

Approved

Ken Grotewiel
Date 2/6/91

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Representative Ken Grotewiel at
Chairperson

3:30 ~~am~~/p.m. on February 5, 1991 in room 526-S of the Capitol.

All members were present except:

Representative Webb, excused

Committee staff present:

Raney Gilliland, Principal Analyst, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Pat Mah, Legislative Research
Lenore Olson, Committee Secretary

Conferees appearing before the committee:

David M. Traster, Assistant Secretary and General Counsel, Kansas
Department of Health and Environment
Joyce Wolf, Kansas Audubon Council
Shaun McGrath, Kansas Natural Resource Council
Scott Andrews, Sierra Club - Kansas Chapter
Mary Ann Bradford, Natural Resources Coordinator, League of Women
Voters of Kansas
Vic DeJong, Vice President and General Manager, APTUS

Chairperson Grotewiel called the meeting to order and opened the hearing on HB 2021.

David Traster, Department of Health and Environment, testified in support of HB 2021, stating that this bill responds to two problems that have become sources of growing concern to KDHE and others during the past several years. The first problem involves the continuing inability of the agency to complete timely technical reviews of complex permit applications for new or modified hazardous waste facilities. The second problem that this bill addresses has been only recently recognized and concerns the lack of provisions in the current Kansas hazardous waste statutes for establishing and implementing a schedule of fees because the state has not had commercial facilities of this type; however, the Department currently has under review a permit application submitted by the APTUS Corporation for a commercial hazardous waste treatment facility. (Attachment 1)

Joyce Wolf, Kansas Audubon Council, testified in support of HB 2021, stating that all aspects of hazardous waste management must be carefully monitored. She also stated that they support the application fee; however, they suggest that the cap be set at \$300,000 to actually cover all associated costs to KDHE. (Attachment 2)

Shaun McGrath, Kansas Natural Resources Council, testified in support of HB 2021, stating that the general intent of this bill effects specifically the APTUS facility in Coffeyville, which could become the state's first "off-site" commercial hazardous waste incinerator facility. He also stated that KNRC has historically been very skeptical of the incineration of hazardous wastes and do not wish to advocate incineration. Mr. McGrath said that KNRC advocates the bill be amended to make the fee \$300,000. (Attachment 3)

Scott Andrews, Sierra Club - Kansas Chapter, testified that they generally support HB 2021, but have some concerns. He stated that the Sierra Club suggests that this Committee consider amending this bill to further encourage waste minimization and recycling and to eliminate the fee exemption for incinerators that use hazardous waste as a fuel. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 526-S, Statehouse, at 3:30 ~~am~~/p.m. on February 5, 1991.

Mary Ann Bradford, League of Women Voters of Kansas, testified in support of HB 2021, stating that they generally view the provisions of this bill to be steps toward implementation of policies that ensure safe treatment, transportation, storage and disposal of solid and hazardous waste in order to protect public health and air, water and land resources.
(Attachment 5)

Vic DeJong, APTUS Corporation, testified that although they are in general support of HB 2021, they recommend a reduced maximum permit of \$125,000, a cap of \$200,000 on the treatment fee, no fee exemption for certain industries, and a reasonable time frame to process a permit application.
(Attachment 6)

Chairperson Grotewiel closed the hearing on HB 2021.

A motion was made by Representative Hendrix, seconded by Representative Corbin, to approve the minutes of January 30 and January 31, 1991.
The motion carried.

The meeting adjourned.



State of Kansas

~~Mike Hayden, Governor~~

Joan Finney, Governor

Department of Health and Environment

Office of the Secretary

Acting
Stanley C. Grant, Ph.D., Secretary

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Testimony presented to
House Energy and Natural Resources Committee
by
The Kansas Department of Health and Environment
House/Senate Bill 2021

SUMMARY OF MAJOR ISSUES

The Department of Health and Environment is pleased to provide testimony in support of House Bill 2021 relating to hazardous waste disposal and treatment fees and to have this opportunity to recommend several clarifying amendments to the Bill. The amendments recommended by KDHE are summarized in Attachment 1. As the committee is aware, this bill follows the referral of Proposal No. 41 which was the subject of an interim study this summer by the Special Committee on Ways and Means/Appropriations.

