 Sec. 7. (a) Each owner or operator of an underground storage
306 tank shall provide evidence of financial responsibility.

307 (b) If the owner or operator is in bankruptcy, reorganization or
308 arrangement pursuant to the federal bankruptcy law, or if jurisdiction
309 in any state or federal court cannot be obtained over an owner or
310 operator likely to be solvent at the time of judgment, any claim
311 arising from conduct for which evidence of financial responsibility
312 must be provided under this act may be asserted directly against
313 the guarantor providing the evidence of financial responsibility. In
314 the case of action pursuant to this subsection, the guarantor is en-
315 titled to invoke all rights and defenses which would have been
316 available to the owner or operator if any action had been brought
317 against the owner or operator by the claimant and which would have
318 been available to the guarantor if any action had been brought against
319 the guarantor by the owner or operator.

320 (c) The total liability of a guarantor shall be limited to the ag-
321 gregate amount which the guarantor has provided as evidence of
322 financial responsibility to the owner or operator under this section.
323 This subsection does not limit any other state or federal statutory, _____ common law
324 contractual or ~~common law~~ liability of a guarantor to its owner or
325 operator, including, but limited to, the liability of the guarantor for
326 bad faith in negotiating or in failing to negotiate the settlement of
327 any claim. This subsection does not diminish the liability of any
328 person under section 107 or 111 of the Comprehensive Environ-
329 mental Response, Compensation and Liability Act of 1980, or other
330 applicable law.

331 Sec. 8. (a) For the purposes of developing or assisting in the
332 development of any regulation, conducting any study or enforcing
333 the provisions of this act: _____ an underground petroleum

334 (1) It shall be the duty of any owner or operator of a storage
335 tank, upon the request of any duly authorized representative of the
336 secretary made at any reasonable time, to furnish information relating
337 to the storage tank, including tank equipment and contents, to con-
338 duct monitoring or testing, to permit such authorized representative
339 to have access to and to copy all records relating to such [tanks] _____ tank

b-1

340 (2) Any officer, employee or other authorized representative of
 341 the secretary is authorized to enter at reasonable times any estab- an underground petroleum
 342 lishment or place where ~~a~~ storage tank is located, to inspect and
 343 obtain samples from any person of any regulated substance contained
 344 in such storage tank, and to conduct or require the owner or operator
 345 to conduct monitoring or testing of ~~the tanks~~ associated equipment, such storage tank
 346 tank contents or surrounding soils, air, surface water or groundwater.

347 (b) Each inspection shall be commenced and completed with
 348 reasonable promptness.

349 (c) Any records, reports, documents or information obtained from
 350 any person under this act shall be available to the public except as
 351 provided in this section.

352 (d) Any person submitting any records, reports, documents or
 353 information required by this act, may, upon a showing satisfactory
 354 to the secretary, claim any portion of such record, report, document
 355 or information confidential as a trade secret. The department shall
 356 establish procedures to insure that trade secrets are utilized by the
 357 secretary or any authorized representative of the secretary only in
 358 connection with the responsibilities of the department pursuant to
 359 this act. Trade secrets shall not be otherwise used or disseminated
 360 by the secretary or any representative of the secretary without the
 361 consent of the person furnishing the information.

362 (e) Notwithstanding any limitation contained in this section, all
 363 information reported to, or otherwise obtained by the department
 364 under this act, shall be made available to the administrator of the
 365 United States environmental protection agency, or an authorized
 366 representative of the administrator, upon written request. In sub-
 367 mitting any trade secrets to such administrator or the authorized
 368 representative of such administrator, the secretary shall submit the
 369 claim of confidentiality to the administrator or authorized repre-
 370 sentative of the administrator.

371 Sec. 9. (a) It shall be unlawful for any person to:

372 (1) Knowingly deposit, store or dispense, or permit any person
 373 to deposit, store or dispense, any regulated substance into any stor- underground petroleum
 374 age tank which does not comply with the provisions of this act, the
 375 rules and regulations promulgated hereunder, or any order of the
 376 secretary;

377 (2) construct, modify or operate an underground storage tank petroleum
 378 without a permit or other written approval from the secretary, [or,
 379 on or after January 1, 1990, construct, modify or operate an above
 380 ground storage tank without a permit or other written approval from
 381 the secretary,] or otherwise be in violation of the rules and regula-
 382 tions, standards or orders of the secretary; strike

383 (3) prevent or hinder a properly identified officer or employee
 384 of the department or other authorized agent of the secretary from an underground petroleum
 385 entering, inspecting or sampling at a facility on which a storage tank
 386 is located or from copying records concerning such storage tank as
 387 authorized by this act;

388 (4) knowingly make any false material statement or representation
 389 in any application, record, report, permit or other document filed,
 390 maintained or used for purposes of compliance with this act;

391 (5) knowingly destroy, alter or conceal any record required to
 392 be maintained by this act or rules and regulations promulgated her-
 393 eunder; or

394 (6) knowingly allow a release, knowingly fail to report a release
 395 or knowingly fail to take corrective action in response to a release
 396 of a regulated substance in violation of this act or rules and regu-
 397 lations promulgated hereunder. any provision

398 (b) Any person who violates ~~paragraphs (1) through (6)~~ of sub-
 399 section (a) shall be guilty of a class A misdemeanor and, upon con-
 400 viction thereof, shall be punished as provided by law.

401 Sec. 10. (a) It shall be unlawful for any person to practice, or
 402 hold oneself out as authorized to practice, as an underground storage petroleum
 403 tank installer or underground storage tank contractor or use other
 404 words or letters to indicate such person is a licensed installer or
 405 contractor unless the person is licensed in accordance with this
 406 section.

407 (b) The secretary shall:

408 (1) Develop and administer a written examination to candidates
 409 for licensing under the terms of this section. Questions used in the
 410 examination shall be derived from standard instructions and rec-
 411 ommended practices published by such authorities as the Petroleum
 412 Equipment Institute, American Petroleum Institute, Steel Tank In-
 413 stitute, National Association of Corrosion Engineers, Fiberglass Tank

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414 and Pipe Manufacturers Institute, National Fire Protection Associ-
 415 ation, Western Fire Chiefs Association and Underwriters Labora-
 416 tories. Additional questions shall be derived from state and federal
 417 regulations applicable to storage tanks. The secretary shall make
 418 available sample questions and related material to qualified candi-
 419 dates to be used as a study guide in preparation for the examination.

420 (2) Conduct at least one on-site inspection annually, observing
 421 procedures used by each licensed underground ~~storage tank con-~~ petroleum
 422 tractor for installing, repairing or removing an underground storage
 423 tank.

424 (c) Any person who willfully violates any provision of subsection
 425 (a) shall be guilty of a class C misdemeanor and, upon conviction
 426 thereof, shall be punished as provided by law.

427 (d) Prior to 12 months after the effective date of this act, the
 428 department shall conduct written examinations, at such times and
 429 locations within the state as the department may designate, for the
 430 purpose of identifying installers as being qualified to receive an
 431 underground tank installer's license. Each underground tank install- petroleum storage
 432 er's license shall be issued for a period of two years and shall be
 433 subject to periodic renewal thereafter under procedures prescribed
 434 by the department.

435 (e)(1) Beginning six months after the effective date of this act,
 436 no contractor shall engage in the installation, repair or removal of
 437 an underground storage tank unless the contractor shall have filed
 438 with the department, on a form prescribed by the secretary, doc-
 439 umentation demonstrating that within the previous two years the strike
 440 contractor has been regularly and specifically engaged in the in-
 441 stallation, repair and removal of underground storage tanks, as a
 442 primary business activity, and the department shall have issued to
 443 such contractor, as a result of such documentation, an interim con-
 444 tractor license.