House Bill 2021 responds to two problems that have become sources of growing concern to KDHE and others during the past several years. The first problem involves the continuing inability of the agency to complete timely technical reviews of complex permit applications for new or modified hazardous waste facilities. The receipt of permit applications for major new facilities cannot be anticipated by the Department and the necessary resources cannot be provided through the traditional budget planning process. The solution to this problem proposed in H.B. 2021 provides for the assessment of an application fee to be submitted by applicants at the time that the permit application is initially submitted. The Department strongly supports this concept because it would allow the Department to temporarily supplement the technical staff resources normally used for routine program demands with contract resources at the time applications are received. If no applications are received, no fees are assessed. The concept of a permit application fee is not new and is currently used by many states for reasons identical to those discussed here. It is a fee that is, in general, also supported by applicants for permits, particularly those in the private sector, because it provides a mechanism to reduce the significant economic impact that can result from extended delays in completing the permit process.

The second problem that House Bill 2021 addresses has been only recently recognized and concerns the lack of provisions in the current Kansas hazardous waste statutes for establishing and implementing a schedule of fees

E+NR
2/5/91 Attachment 1

because the state has not had commercial facilities of this type; however, the Department currently has under review a permit application submitted by the Aptus corporation for a commercial hazardous waste treatment facility to be located in Coffeyville at the site of this firm's existing PCB management and treatment plant. If the permit process for this facility is successfully completed, the state's first commercial hazardous waste treatment facility will begin operation this year. This will be the only Kansas industry at that time subject to the treatment fees addressed in House Bill 2021. Recently promulgated federal regulations applicable to boilers and industrial furnaces burning hazardous wastes may eventually result in additional Kansas facilities such as cement kilns being subject to regulation as off-site treatment facilities. KDHE has not yet fully assessed the impact of these requirements in Kansas.

Establishing a commercial facility fee program is important to the Department and the State of Kansas, overall, for several reasons. First, commercial hazardous waste treatment and disposal fees are commonly used nationwide as a source of revenue to support various segments of state waste management programs. It is important to note that the hazardous waste which will be processed and treated at any commercial facility in Kansas will originate predominantly from outside Kansas. These fee programs are, therefore, recognized as an appropriate and effective way of providing the opportunity for out-of-state generators of hazardous waste that choose to ship waste to commercial Kansas facilities to contribute to the implementation of the Kansas hazardous waste program. Further, this will assure that the Kansas commercial hazardous waste fee program is consistent with those of other states with similar facilities.

The second reason the Department believes this fee program is of great importance to Kansas involves the need to provide for an adequate and permanent source of funding for the state's developing hazardous waste minimization program. This program is currently being implemented through cooperative agreements between KDHE, Kansas State University, and Kansas University. It is being made possible through a federal grant received by KDHE in 1988 that provided \$325,000 in federal grant funds to be spent over a three-year period to establish a demonstration waste minimization program for Kansas. The project emphasizes the importance of providing technical assistance to small Kansas firms in a non-regulatory environment. The continuation of this project beyond the federal grant period is considered by the Department to be a critical need for Kansas. Assuring that every effort is made to minimize the generation of hazardous wastes is indicative of the future direction of the Kansas hazardous waste program.

As is also discussed in the Department's detailed testimony, the use of some of these revenues for additional support for the state's household hazardous waste program and for completing specialized, non-routine surveillance activities by KDHE at the new commercial facility is also believed to be appropriate and House Bill 2021 contains such provisions.

Following the enactment of statutory authority for the Secretary to establish these new fee schedules, the Department will begin a rule-making process whereby the detailed fee schedules would be proposed, evaluated and adopted only after public hearing and opportunity for comment by all interested parties. In arriving at the appropriate schedule of fees, the Department must assure that the fees are reasonable in their economic impact, consistent with those of nearby states, and appropriate for the type and quantity of wastes involved, and that they properly consider the origin of the waste and the treatment and disposal technologies being regulated.

House Bill 2021 provides that the revenues collected as commercial treatment and disposal fees be deposited into the same fund as the permit application fees; however, with the exceptions noted below, the statute effectively defines the authorized uses for these funds and the need to account separately for their use.