445 (2) Beginning 18 months after the effective date of this act, no
 446 contractor shall engage in the installation, repair or removal of an
 447 underground storage tank unless such contractor shall have been
 448 issued a contractor license. Each contractor license shall be issued
 449 for a period of two years and shall be subject to periodic renewal
 450 thereafter under procedures prescribed by the department.

1-12

451 (f) A contractor must meet the following requirements to qualify
452 for a contractor license:

453 (1) At least one active officer or executive of the business must _____ petroleum storage
454 possess a valid underground storage tank installer's license.

455 (2) The contractor must submit documentation showing that it
456 has insurance, surety bonds or liquid company assets which, in com- equal to
457 bination, represent a value ~~of not less than five times~~ the value of
458 the largest underground storage tank installation, removal or repair

459 contract performed by the contractor during the previous two years. } petroleum
460 (3) The contractor must state in its license application and agree
461 that at all times on any and all jobs involving the installation, repair
462 or removal of an underground storage tank, an individual who pos- underground petroleum storage
463 sesses a valid tank installer's license will be present at the job site
464 not less than 75% of the time during the progress of the work, and
465 that such installer shall exercise responsible supervisory control over
466 the work.

467 (g) The secretary may elect to establish reciprocal arrangements
468 with states having similar licensing requirements and to provide for
469 the licensing in this state of persons who have successfully completed
470 examinations and otherwise qualified for licensure in another state.

471 (h) A valid interim contractor license or an unexpired contractor
472 license shall be valid in all counties and municipalities throughout
473 the state, and the issuance of either license to a contractor shall
474 serve as authority for the contractor to engage in the installation, _____ petroleum
475 repair and removal of underground storage tanks in any jurisdiction
476 within the state without requirement for obtaining additional county
477 or local licenses. However, local jurisdictions may impose more strin-
478 gent requirements for installation, repair or removal of such tanks
479 than are imposed by state regulations, in which case a contractor
480 shall be required to conduct its operations in the local jurisdiction
481 in conformity with the local requirements.

482 Sec. 11. The secretary may deny any license applied for, or
483 suspend or revoke any license issued, pursuant to section 10 if the
484 secretary finds, after notice and the opportunity for a hearing con-
485 ducted in accordance with the provisions of the Kansas administrative
486 procedure act, that the applicant or licensee, whichever is applicable,
487 has:

488 (a) Fraudulently or deceptively obtained or attempted to obtain
489 a license;

490 (b) failed at any time to meet the qualifications for a license or
491 to comply with any provision or requirement of this act or of any
492 rule and regulation adopted thereunder; or

493 (c) failed to comply with local requirements of any jurisdiction
494 within which the licensee has installed, repaired or removed an
495 underground storage tank. petroleum

7 Sec. 12. The secretary and the governing body of any city,
8 county or other political subdivision may enter into agreements au-
9 thorizing the local fire department, building inspection department,
10 health department, department of environmental control or other
11 municipal, county or local governmental agency, to act as the sec-
12 retary's agent to carry out the provisions of this act under such terms
13 and conditions as the secretary shall prescribe.

14 Sec. 13. (a) Any person who violates any provisions of section 9
15 or section 10 shall incur, in addition to any other penalty provided
16 by law, a civil penalty in an amount of up to \$10,000 for every such
17 violation, and in case of a continuing violation, every day such vi-
18 olation continues shall be deemed a separate violation.

19 (b) The director of the division of environment, upon a finding
20 that a person has violated any provision of section 9 or section 10
21 may impose a penalty within the limits provided in subsection (a),
22 which penalty shall constitute an actual and substantial economic
23 deterrent to the violation for which it is assessed.

24 (c) No penalty shall be imposed pursuant to this section except
25 upon the written order of the director of the division of environment
26 to the person who committed the violation. Such order shall state
27 the violation, the penalty to be imposed and the right of such person
28 to appeal to the secretary. Within 15 days after service of the order,
29 any such person may make written request to the secretary for a
30 hearing thereon in accordance with the Kansas administrative pro-
31 cedure act. subsection

32 (d) Any action of the secretary pursuant to ~~subsection~~ (c), (f)(1)
33 or (f)(2) is subject to review in accordance with the act for judicial
34 review and civil enforcement of agency actions.

35 (e) Notwithstanding any other provision of this act, the secretary,

71-1

36 upon receipt of information that the storage or release of a regulated
37 substance may present a hazard to the health of persons or to the
38 environment, may take such action as the secretary determines to
39 be necessary to protect the health of such persons or the environ-
40 ment. The action the secretary may take shall include, but is not
41 limited to:

42 (1) Issuing an order, subject to review pursuant to the Kansas
43 administrative procedure act, directing the owner or operator of the underground petroleum
44 storage tank, or the custodian of the regulated substance which
45 constitutes such hazard, to take such steps as are necessary to prevent
46 the act, to eliminate the practice which constitutes such hazard, to
47 investigate the extent of and remediate any pollution resulting from
48 the storage or release. Such order may include, with respect to a
49 facility or site, permanent or temporary cessation of operation.

50 (2) Issuing an order, subject to review pursuant to the Kansas
51 administrative procedure act, directing an owner, tenant or holder
52 of any right of way or easement of any real property affected by a
53 known release from a storage tank to permit entry on to and egress an underground petroleum
54 from that property, by officers, employees, agents or contractors of
55 the department or of the person responsible for the regulated sub-
56 stance or the hazard, for the purposes of monitoring the release or
57 to perform such measures to mitigate the release as the secretary
58 shall specify in the order.

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

67 (4) Applying to the appropriate district court for an order of that
68 court directing compliance with the order of the secretary pursuant
69 to the act for judicial review and civil enforcement of agency actions.
70 Failure to obey the court order shall be punishable as contempt of
71 the court issuing the order. The application under this subsection
72 shall have precedence over other cases in respect to order of trial.

1-15

73 (f) In any civil action brought pursuant to this section in which
 74 a temporary restraining order, preliminary injunction or permanent
 75 injunction is sought it shall be sufficient to show that a violation of
 76 the provisions of this act, or the rules and regulations adopted there-
 77 under has occurred or is imminent. It shall not be necessary to
 78 allege or prove at any stage of the proceeding that irreparable damage
 79 will occur should the temporary restraining order, preliminary in-
 80 junction or permanent injunction not be issued or that the remedy
 81 at law is inadequate.

82 Sec. 14. (a) There is hereby established as a segregated fund in
 83 the state treasury the petroleum storage tank release trust fund, to
 84 be administered by the secretary. Revenue from the following
 85 sources shall be deposited in the state treasury and credited to the
 86 fund:

87 (1) The proceeds of the environmental assurance fee ~~imposed by~~ and the storage tank registration fee
 88 this act;

89 (2) any moneys recovered by the state under the provisions of
 90 this act, including administrative expenses, civil penalties and mon-
 91 eys paid under an agreement, stipulation or settlement;

92 (3) interest attributable to investment of moneys in the fund; and

93 (4) moneys received by the secretary in the form of gifts, grants,
 94 reimbursements or appropriations from any source intended to be
 95 used for the purposes of the fund, but excluding federal grants and
 96 cooperative agreements.