In summary, the Department strongly encourages the enactment of H.B. 2021 with the amendments recommended as a partial solution to the increasing resource demands being placed upon our state's hazardous waste management program. The fees proposed are believed to represent an innovative approach to financing these needs in a time of growing concern over taxes and public demands for fiscal restraint. The Department believes that the changes proposed provide the framework for arriving at an acceptable balance between the resource needs of a complex regulatory and technical assistance program and the resulting economic impacts upon the commercial hazardous waste industry in Kansas.

Testimony presented by:

David M. Traster

Assistant Secretary and General Counsel

Kansas Department of Health and Environment

Attachments:

1. Recommended Amendments
2. Economic Impact - Aptus
3. Summary of Fees

DETAILED TESTIMONY (FOCUSING ON 1991 H.B. 2021)

Background

K.S.A. 65-3431, enacted in 1981, authorizes and directs the Secretary of Health and Environment to implement a comprehensive hazardous waste management program for the State of Kansas. Specific authorities include adopting rules and regulations as necessary to protect the public health and environment and establishing fees schedules to offset the costs of implementing the program and for other purposes as described in the law. Under current statutes, two hazardous waste fee schedules are authorized and established.

The first fee schedule is authorized by K.S.A. 65-3431 (u) and established in K.A.R. 28-31-10, and provides for the payment of fees by hazardous waste treatment, storage, and disposal facilities in Kansas, as well as hazardous waste transporters and generators for the purpose of reimbursing the State of Kansas for the costs incurred by the Secretary in monitoring the operation of these facilities. These funds are deposited into the State General Fund and replace the direct and indirect state funds appropriated by the Kansas Legislature for the Department's routine inspection and evaluation activities.

The second existing fee schedule is authorized by K.S.A. 65-3431 (v) and is established in K.A.R. 28-31-11 and provides for the payment of fees specifically by hazardous waste disposal facilities into a Perpetual Care Trust Fund. This fund was established to provide for the monitoring of disposal facilities after closure.

There are two substantive amendments to K.S.A. 65-3431 proposed in House Bill 2021. The first of these provides for the addition of a new subsection (w) which establishes authority for a new schedule of fees to be paid by applicants for permits for new or modified hazardous waste facilities. This new subsection also establishes a new revenue fund named the Environmental Permit Fund, and requires that the monies collected from this new schedule of fees be deposited into this fund.

The Department strongly supports the concept of an application fee because it provides for resources to evaluate new permits immediately at the time that applications are received. This procedure allows the Department to supplement their staff resources, temporarily, during periods of increased workloads. By providing the Secretary access to a separate fund established for this purpose, the Department's response to major new applications can be timely and comprehensive. This procedure also places the burden for many of the expenses associated with the permit review process upon the applicant. If no new applications are received, no revenue will be generated by this fee

schedule. The proposed amendment provides for an application fee not to exceed \$175,000. However, the actual fee will be assessed based upon the actual costs incurred by the Department and will be determined through a formal rule-making process. The following listed criteria are recommended as the minimum necessary in order to assure a fair and effective fee program:

1. The application fee should be submitted with the application.
2. The fee should be deposited into a dedicated revenue fund with a no-limit appropriation.
3. The uses for these specific fee revenues should be limited to permit-related review activities.
4. The fee schedule should be based upon the size and nature of the proposed facility and the complexity of the facility and the technologies proposed in the application.
5. The Secretary should be authorized to contract with private firms for additional technical resources to complete the require evaluations.
6. The revenues in the designated fund should carry-over into subsequent fiscal years in order to accommodate applications received near the end of the year.

The second major amendment to K.S.A. 65-3431 involves the addition of a new subsection (x) which provides for a second new schedule of fees specifically applicable to off-site hazardous waste treatment and disposal facilities. The term "off-site facility" is defined under existing Kansas law (K.S.A. 65-3430) as a facility where treatment, storage, or disposal activities are conducted by a person other than the hazardous waste generator. The term "off-site hazardous waste treatment and disposal facility" will, therefore, include hazardous waste incineration facilities, disposal facilities at which hazardous waste will remain after closure, and underground injection wells; provided that these facilities receive wastes that are not generated on-site. In practice, these new fees will apply to any new commercial hazardous waste treatment or disposal facilities that would begin operation in the state, as there are currently no facilities in Kansas to which this proposed fee schedule would apply. The Department has under review, however, an application from the Aptus Corporation for a commercial hazardous waste incineration facility in Coffeyville and when issued a permit this facility would become the first to fall under this new fee schedule.