97 (b) The fund shall be administered so as to assist owners and ~~and~~ underground
 98 operators of ~~petroleum storage tanks in providing evidence of finan-~~ cial responsibility for corrective action required by a release from
 99 any such tank. Moneys deposited in the fund may be expended for

100 the purpose of reimbursing owners and operators for the costs of
 101 corrective action, subject to the conditions and limitations prescribed
 102 by this act, but moneys in the fund shall not be used for compen-

103 sating third parties for bodily injury or property damage caused by
 104 a release from ~~a~~ petroleum storage tank, other than property damage ~~caused by~~ an underground

105 included in a corrective action plan approved by the secretary. In
 106 addition, moneys deposited in the fund may be expended for the

107 following purposes:
 108

109 (1) To permit the secretary to take whatever emergency action

91-1

an underground

is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release from a petroleum storage tank;

(2) to permit the secretary to take corrective action where the release presents an actual or potential threat to human health or the environment, if the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to, providing for alternative water supplies;

(3) payment of the state's share of the federal leaking underground storage tank trust fund cleanup costs, as required by the resource conservation and recovery act, 42 U.S.C. § 6991b(h)(7)(B); and

(4) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of sections 14

~~94, inclusive.~~

(c) The petroleum storage tank release trust fund shall be used for the purposes set forth in this act and for no other governmental purposes. It is the intent of the legislature that the fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a and amendments to such sections.

(d) Neither the state of Kansas nor the petroleum storage tank release trust fund shall be liable to an owner or operator for the loss of business, damages or taking of property associated with any corrective or enforcement action taken pursuant to this act.

(e) The pooled money investment board may invest and reinvest moneys in the fund established under this section in obligations of the United States or obligations the principal and interest of which are guaranteed by the United States or in interest-bearing time deposits in any commercial bank or trust company located in Kansas or, if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than 30 days' duration with a Kansas bank or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof. Any income or interest

section

26;

(4) payment for insurance coverage as authorized by section

(5)

through 26, including the costs of any additional employees or increased general operating costs of the department attributable thereto, which costs shall not be payable from any moneys other than those credited to the fund

thereto

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147 earned by such investments shall be credited to the fund.

148 (f) All expenditures from the fund shall be made in accordance
149 with appropriation acts upon warrants of the director of accounts and
150 reports issued pursuant to vouchers approved by the secretary for
151 the purposes set forth in this section.

152 Sec. 15. Except as otherwise provided in this act, an owner or an underground
153 operator of petroleum storage tank, or both, shall be liable for all
154 costs of corrective action taken in response to a release from such
155 petroleum storage tank. Eligibility to participate in the petroleum
156 storage tank release trust fund may be submitted as evidence of
157 financial responsibility required of owners and operators of under-
158 ground storage tanks. petroleum

159 Sec. 16. (a) There is hereby established the petroleum storage
160 tank release compensation advisory board composed of seven mem-
161 bers, including the state fire marshal or the state fire marshal's
162 designee, the director of the division of environment of the de-
163 partment, two representatives from the petroleum industry, at least
164 one of which shall be a petroleum marketer, one representative from
165 the insurance industry, one member of the governing body of a city
166 and one county commissioner. The governor shall appoint the ap-
167 pointive members of the board, and the members so appointed shall
168 serve for terms of two years. The governor also shall designate a
169 member of the board as its chair, to serve in such capacity at the
170 pleasure of the governor. The secretary shall provide staff to support
171 the activities of the board.

172 (b) Appointed members of the board attending meetings of such
173 board, or attending a subcommittee meeting thereof, when author-
174 ized by such board, shall receive the amounts provided in subsection
175 (e) of K.S.A. 75-3223 and amendments thereto.

176 (c) The board shall provide advice and counsel and make rec-
177 ommendations to the secretary regarding the rules and regulations
178 to be promulgated by the secretary regarding the financial respon-
179 sibility of owners and operators required by this act and, upon
180 request of the secretary, shall provide advice and counsel to the
181 secretary with respect to the disbursement of moneys from the fund.

Subject to the provisions of subsection (c),

182 Sec. 17. (a) There is hereby established an environmental as-
183 surance fee of ~~\$.01~~ on each gallon of petroleum product manufactured \$.005

81-18

184 in or imported into this state. The environmental assurance fee shall
 185 be paid by the manufacturer, importer or distributor first selling,
 186 offering for sale, using or delivering petroleum products within this
 187 state. The environmental assurance fee shall be paid to the depart-
 188 ment of revenue at the same time and in the same manner as the
 189 inspection fee established pursuant to K.S.A. 55-426 and amend-
 190 ments thereto, is paid. The secretary of revenue shall remit daily
 191 the environmental assurance fees paid hereunder to the state treas-
 192 urer, who shall deposit the same in the state treasury to the credit
 193 of the petroleum storage tank release trust fund. Exchanges of pe-
 194 troleum products on a gallon-for-gallon basis within a terminal and
 195 petroleum product which is subsequently exported from this state
 196 shall be exempt from this fee.

Subject to the provisions of subsection (c),

197 (b) Environmental assurance fees as specified in subsection (a)
 198 shall be paid until the unobligated principal balance of the fund
 199 equals or exceeds \$5,000,000, at which time no environmental as-
 200 surance fees shall be levied unless and until such time as the balance
 201 in the fund is less than or equal to an unobligated balance of
 202 \$2,000,000, in which case the collection of the environmental as-
 203 surance fee will resume within 90 days following the end of the
 204 month in which such unobligated balance occurs. The director of
 205 accounts and reports shall notify the secretary of revenue whenever
 206 the unobligated balance in the fund is \$2,000,000, and the secretary
 207 of revenue shall then give notice to each person subject to the
 208 environmental assurance fee as to the imposition of the fee and the
 209 duration thereof.

(c) No moneys in the state general fund shall be used, or transferred to another fund for use, for the purposes specified by subsection (b) of section 14. At any time when the fee established by subsection (a), or an increased fee authorized by this subsection, has been levied for a period of 12 consecutive months and the secretary of health and environment certifies to the director of taxation that the moneys in the fund are insufficient for the purposes specified by subsection (b) of section 14, such fee shall be increased by \$.005 per gallon.

210 (d) Every manufacturer, importer or distributor of any petroleum
 211 product liable for the payment of environmental assurance fees as
 212 provided in this act, shall report in full and detail before the 25th
 213 day of every month to the secretary of revenue, on forms prepared
 214 and furnished by the secretary of revenue, and at the time of for-
 215 warding such report, shall compute and pay to the secretary of
 216 revenue the amount of fees due on all petroleum products subject
 217 to such fee during the preceding month.

218 (e) All fees imposed under the provisions of this act and not paid
 219 on or before the 25th day of the month succeeding the calendar
 220 month in which such petroleum products were subject to such fee

61-1

221 shall be deemed delinquent and shall bear interest at the rate of
 222 1% per month, or fraction thereof, from such due date until paid.
 223 In addition thereto, there is hereby imposed upon all amounts of
 224 such fees remaining due and unpaid after such due date a penalty
 225 in the amount of 5% thereof. Such penalty shall be added to and
 226 collected as a part of such fees by the secretary of revenue.

227 ~~(c)~~ ^(f) The secretary of revenue is hereby authorized to adopt such
 228 rules and regulations as may be necessary to carry out the respon-
 229 sibilities of the secretary of revenue under this section.