The new subsection (x) also provided that the fees to be collected not exceed five cents per pound (\$100 per ton) of hazardous waste disposed of or one cent per pound (\$20 per ton) of hazardous waste treated and that this money be deposited into two different funds as follows: 75% - Environmental Permit Fund; and 25% - Hazardous Waste Collection Fund. The revenue from these fees

that is deposited into the Environmental Permit Fund is limited in its use by the Department as described in the new subsection (w). These uses include enhancing the state's hazardous waste minimization efforts, conducting extraordinary facility surveillance activities such as specialized air monitoring, groundwater sampling and analysis, and assuring compliance with special operating conditions established during the permit evaluation process.

The Department strongly supports the provisions that allocate a share of the fee revenues to supporting the state's waste minimization activities. Assuring that every effort is made to minimize the generation of hazardous waste is indicative of the future direction of the hazardous waste program in Kansas. In 1988, the Department competed for and received \$325,000 in federal grant funds to be spent over a three-year period to establish a demonstration waste minimization program for Kansas. The Department is currently implementing this project through a cooperative agreement with Kansas State University and Kansas University that is providing technical assistance and educational services to hazardous waste generators in Kansas to encourage waste minimization. The emphasis of this project is making technical information available to small Kansas firms in a non-regulatory environment. The Department is hopeful that in the near future the scope of this project can be broadened to include the addition of applied research activities related to innovative waste reduction technologies that focus specifically on the industrial processes common to Kansas industries. While still developing, this project has already been recognized by KDHE and Kansas industry as highly successful and the continuation of this project beyond the federal grant period is believed to be a critical need for Kansas.

The Department also supports the concept of setting aside a portion of these fees for deposit into the state's Household Hazardous Waste Fund (established under K.S.A. 65-3460) to provide a supplemental source of funding for this program. This fund was established to provide a 50/50 grant program to assist local communities in starting household hazardous waste programs in order to eliminate to the greatest extent possible the disposal of household chemical wastes into Kansas landfills. The program has also been a very successful one at KDHE and is expected to continue to receive the enthusiastic support of many Kansas communities. During FY 1990, all authorized grant funds were committed along with the required community matching funds. Eight projects were funded that included the City of Olathe, Wichita-Sedgwick County, and the counties of Reno, Barton, Ellis, Rooks, Phillips, and Riley. A total of six permanent community-operated collection sites resulted from the 1990 demonstration projects which is the ultimate objective of this program.

Following the enactment of the new subsection (x), the Department will promulgate a regulation that details a new off-site treatment and disposal facility fee schedule after comprehensive evaluation, public hearing, and opportunity for comment by all affected parties. In arriving at the appropriate schedule of fees, the Department will evaluate the chemical

nature of the wastes involved, the economic impact upon the facilities affected, the costs of treatment and disposal, and the fees established by other states for similar facilities.

In addition to the amendments discussed above, House Bill 2021 also contains several other statutory changes that have been included to clarify existing language in the affected statutes in response to the Department's experience, to date, in its hazardous waste program. A very brief discussion of these minor changes is presented below.

1. K.S.A. 65-3431 (u) is amended to clarify that all persons owning or operating hazardous waste facilities are subject to the appropriate fees. There has been past confusion on this issue where regulated facilities that do not have "permits" were involved.
2. The fee cap established in K.S.A. 65-3431 (u) is clarified so as to apply to all treatment, storage, and disposal facilities and not just storage facilities and is increased from \$25,000 to \$50,000. There will be not immediate impact of this change. However, the Department does intend to review the existing fee structure established under K.A.R. 28-31-10 that pertains to continuous on-site witnessing of operations.
3. K.S.A. 65-3431 (v) (1) is amended to convert the fees being deposited into the Hazardous Waste Perpetual Care Trust Fund from units of cubic feet to pounds. Difficulties have arisen in calculating these fees because private industries do not normally measure wastes in cubic feet.
4. K.S.A. 65-3431 (v) (2) is amended to clarify the intent of the Perpetual Care Trust Fund to apply to hazardous waste disposal facilities closed after 1981 and any unlawful facilities.
5. K.S.A. 65-3437 is amended to delete the provisions for application fees for hazardous waste injection wells as these fees will become a part of the new schedule established under the new subsection K.S.A. 65-3431 (w) and these provisions would be duplicative.

ATTACHMENT I

Recommended Amendments to H.B. 2021

1. Subsection (w)(1) should be amended to clearly indicate that the permit application fees are to be used by the Secretary for permit-related activities. Recommend adding the following sentence at the end of subsection (w)(1).

"Fees collected under this subsection shall be used by the Secretary to recover the costs associated with the review and processing of the permit application for which the fee was paid."

2. Subsection (w)(2) should be amended to clarify that the monies in the environmental permit fund can be used for waste minimization activities related to hazardous waste generators as well as applicants for permits. Recommend deleting the term "to applicants" from line 9 on page 7.
3. Subsection (bb) should be amended to clarify that the fee exemption for energy recovery facilities was intended to apply only to the fees in subsection (x) and not the entirety of Section 1. Recommend the following change in line 3 on page 9.

"is exempt from all fees established under subsection (x) of this section."

ATTACHMENT 2

Estimate of Economic Impact of
Commercial Hazardous Waste
Treatment Fee at the Proposed APTUS
Coffeyville Incineration Facility

Assumptions:

1. The operating permit is issued for a maximum capacity of 15,000 lb/hr and 50% of this waste will be subject to the treatment fee.
2. The facility operates 7000 hours/year at 70% of capacity.
3. The treatment fee is established at the maximum of \$.01 per pound authorized by H.B. 2021.

Analysis:

$\$.01 \times 15,000 \text{ lbs} \times .50 \text{ (regulated waste)} \times 7000 \text{ hrs} \times .70 \text{ (capacity)}$
 $\$367,500 \text{ year}$

Funds Affected:

a.	Hazardous Waste Collection Fund (\$367,500 x .25 = \$91,875)	+ \$ 91,875
b.	Newly-established environmental permit fund (\$367,500 - \$91,875 = \$275,625)	+ \$ 275,625
Total Fee Revenues		\$ 367,500

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ATTACHMENT 3

SUMMARY OF EXISTING AND NEW HAZARDOUS WASTE FEES PROPOSED IN H.B. 2021

Fee Name	Statutory/Regulatory Authority	Who Pays	Fees	Disposition of Fees	Specific Uses of Fees
<u>CURRENT FEES</u>					
Hazardous Waste Monitoring Fee	K.S.A. 65-3431(u) K.A.R. 28-31-10	1. Hazardous waste treatment storage and disposal facilities 2. Hazardous waste transporters 3. Hazardous waste generators	\$15,00/year storage facilities \$2,500/year treatment facilities \$5,000/year disposal facilities except landfills and injection wells \$10,000/year other disposal facilities \$250/year transporters \$100-5,000/year generators	State General Fund	Routine facility Monitoring
Perpetual Care Trust Fund Fee	K.S.A. 65-3431(v) K.A.R. 28-31-11	Hazardous waste disposal facilities	\$0.25/cubic feet for landfilling \$0.02/wet cubic foot for deep well injection \$0.05/cubic foot for other disposal methods	Perpetual Care Trust Fund	Extraordinary costs of monitoring or repairing closed disposal facilities
<u>NEW FEES</u>					
Proposed Application Fee	H.B. 2021 Section 1 K.S.A. 65-3431(w)	Hazardous waste treatment, storage and disposal facilities	To be established by regulation with a maximum of \$175,000 for permit applications, modifications and renewals	Environmental Permit Fund	Reviewing new applications