230 Sec. 18. (a) Whenever the secretary has reason to believe that ^(f) an underground
 231 there is or has been a release into the environment from a petroleum
 232 storage tank, and has reason to believe that such release poses a
 233 danger to human health or the environment, the secretary shall
 234 obtain corrective action for such release from the owner or operator,
 235 or both, or from any past owner or operator who has contributed
 236 to such release. Such corrective action shall be performed in ac-
 237 cordance with a plan approved by the secretary. Upon approval of
 238 such plan, the owner or operator shall obtain and submit to the
 239 secretary at least three bids from persons qualified to perform the
 240 corrective action except that, the secretary may waive this require-
 241 ment upon a showing that the owner or operator has made a good
 242 faith effort but has not been able to obtain three bids from qualified
 243 bidders.

244 (b) If the owner or operator is unable or unwilling to perform
 245 corrective action as provided for in subsection (a) or no owner or
 246 operator can be found, the secretary may undertake appropriate
 247 corrective action utilizing funds from the petroleum storage tank
 248 release trust fund. Costs incurred by the secretary in taking a cor-
 249 rective action, including administrative and legal expenses, are re-
 250 coverable from the responsible party and may be recovered in a civil
 251 action in district court brought by the secretary. Corrective action
 252 costs recovered under this section shall be deposited in the petro-
 253 leum storage tank release trust fund. Corrective action taken by the
 254 secretary under this subsection need not be completed in order to
 255 seek recovery of corrective action costs, and an action to recover
 256 such costs may be commenced at any stage of a corrective action.

257 (c) An owner or operator shall be liable for all costs of corrective

258 action incurred by the state of Kansas as a result of a release from _____ an underground
 259 ~~a~~ petroleum storage tank, unless the owner or operator, or both,
 260 enter into a consent agreement with the secretary in the name of
 261 the state within a reasonable period of time, which time period may
 262 be specified by regulation. At a minimum, the owner or operator,
 263 or both, must agree that:

264 (1) The owner or operator shall be liable for the appropriate
 265 ~~deductible amount, as established in~~ section 19; _____ amounts pursuant to

266 (2) the state of Kansas and the petroleum storage tank release
 267 trust fund are relieved of all liability to an owner or operator for
 268 any loss of business, damages and taking of property associated with
 269 the corrective action;

270 (3) the department or its contractors may enter upon the property
 271 of the owner or operator, at such time and in such manner as deemed
 272 necessary, to monitor and provide oversight for the necessary cor-
 273 rective action to protect human health and the environment;

274 (4) the owner or operator shall be fully responsible for removal, _____ underground
 275 replacement or retrofitting of petroleum storage tanks and the cost
 276 thereof shall not be reimbursable from the fund;

277 (5) the owner or operator shall effectuate corrective action ac-
 278 cording to a plan approved by the secretary pursuant to subsection
 279 (a);

280 (6) the liability of the state and the petroleum storage tank release
 281 trust fund shall not exceed \$1,000,000, less the appropriate de- _____ an underground
 282 ductible amount, for any release from ~~a~~ petroleum storage tank; and

283 (7) such other provisions as are deemed appropriate by the sec-
 284 retary to ensure adequate protection of human health and the
 285 environment.

286 (d) For purposes of this act, corrective action costs shall include
 287 the actual costs incurred for the following: _____ underground

288 (1) Removal of petroleum products from petroleum storage tanks,
 289 surface waters, groundwater or soil;

290 (2) investigation and assessment of contamination caused by a _____ an underground
 291 release from ~~a~~ petroleum storage tank;

292 (3) preparation of corrective action plans approved by the
 293 secretary;

294 (4) removal of contaminated soils;

- 295 (5) soil treatment and disposal;
- 296 (6) environmental monitoring;
- 297 (7) maintenance of corrective action equipment;
- 298 (8) restoration of a private or public potable water supply, where
- 299 possible, or replacement thereof, if necessary; and
- 300 (9) other costs identified by the secretary as necessary for proper
- 301 investigation, corrective action planning and corrective action activi
- 302 ties to meet the requirements of this act.

303 Sec. 19. (a) An owner or operator of a petroleum storage tank,
 304 other than the United States government or any of its agencies, or
 305 the owner or operator of any above ground storage tank specified
 306 in subsection (g) or (j) of section 3, who is in substantial compliance,
 307 as provided in subsections (c) and (d), and who undertakes corrective
 308 action, either through personnel of the owner or operator or through
 309 response action contractors or subcontractors, is entitled to reim-
 310 bursement of reasonable corrective action costs from the fund, sub-
 311 ject to the following provisions:

312 (1) The owner or operator of not more than 12 petroleum storage
 313 tanks shall be liable for the first ~~\$5,000~~ of costs of corrective action
 314 taken in response to a release from any such petroleum storage tank;

315 (2) the owner or operator of at least 13 and not more than 99
 316 petroleum storage tanks shall be liable for the first ~~\$10,000~~ of costs
 317 of corrective action taken in response to a release from any such
 318 petroleum storage tank;

319 (3) the owner or operator of more than 99 petroleum storage
 320 tanks shall be liable for the first ~~\$80,000~~ of costs of corrective action
 321 taken in response to a release from any such petroleum storage tank;

322 (4) the owner or operator must submit to and receive from the
 323 secretary approval of the proposed corrective action plan, together
 324 with projected costs of the corrective action;

325 (5) the owner or operator or any agents thereof shall keep and
 326 preserve suitable records demonstrating compliance with the ap-
 327 proved corrective action plan and all invoices and financial records
 328 associated with costs for which reimbursement will be requested;

329 (6) within 30 days of receipt of a complete corrective action plan,
 330 the secretary shall make a determination and provide written notice
 331 as to whether the owner or operator responsible for corrective action

an underground

(1) The owner or operator has submitted to the secretary
 the proof required by section 25 unless such requirement is
 waived;

(2) the owner or operator submits to the secretary proof,
 satisfactory to the secretary, that such owner or operator had
 gross sales of \$20,000,000 or less during the owner's or
 operator's next preceding taxable year;

Renumber subsections (1) - (3) accordingly

underground

underground

underground

(6) the owner or operator shall be liable for all costs
 which are paid by or for which the owner or operator is entitled
 to reimbursement from insurance coverage, warranty coverage or
 any other source;

(7) the owner or operator shall be liable for all costs of
 corrective action related to a release if the secretary
 determines that such owner or operator allowed, failed to report
 or failed to take corrective action in response to such release,
 knowing or having reason to know of such release;

Renumber remaining subsections accordingly

1-29

332 is eligible or ineligible for reimbursement of corrective action costs,
333 and should the secretary determine the owner or operator is inel-
334 ible, the secretary shall include in the written notice an explanation
335 setting forth in detail the reasons for the determination;

336 (7) the owner or operator shall submit to the secretary a written
337 notice that corrective action has been completed within 30 days of
338 completing corrective action;

339 (8) no later than 30 days from the submission of the notice as
340 required by ~~paragraph (7)~~ subsection (a)
341 application for reimbursement of corrective action costs in accordance
342 with criteria established by the secretary, and the application for
343 reimbursement must include the total amount of the corrective action
344 costs and the amount of reimbursement sought. In no case shall the
345 total amount of reimbursement exceed the lesser of the actual costs
346 of the corrective action or the amount of the lowest bid submitted
347 pursuant to section 18 less the appropriate deductible amount;

348 (9) interim payments shall be made to an owner or operator in
349 accordance with the plan approved by the secretary pursuant to
350 section 18, except that the secretary, for good cause shown, may
351 refuse to make interim payments or withhold the final payment until
352 completion of the corrective action;

353 (10) the owner or operator shall be fully responsible for removal,
354 replacement or retrofitting of petroleum storage tanks and the cost
355 thereof shall not be reimbursable from the fund; and

356 (11) the owner or operator shall provide evidence satisfactory to
357 the secretary that corrective action costs equal to the appropriate
358 deductible amount have been paid by the owner or operator, and
359 such costs shall not be reimbursed to the owner or operator.

360 (b) Notwithstanding the provisions of subsection (c) of section 18,
361 should the secretary find that any of the following situations exist,
362 the owner or operator, or both, may be liable for 100% of costs
363 associated with corrective action necessary to protect health or the
364 environment, if:

365 (1) The release was due to willful or wanton actions by the owner
366 or operator;

367 (2) the owner or operator is in arrears for moneys owed, other
368 than environmental assurance fees, to the petroleum storage tank

(b) For the purpose of determining an owner's or operator's eligibility for reimbursement pursuant to subsection (a) and the applicable deduction of such owner or operator, the secretary shall consider all owners and operators owned or controlled directly or indirectly by the same interests to be a single owner or operator.

Reletter remaining subsections accordingly

or petroleum storage tank registration fees

1-23

369 release trust fund;

370 (3) the release was from a tank not registered with the
371 department;

372 (4) the owner or operator fails to comply with any provision of
373 the agreement specified in subsection (c) of section 18;

374 (5) the owner or operator moves in any way to obstruct the efforts
375 of the department or its contractors to investigate the presence or
376 effects of a release or to effectuate corrective action; or

377 (6) the owner or operator is not in substantial compliance with
378 any provision of this act or rules and regulations promulgated
379 hereunder.

380 (c) Except as otherwise provided in subsection (d), an owner or
381 operator of a petroleum storage tank is in substantial compliance ~~with this act and the rules and regulations adopted hereunder,~~ an underground
382 with this act and the rules and regulations adopted hereunder, if:

383 (1) On and after January 1, 1990, each petroleum storage tank
384 owned or operated by such owner or operator has been registered
385 with the secretary, in accordance with the applicable laws of this
386 state and any rules and regulations adopted thereunder;

387 (2) the owner or operator has entered into an agreement with
388 the secretary, as provided in subsection (c) of section 18;

389 (3) the owner or operator has complied with any applicable fi- Kansas
390 nancial responsibility requirements imposed by the storage tank act
391 and the rules and regulations adopted thereunder; and

392 (4) the owner or operator has otherwise made a good faith effort
393 to comply with the federal act, this act, any other law of this state
394 regulating petroleum storage tanks and all applicable rules and reg-
395 ulations adopted under any of them.

396 (d) Prior to July 1, 1990, an owner or operator of any of the
397 following underground petroleum storage tanks shall be deemed to
398 be in substantial compliance with this act:

399 (1) Any farm or residential tank of 1,100 gallons or less capacity
400 used for storing motor fuel for noncommercial purposes; and

401 (2) any tank used for storing heating oil for consumptive use on
402 the single family residential premise where stored.

403 On and after July 1, 1990, an owner or operator of any petroleum
404 storage tanks specified above shall be deemed to be in substantia
405 compliance with this act, if each such tank has been registered with

124

406 the secretary in accordance with the applicable laws of this state
407 and any rules and regulations adopted thereunder. _____ an underground

408 (e) Any owner of ~~a~~ petroleum storage tank who at no time has
409 placed petroleum in such tank or withdrawn petroleum from such
410 tank shall be eligible for reimbursement from the fund of all costs
411 of any necessary corrective action and shall not be subject to the _____ subsections (a) (1), (2) and (3)
412 provisions of ~~paragraphs (1), (2) or (3) of subsection (e)~~ if such owner
413 submits a corrective action plan prior to July 1, 1990.

414 Sec. 20. Notwithstanding any other provision of this act, an _____ an underground
415 owner or operator of ~~a~~ petroleum storage tank who has undertaken
416 corrective action prior to the effective date of this act pursuant to
417 a corrective action plan approved by the secretary on or after January
418 1, 1989, shall be eligible for reimbursement from the fund for costs
419 incurred in conjunction with such corrective action performed sub-
420 sequent to plan approval by the secretary.

421 Sec. 21. (a) Nothing in this act shall establish or create any li-
422 ability or responsibility on the part of the board, the secretary, the
423 department or its agents or employees, or the state of Kansas to
424 pay any corrective action costs from any source other than the fund
425 created by this act. In no event shall the fund be liable for the
426 payment of corrective action costs ~~incurred in response to any one~~
427 ~~release from a petroleum storage tank in an amount in excess of~~
428 ~~\$1,000,000, less the applicable deductible amount of the owner or~~
429 ~~operator of such tank~~

in an amount in excess of the following, less any applicable deductible amounts of the owner or operator:
(1) For costs incurred in response to any one release from an underground petroleum storage tank, \$1,000,000;
(2) for an owner or operator of 100 or fewer underground petroleum storage tanks, an annual aggregate of \$1,000,000; and
(3) for an owner or operator of more than 100 underground petroleum storage tanks, an annual aggregate of \$2,000,000

430 (b) This act is intended to assist an owner or operator only to
431 the extent provided for in this act, and it is in no way intended to
432 relieve the owner or operator of any liability that cannot be satisfied
433 by the provisions of this act.

434 (c) Neither the secretary nor the state of Kansas shall have any
435 liability or responsibility to make any payments for corrective action
436 if the fund created herein is insufficient to do so. In the event the
437 fund is insufficient to make the payments at the time the claim is
438 filed, such claims shall be paid in the order of filing at such time
439 as moneys are paid into the fund.

440 (d) No common law liability, and no statutory liability which is
441 provided in a statute other than in this act, for damages resulting _____ an underground petroleum
442 from a release from ~~a~~ storage tank is affected by this act. The au-

1-25

443 thority, power and remedies provided in this act are in addition to
444 any authority, power or remedy provided in any statute other than
445 a section of this act or provided at common law.

446 (e) If a person conducts a corrective action activity in response _____ an underground
447 to a release from a petroleum storage tank, whether or not the person
448 files a claim against the fund under this act, the claim and corrective
449 action activity conducted are not evidence of liability or an admission
450 of liability for any potential or actual environmental pollution or third
451 party claim.

452 Sec. 22. On or before March 1 of each year, the secretary shall
453 prepare and submit a report to the governor and each member of
454 the legislature regarding the receipts and disbursements from the
455 fund during the preceding calendar year, indicating the extent of
456 the corrective action taken under this act.

457 Sec. 23. (a) Any person adversely affected by any order or de-
458 cision of the secretary may, within 15 days of service of the order
459 or decision, request in writing a hearing. Hearings under this section
460 shall be conducted in accordance with the provisions of the Kansas
461 administrative procedure act.

462 (b) Any person adversely affected by any action of the secretary
463 pursuant to this act may obtain review of such action in accordance
464 with the act for judicial review and civil enforcement of agency
465 actions.

466 Sec. 24. Except as provided in K.S.A. 74-7246, and amendments
467 thereto, the board and the fund shall be and are hereby abolished
468 on July 1, 1994. _____ Insert sections 25-39, attached

469 Sec. 25. This act shall take effect and be in force from and after _____ 40
470 its publication in the ~~Kansas register.~~
471 _____ statute book

1-26

New Sec. 25. (a) Before an owner or operator is entitled to reimbursement from the fund during a calendar year, such owner or operator, on or before January 1 of such year, shall submit to the secretary proof, satisfactory to the secretary, that the owner or operator has made diligent efforts to obtain insurance coverage for the owner's or operator's liability for corrective action costs in an amount equal to the maximum reimbursement that the owner or operator could receive from the fund if eligible for such reimbursement. If such coverage is available to the owner or operator, the secretary may purchase such coverage on behalf of the owner or operator. If the secretary does not purchase such coverage or if the secretary determines that such coverage is not available to the owner or operator, the owner or operator may receive reimbursement from the fund if otherwise entitled to such reimbursement.