ATTACHMENT 3

SUMMARY OF EXISTING AND NEW HAZARDOUS WASTE FEES PROPOSED IN H.B. 2021

Fee Name	Statutory/Regulatory Authority	Who Pays	Fees	Disposition of Fees	Specific Uses of Fees
Proposed Off-Site Treatment and Disposal Fee	H.B. 2021 Section 1 K.S.A. 65-3431(x)	Offsite (commercial) hazardous waste treatment and disposal facilities	To be established by regulation with a maximum of \$0.05 per pound for disposal and \$0.01 per pound for treatment (not to exceed \$400,000 per facility)	75% Environmental Permit Fund and 25% Hazardous Waste Collection Fund (up to \$150,000)	Waste minimization, household hazardous waste, and extraordinary costs of monitoring permit conditions during operation

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Kansas Audubon Council

February 5, 1991
House Energy and Natural Resources Committee

HB 2021: HAZARDOUS WASTES: FEES

My name is Joyce Wolf and I am testifying today on behalf of the 5000 Kansas members of the National Audubon Society who support the wise use and protection of our natural resources.

Because the Kansas Audubon Council supports the concept that each state must be responsible for the proper handling and disposal of the hazardous wastes generated within the state, and because burial of hazardous wastes was prohibited in Kansas, we believe all aspects of hazardous waste management must be carefully monitored. Incineration of these wastes causes us to have concerns that we may be trading a solid waste disposal problem for an air-toxics emissions problem. For that reason we support the rules, regulations and fees that this bill sets up for generators, transporters, and storage, treatment and disposal facilities of hazardous wastes.

Because there is the potential for increased health risks to surrounding population centers from improperly operating incineration equipment, the fees generated must be sufficient to pay the costs of closely monitoring these operations. In this regard, if after a reasonable time, the Kansas Department of Health and Environment finds the fees are inadequate to cover its increased monitoring costs, the Council would support increasing the fees by either: 1) charging increased fees for hazardous wastes imported from other states, or 2) establishing a sliding-scale fee schedule based on the degree of toxicity of the wastes, that is, increasing costs for more hazardous materials, regardless of where they are generated.

On page 6, subsection (w), we support the application fee; however, we suggest that the cap be set at \$300,000 to actually cover all associated costs to KDHE. In order to design, monitor, and review the test burns of hazardous waste incinerators, the services of highly specialized experts are required to accomplish the goal of evaluating the degree of hazard and potential impact upon health and the environment. Adequate application fees could benefit industry by ensuring the thorough, yet timely, manner in which these permits will be handled. Any funds remaining after the completion of the application process should be returned to the applicant.

On page 8, subsection (x), part 2: we fully support using 25% of this fee to be applied to the household hazardous waste collection fund. The Kansas Audubon Council worked hard to establish this program and we fully support its continuation. Furthermore, we believe it should be funded both from this source of money as well as from the State Water Plan to ensure that enough money is raised annually to provide matching grants to ALL communities trying to establish collection sites.

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Attachment 2

In the beginning of our testimony, we stated the need to carefully monitor all aspects of hazardous waste management. For that reason we believe the fees generated under subsection (u) page 4, should be credited to the environmental permit fund. Not only should these facilities be carefully monitored, the Council is especially concerned about the increased risk to communities along the designated transportation routes mentioned on page 2, subsection (o). We are aware of the hazards of transporting toxic chemicals, and of the costs of providing training and equipment for personnel who would have to respond to transportation-related spills. In order to cover some of the monitoring and transportation-associated costs, the Council suggests the following changes:

Page 4, subsection (u), the last sentence should be amended to read:

Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the environmental permit fund.

And on page 7, subsection (w), line 15 add the following:

(F) monitoring facilities, monitoring generators, and monitoring the transportation of hazardous wastes, and (G) in cooperation with the State Emergency Response Commission, training and equipping emergency responders.

We appreciate this opportunity to offer these comments and suggestions.

Kansas Natural Resource Council

February 5, 1991

Testimony to the House Energy and Natural Resources Committee

Re: HB2021 - Concerning Hazardous Waste Disposal Fees

From: Shaun McGrath, Program Director

My name is Shaun McGrath. I am the Program Director for the Kansas Natural Resource Council, a private, non-profit, organization which advocates sustainable resource policies for the state. Our membership is over 850 statewide.

HB2021 concerns facilities which treat or dispose of hazardous wastes. The general intent of the bill effects specifically the APTUS facility in Coffeyville, which could become the state's first "off-site" commercial hazardous waste incinerator facility. KNRC has historically been very skeptical of the incineration of hazardous wastes, due to the safety considerations related to air emissions and the disposal of the remaining toxic ash. We maintain that skepticism, and do not wish to advocate incineration.

Nevertheless, incineration of hazardous wastes is a reality in Kansas, and therefore, KNRC supports the general intent of HB2021:

1.) to establish a \$175,000 permit application fee allowing KDHE resources to process applications to construct, operate, or modify a hazardous waste facility; and

2.) to establish a \$.01 per pound fee for "off-site" treatment of hazardous wastes, and a \$.05 per pound fee for "off-site" disposal of hazardous wastes, allowing KDHE resources to monitor compliance with the conditions of the permit.

Again, KNRC supports these objectives. For purposes of discussion, we would like to raise a few issues in which we feel HB2021 creates inequities in pursuing the objectives of the bill, and where the bill possibly falls short in realizing its intent.

First, the permit application fee established in the bill is \$175,000. The original KDHE proposal for this fee was \$300,000. This was based on KDHE's estimates for the costs it would incur for processing applications. By lowering the fee to \$175,000, have we risked that insufficient funds will be available to process these applications?

KNRC advocates that the bill be amended on page 6, line 29, making the fee \$300,000. We also suggest that language be added which would refund any excess money collected which was not used for reviewing the application. This amendment would better insure that sufficient funds will be available.

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2/5/91

Attachment 3

Secondly, with regard to the fees for off-site treatment or disposal, the bill on page 8, line 6 reads, "In establishing fees, the secretary shall give consideration to the degree of hazard, [...and] costs of treatment or disposal[.]" Due to this language, KNRC advocates a sliding scale based on the toxicity of the wastes. Additionally, KNRC recognizes the responsibility Kansans have in responsibly disposing of, or treating hazardous wastes originating from Kansas manufacturers. We do not believe this responsibility extends to wastes generated out-of-state. Therefore, we would advocate a surcharge to treat or dispose of out-of-state wastes.

Thirdly, if there is going to be incineration, KNRC acknowledges the benefits to recovering energy from that incineration. However, incineration for purposes of cogeneration or not is still incineration, and consequently has the potential for unsafe air emissions, and for problems arising from the disposal of the ash. HB2021, in its aggressive attempt to promote energy recovery, raises a few questions:

1.) Does the state really want to be in the position of promoting and encouraging incineration for any reason?

2.) Page 8, line 42-43 to Page 9 lines 1-3 exempt all facilities which incinerate for the purpose of energy recovery from all fees. If the purpose of fees is to pay for the monitoring during operation and after closure of a facility, and these facilities are exempt from fees, are these facilities being monitored?

3.) If yes, who is paying the costs for monitoring?

4.) Page 4, line 31, in the current statutes, exempts generators of hazardous waste from which energy can be recovered. Do we really want to encourage generation of any hazardous wastes?

Based on the polluter pays principal, KNRC strongly advocates that taxpayers not subsidize the operations of these facilities, and thus that the exemption in this bill be struck.

Fourthly, KNRC supports diverting a portion of the money raised under this bill to the household hazardous waste program. We would object, though, to have this source supplant current funding for the program. Also, we would like to point out that, given the cap of \$400,000 in subsection (x), and given that this section would only apply to one company, the maximum amount that this provision in the bill could divert to household hazardous waste is \$100,000.

Finally, we would like to point out the apparent inequitable treatment this bill would create, and another which already exists under current law.

The bill creates a per pound fee of a penny for treatment, and a nickel for disposal for off-site facilities. (The cap for treatment is \$400,000. The cap for disposal is unclear.) A fee based on volume is fair.

Currently, on-site treatment and disposal facilities pay an annual fee not to exceed \$25,000, and subsection (u) would amend that to

~~\$50,000~~. (Off-site facilities are also subject to pay this fee.) This annual fee is not based on volume per se. It is the source of funding for KDHE monitoring of on-site facilities during operation.