(b) The secretary may waive the requirement to submit proof pursuant to subsection (a) for any calendar year upon a determination by the secretary that insurance coverage for liability for corrective action costs is not reasonably available to owners and operators. If the requirement is waived, owners and operators shall not be required to submit the proof provided for by subsection (a) in order to be entitled to reimbursement from the fund during such year.

(c) The commissioner of insurance shall provide the secretary with a list of all insurers offering coverage in this state for liability for corrective action costs and shall assist the secretary in determining what constitutes diligent efforts to obtain such coverage pursuant to subsection (a) and whether such coverage is reasonably available to owners and operators pursuant to subsection (b).

New Sec. 26. (a) There is hereby established an annual petroleum storage tank registration fee on each underground storage tank in this state in an amount equal to the following:

- (1) For a tank having a capacity of 1,100 gallons or less,

\$25;

(2) for a tank having a capacity of 5,000 gallons or less but more than 1,100 gallons, \$50;

(3) for a tank having a capacity of 10,000 gallons or less but more than 5,000 gallons, \$100; and

(4) for a tank having a capacity of more than 10,000 gallons, \$250.

(b) There is hereby established an annual petroleum storage tank registration fee of \$5 on each above ground petroleum storage tank in this state.

(c) The petroleum storage tank registration fee shall be paid by the owner of the tank and shall be paid to the department of revenue on or before July 1 of each year. The secretary of revenue shall remit daily the fees paid hereunder to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the petroleum storage tank release trust fund.

(d) All fees imposed under the provisions of this section and not paid on or before the 25th day of the month due shall be deemed delinquent and shall bear interest at the rate of 1% per month, or fraction thereof, from such due date until paid. In addition thereto, there is hereby imposed upon all amounts of such fees remaining due and unpaid after such due date a penalty in the amount of 5% thereof. Such penalty shall be added to and collected as a part of such fees by the secretary of revenue.

(e) The secretary of revenue is hereby authorized to adopt such rules and regulations as may be necessary to carry out the responsibilities of the secretary of revenue under this section.

New Sec. 27. The provisions of sections 1 through 26 shall take effect and be in force on and after April 1, 1990.

New Sec. 28. (a) There is hereby imposed a water protection fee at the rate of:

(1) Two cents per 1,000 gallons of water sold at retail by a public water supply system and delivered through mains, lines or pipes;

(2) two cents per 1,000 gallons of water appropriated for industrial use pursuant to a permit granted in accordance with the provisions of K.S.A. 82a-701 et seq. and amendments thereto;

(3) two cents per 1,000 gallons of water appropriated for stockwatering pursuant to a permit granted in accordance with the provisions of K.S.A. 82a-701 et seq. and amendments thereto; and

(4) fifty dollars annually per point of diversion for irrigation use pursuant to a permit granted in accordance with the provisions of K.S.A. 82a-701 et seq. and amendments thereto.

(b) As used in this section:

(1) "Industrial use," "stockwatering," "point of diversion" and "irrigation use" have the meanings provided by rules and regulations of the chief engineer of the division of water resources of the state board of agriculture and the determination of gallons used and points of diversion shall be based upon figures supplied to the secretary of revenue by the division of water resources.

(2) "Sales at retail by public water supply systems" shall include only sales of water to individuals' households, businesses, industries and other ultimate customers and shall not include sales by one municipality, rural water district or other water district to another municipality, rural water district or other water district similar types of wholesale transactions.

(c) The fees imposed by subsections (a)(2) and (3) shall be based on the actual amount used for industrial or stockwatering use during the preceding calendar year as reported to the chief engineer of the division of water resources of the state board of agriculture in accordance with the provisions of K.S.A. 1988 Supp. 82a-732 and amendments thereto, except that the amount of surface water used for flow through cooling purposes for electric power generating plants shall be based on an average consumptive factor as determined by the division of water resources. If a complete and accurate water use report is not filed prior to March 1 of the succeeding year, the fee shall be based on the amount authorized for industrial or stockwatering use per

calendar year.

(d) The fee imposed by subsection (a)(1) shall be paid by the consumer or user to the retailer and it shall be the duty of each retailer making sales under this act to collect from the consumer or user the full fee that is imposed by this act. The fees imposed by subsections (a)(2), (3) and (4) shall be paid by the holder of the permit. If any retailer or permit holder fails to pay the fees required to be collected and paid under this act, there shall be added to the unpaid balance of the fee, penalty and interest as prescribed under K.S.A. 79-3615 and amendments thereto for the late payment of sales tax. The director of taxation shall administer, enforce and collect the fee imposed by this section. All laws and rules and regulations of the secretary relating to the administration, enforcement and collection of the retailers' sales tax shall apply to such fee insofar as they can be made applicable, and the secretary shall adopt such additional rules and regulations as necessary for the efficient and effective administration, enforcement and collection thereof. Notwithstanding the above, the fees imposed by subsection (a) for the months of July, August and September, in calendar year 1989, shall be filed on or before the 25th day of October, 1989.

(e) The director of taxation shall remit daily to the state treasurer all moneys collected from fees imposed pursuant to this section. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it to the state water plan fund created by section 38.

New Sec. 29. (a) There is hereby imposed a tonnage fee for each ton or equivalent volume of solid waste disposed of at any solid waste sanitary landfill, as defined by rules and regulations adopted by the secretary of health and environment pursuant to K.S.A. 65-3401 et seq. and amendments thereto, at the rate of \$1 per ton for the fiscal year beginning July 1, 1989, and increasing annually thereafter on July 1 in the amount of \$.25 through July 1, 1993. Thereafter such rate shall be \$2 per

ton.

(b) The operator of a solid waste sanitary landfill shall pay the fee imposed by this section.

(c) The secretary of revenue shall administer, enforce and collect the fee imposed by this section. Except as otherwise provided by subsection (b), all laws and rules and regulations of the secretary relating to the administration, enforcement and collection of the retailers' sales tax shall apply to such fee insofar as they can be made applicable, and the secretary shall adopt such additional rules and regulations as necessary for the efficient and effective administration, enforcement and collection thereof.

(d) The secretary of revenue shall remit daily to the state treasurer all moneys collected from fees imposed pursuant to this section. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit 1/2 to the local solid waste management fund created by section 36 and 1/2 to the state water plan fund created by section 38.

(e) The secretary of revenue shall grant exemptions from the fee requirements of this section for disposal of solid waste if all of the following criteria are met:

(1) Disposal of the solid waste is pursuant to a written contract between the owner or operator of the solid waste sanitary landfill and another person or entity;

(2) the contract for receipt of solid waste was lawfully executed prior to February 1, 1989;

(3) the contract for receipt of solid waste prevents any increase in the compensation or fee payable to the operator or owner of the solid waste sanitary landfill;

(4) the contract has not been amended at any time after January 31, 1989; and

(5) the owner or operator of the solid waste sanitary landfill applying for the exemption demonstrates to the satisfaction of the secretary that the owner or operator has made good faith efforts to renegotiate such contract notwithstanding

its terms and has been unable to obtain an amendment allowing the fee provided by this section to be added to the compensation or fee provisions of the contract.

Exemptions granted under this subsection shall cause the solid waste exempted to be disregarded in calculating the volume or weight of solid waste disposed of during the calendar year under this subsection.

Exemptions under this subsection shall expire upon the renewal or amendment of the contract or June 30, 1992, whichever occurs first.

Sec. 30. K.S.A. 1988 Supp. 79-4227 is hereby amended to read as follows: 79-4227. (a) All revenue collected or received by the director from the tax imposed by this act shall be remitted daily to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. The state treasurer shall first credit such amount thereof as the director shall order to the mineral production tax refund fund created under subsection (b) of this section. The state treasurer shall credit the remainder of such amounts as follows: (1) Seven percent to the special county mineral production tax fund created under subsection (c) of this section; and (2) such amount as the director certifies pursuant to subsection (f) to be credited to the state water plan fund created by section 38; and (3) the remainder shall be credited to the state general fund.

(b) A refund fund designated as "mineral production tax refund fund" not to exceed \$50,000 is hereby created for the prompt payment of all tax refunds. The mineral production tax refund fund shall be in such amount, within the limit set by this section, as the director shall determine is necessary to meet current refunding requirements under this act.

(c) There is hereby created a special county mineral production tax fund. On December 1, 1983, and quarterly thereafter, the director of taxation shall distribute all moneys credited to such fund to the county treasurers of all counties in

which taxes were levied under K.S.A. 79-4217 and amendments thereto for the severing and producing of coal, oil or gas from property within the county, in the proportion that the taxes levied upon production in each county bears to the total of all of such taxes levied in all of such counties. Such distribution shall be based on returns filed, with any adjustments or corrections thereto made by the director of taxation.

(d) The secretary of revenue shall make provision for the determination of the counties within which taxes are levied under K.S.A. 79-4217 and amendments thereto for the severance of coal, oil or gas and shall certify the same to the director of accounts and reports.

(e) The director of accounts and reports shall draw warrants on the state treasurer payable to the county treasurer of each county entitled to payment from the special county mineral production tax fund upon vouchers approved by the director of taxation. Upon receipt of such warrant, each county treasurer shall credit 50% of the amount thereof to the county general fund and shall distribute the remaining 50% thereof to the treasurer of each school district all or any portion of which is located within the county in the proportion that the assessed value of coal, oil and gas properties within each district bears to the total of the assessed value of all coal, oil and gas properties within the county. Such assessed valuation shall be determined upon the basis of the most recent November 1 tax roll. The treasurer of each school district shall credit the entire amount of the moneys so received to the general fund of the school district.

(f) The director of taxation shall certify to the state treasurer an amount to be credited to the state water plan fund from each amount remitted to the state treasurer pursuant to this section. The total of all amounts so certified during each fiscal year shall be \$6,000,000. To the extent practicable, the amount certified with each such remittance shall be proportionate to the total amount of such remittance and shall be based upon

the ratio of \$6,000,000 to the total amount which will be remitted to the state treasurer pursuant to this section during the fiscal year as estimated by the director and as adjusted by the director from time to time during the fiscal year in accordance with actual receipts.

New Sec. 31. All moneys collected from penalties imposed pursuant to K.S.A. 65-170d, 65-171s, 65-3419 or 65-3446, and amendments thereto, shall be remitted to the state treasurer. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it to the state water plan fund created by section 38.

Sec. 32. K.S.A. 65-170f is hereby amended to read as follows: 65-170f. Except as otherwise provided by section 31, all penalties recovered pursuant to the provisions of this act shall be deposited in the state treasury and credited to the state general fund of-the-state-of-Kansas.

Sec. 33. K.S.A. 1987 Supp. 65-3419, as amended by section 204 of chapter 356 of the laws of 1988, is hereby amended to read as follows: 65-3419. (a) Any person who violates any provision of subsection (a) of K.S.A. 65-3409 and amendments thereto, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$500 for every such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of subsection (a) of K.S.A. 65-3409 and amendments thereto, may impose a penalty within the limits provided in this section, which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No penalty shall be imposed pursuant to this section except upon the written order of the director of the division of environment to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to a hearing before the

secretary of health and environment. Any such person may, within 15 days after service of the order make written request to the secretary for a hearing thereon. The secretary shall hear such person within 30 days after receipt of such request. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

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

~~(e) Any penalty recovered pursuant to the provisions of this section shall be deposited in the state treasury and credited to the general fund.~~

~~(f)~~ (e) Notwithstanding any other provision of this act, the secretary, upon receipt of information that the storage, transportation, treatment, or disposal of any waste may present an imminent and substantial hazard to the health of persons or to the environment, may take such action as the secretary determines to be necessary to protect the health of such persons or the environment. The action the secretary may take shall include, but not be limited to:

(1) Issuing an order directing the operator of the treatment or disposal facility or site, or the custodian of the waste, which constitutes such hazard, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes such hazard. Such action may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Requesting that the attorney general or appropriate district attorney commence an action enjoining such acts or practices. Upon showing by the department that a person has engaged in such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted by any court of competent jurisdiction.

~~(g)~~ (f) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary

injunction or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction or permanent injunction shall issue without such allegations and without such proof.

Sec. 34. K.S.A. 1987 Supp. 2-2204, as amended by section 31 of chapter 356 of the laws of 1988, is hereby amended to read as follows: 2-2204. (a) Every agricultural chemical which is distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the secretary. All registration of products shall expire on December 31 following the date of issuance, unless such registration shall be renewed annually, in which event expiration date shall be extended for each year of renewal registration, or until otherwise terminated. Products which have the same formula, and are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same agricultural chemical may be registered as a single product and additional names and labels shall be added by supplement statements during the current period of registration. Within the discretion of the secretary, or an authorized representative of the secretary, a change in the labeling or formulas of an agricultural chemical may be made within the current period of registration without requiring a reregistration of the product. Any agricultural chemical imported into this state which is subject to the provisions of any federal act providing for the registration and which has been duly registered under the provisions of such federal act, in the discretion of the secretary, may be exempted from registration under this act when such agricultural chemical

is sold or distributed in the unbroken immediate container in which such agricultural chemical was originally shipped.

(b) The registrant shall file with the secretary, a statement including: (1) The name and address of the registrant and the name and address of the person whose name will appear on the label if other than the registrant; (2) the name of the agricultural chemical; (3) a complete copy of the labeling accompanying the agricultural chemical and a statement of all claims made and to be made for it and a statement of directions for use; and (4) if requested by the secretary, or an authorized representative of the secretary, a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the product was registered or last reregistered.

(c) The registrant shall pay an annual fee fixed by rules and regulations adopted by the state board of agriculture, except that such fee shall not exceed \$30 \$130 for each agricultural chemical registered. Such fee shall be deposited in the state treasury ~~to the credit of~~ and credited as follows: (1) An amount equal to \$100 for each fee so deposited shall be credited to the state water plan fund created by section 38; and (2) the remainder shall be credited to the agricultural chemical fee fund to be used for carrying out the provisions of this act. The annual fee for each agricultural chemical registered which is in effect on the day preceding the effective date of this act shall continue in effect until the state board of agriculture adopts rules and regulations fixing a different fee therefor under this subsection. The state board of agriculture is hereby authorized and empowered, whenever it determines that the fee imposed by this subsection and paid into the state treasury as provided by law is yielding more revenue than is required for the purposes to which such fee is devoted by law, to reduce the fee imposed by this subsection for such period as the board shall deem justified

by adopting rules and regulations under this subsection but not for less than one year. In the event that the board, after reducing such fee, finds that sufficient revenues are not being produced by such reduced fee, the board is authorized and empowered by adopting rules and regulations under this subsection, to restore in full or in part such fee to an amount which, in the judgment of the board, will produce sufficient revenues for the purposes as provided in this section, but not exceeding the maximum amount of the fee imposed by this subsection.

(d) The secretary, or an authorized representative of the secretary, whenever it is deemed essential in the administration of this act, may require the submission of the complete formula of any agricultural chemical. If it appears to the secretary, or an authorized representative of the secretary, that the composition of the product is such as to warrant the proposed claims for the product and if the product and its labeling and other material required to be submitted comply with the requirements of this act, the secretary shall register the product.

(e) If it does not appear to the secretary, or an authorized representative of the secretary, that the product is such as to warrant the proposed claims for it or if the product and its labeling and other material required to be submitted do not comply with the provisions of this act, the secretary shall notify the registrant of the manner in which the product, labeling, or other material required to be submitted fail to comply with the act so as to afford the registrant an opportunity to make the necessary corrections.

(f) In order to protect the public, the secretary, or a duly authorized representative of the secretary, on the secretary's own motion, may at any time, after written notice to the registrant, cancel the registration of an agricultural chemical. Any person so notified shall be given an opportunity for a hearing in accordance with the provisions of the Kansas

administrative procedure act with regard to the secretary's contemplated action, before any registration is canceled or revoked.

(g) Notwithstanding any other provisions of this act, registration is not required in the case of an agricultural chemical shipped from one plant within this state to another plant within this state operated by the same person.

Sec. 35. K.S.A. 2-1205 is hereby amended to read as follows: 2-1205. An inspection fee shall be collected upon all commercial fertilizers sold, offered or exposed for sale, or distributed in Kansas, which shall be at a rate per ton of 2,000 pounds fixed by rules and regulations adopted by the state board of agriculture, except that such rate shall not exceed ~~\$-33~~ \$1.70 per ton of 2,000 pounds. The inspection fee rate per ton of 2,000 pounds in effect on the day preceding the effective date of this act shall continue in effect until the state board of agriculture adopts rules and regulations fixing a different inspection fee rate under this section. Each person registering any commercial fertilizer shall pay the inspection fee on such commercial fertilizer sold, offered or exposed for sale, or distributed in Kansas, and shall keep adequate records showing the tonnage of each commercial fertilizer shipped to or sold, offered or exposed for sale, or distributed in Kansas, and the secretary, and duly authorized representatives of the secretary, shall have authority to examine such records and other pertinent records necessary to verify the statement of tonnage.

Each person registering any commercial fertilizer shall file an affidavit semiannually, with the secretary, within 30 days after each January 1 and each July 1, showing the tonnage of commercial fertilizer sold or distributed in Kansas for the preceding six-month period, and shall pay to the secretary the inspection fee due thereon for such six-month period, except that the registrant shall not be required to pay the inspection fee or report the tonnage of commercial fertilizers or fertilizer materials sold and shipped directly to fertilizer manufacturers

or mixers, but the fertilizer manufacturers or mixers shall keep adequate records of the commercial fertilizers sold or distributed in this state, and report to the secretary the tonnage thereof and pay the inspection fee due thereon. If the affidavit is not filed and the inspection fee is not paid within the thirty-day period, or if the report of tonnage is false, the secretary may revoke the registrations filed by such person; and if the affidavit is not filed and the inspection fee is not paid within the thirty-day period, or any extension thereof granted by the secretary, a penalty of \$5 per day shall be assessed against the registrant and the inspection fee and penalty shall constitute a debt and become the basis for a judgment against such person. The secretary may grant a reasonable extension of time.

The Kansas state board of agriculture is hereby authorized and empowered to reduce the inspection fee by adopting rules and regulations under this section whenever it shall determine that the inspection fee is yielding more than is necessary for the purpose of administering the provisions of this act, and the board is hereby authorized and empowered to increase the inspection fee by adopting rules and regulations under this section when it finds that such is necessary to produce sufficient revenues for the purposes of administering the provisions of this act, but not in excess of the maximum fee prescribed by this section. The secretary shall remit all moneys received by or for the secretary under article 12 of chapter 2 of Kansas Statutes Annotated and amendments thereto to the state treasurer at least monthly. Upon receipt of any such remittance the state treasurer shall ~~deposit the entire amount thereof in the state treasury and the same~~ credit the remittance as follows:

- (1) An amount equal to \$1.40 per ton of 2,000 pounds shall be credited to the state water plan fund created by section 38; and
- (2) the remainder shall be credited to the fertilizer fee fund.

All expenditures from such fund funds shall be made in accordance with appropriation acts upon warrants of the director of accounts

and reports issued pursuant to vouchers approved by the secretary of the state board of agriculture or by a person or persons designated by the secretary.

New Sec. 36. (a) There is hereby created, in the state treasury, the local solid waste management fund.

(b) Moneys credited to the local solid waste management fund shall be used only for grants pursuant to K.S.A. 65-3415 and amendments thereto.

(c) Expenditures from the local solid waste management fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment.

Sec. 37. K.S.A. 65-3415 is hereby amended to read as follows: 65-3415. (a) The secretary is authorized to assist counties, municipalities and authorities by administering grants to pay up to ~~fifty-percent-(50%)~~ 50% of the costs of preparing:

(1) Amending official plans for solid waste management systems in accordance with the requirements of this act and the rules, and regulations and standards adopted pursuant to this act, and for;

(2) implementing such official plans; and

(3) carrying out related studies, surveys, investigations, inquiries, research and analyses.

~~(b) All grants shall be made from funds appropriated for this purpose by the legislature~~ Any grant to a city or county pursuant to this section shall be in an amount proportionate to the amount of fees paid pursuant to section 29 for disposal of solid waste generated within such city or county, to the extent it is practicable to determine or estimate such amount.

New Sec. 38. (a) There is hereby created, in the state treasury, the state water plan fund. All moneys in the state water plan fund shall be expended in accordance with appropriations acts for implementation of the state water plan formulated pursuant to K.S.A. 82a-903 et seq. and amendments thereto. Such moneys shall be used only for the establishment

and implementation of water-related projects and shall not be used for: (1) General operating expenditures of any state agency except on a supplemental basis to provide for the necessary repair, maintenance and replacement of equipment as required for such projects; or (2) projects that are primarily recreational.

(b) On or before December 1 of each year, each state agency which has expended moneys in the state water plan fund during the preceding fiscal year shall submit to the governor and the legislature a report setting out a detailed account of all such moneys expended during such fiscal year.

Sec. 39. K.S.A. 2-1205, 65-170f and 65-3415, K.S.A. 1988 Supp. 79-4227 and K.S.A. 1987 Supp. 2-2204 and 65-3419, both as amended by chapter 356 of the laws of 1988, are hereby repealed.

WATER PLAN FUNDING

<u>UNIT</u>		<u>\$M</u>
1%	Sale of water at retail	1.9
2¢ per 100	Industrial	.95
2¢ per 1000	Feedlots	.15
\$25.00	Irrigation water right owner	.75
.50	Solid Waste Tipping	.97
	$\frac{1}{2}$ of gross	
	Severance tax	6.00
	Penalty fee	.10
\$100	Registration fee pesticide	.70
\$ 1.50	Per ton on fertilized wholesale	2.07
		\$13.59

A Energy and NR
4-6-89
Attachment 2