An inequity exists under current law insofar as ^{ON}~~off~~-site facilities, pay an annual fee which is not based on volume. Vulcan Chemicals in Wichita, for example, which in 1987 was ranked the 16th largest generator of hazardous wastes in the U.S. producing a total of 73,400,000 pounds, pays roughly the same fees for monitoring as small on-site generators of hazardous wastes.

The inequity created by the bill concerns the disparity between fees paid by on-site and off-site facilities. If subjected to the fees established in this bill for off-site disposal, Vulcan and other on-site facilities which inject their waste underground, would pay \$.05 per pound with a cap of \$400,000, maybe greater. Under the bill, they would pay a maximum of \$50,000.

KNRC advocates that a similar fee schedule be established for on-site facilities as for off-site facilities incorporating a sliding scale which takes into consideration toxicity of the waste, and the costs for treatment or disposal.

We hope that you will take into consideration our concerns.

Thank you for allowing me to testify before you today.



SIERRA CLUB

Kansas Chapter

Testimony to House Energy & Natural Resources

H.B. 2021 - Hazardous Waste Fee Bill

I am Scott Andrews and I represent the 3300 members of the Kansas Chapter of the Sierra Club. We are generally supportive of the bill which makes improvements on the management of hazardous waste and establishes fees to help pay for that management. We do, however, have some concerns.

While the management of hazardous waste is quite different than that for solid waste, we believe a similar hierarchical philosophy should be followed. The emphasis should first be on waste reduction (processes and techniques which produce less hazardous waste to make a given product) and on recycling of waste before turning to the exploration of disposal options. Recycling of hazardous waste is often a matter of finding an industry or company who can use your waste, or some form of it, as the chemical feedstock of their process. While encouraged in the bill there could be more emphasis on these options of waste minimization and recycling.

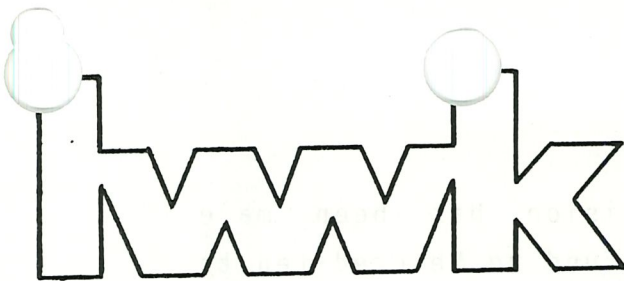
Recycling is not, by definition, incineration and co-generation of power. Although this is often termed "resource recovery". This resource recovery is certainly not bad per se, if a company can provide the best available technology for hazardous waste incineration at the highest safety standards and produce useful energy on the side -- more power to them. However, a company using hazardous waste as an energy source for their industrial process is already gaining from it. We see no need to further encourage this at the expense of funds to deal with hazardous waste and see no reason for exemptions to the fees for incineration in such plants. These exemptions serve only to encourage this type of incineration whether or not it is the best and safest technology for disposal. If any techniques should receive exemptions it should be for waste minimization or true recycling efforts.

The Sierra Club suggests that this committee consider amending H.B. 2021 to further encourage waste minimization and recycling and to eliminate the fee exemption for incinerators that use hazardous waste as a fuel.

E & NR.

2/5/91

Attachment 4



league of women voters of kansas

A Statement to the House
Energy and Natural
Resources Committee
HB 2021, Hazardous Waste Fees

February 5, 1991

Mr. Chairman and Members of the Committee:

I am Mary Ann Bradford, Natural Resources Coordinator for the League of Women Voters of Kansas. The League is a nonpartisan political organization that encourages the informed and active participation of citizens in government and influences public policy through education and advocacy. Through study and member consensus, the League has been addressing management of solid and hazardous waste since the 1970's.

The League supports policies that ensure safe treatment, transportation, storage and disposal of solid and hazardous waste in order to protect public health and air, water and land resources. Generally we view the provisions of HB 2021 to be steps toward implementation of these policies and support the establishment of a fee schedule for permitting hazardous waste facilities and for treatment and disposal of hazardous waste.

It seems imperative that the state have money for all phases of the technical review process upon receipt of an application. This process requires special expertise that should be available through an increase in staff or through contracts with consultants in the private sector. Equally essential are the treatment and disposal fees that would provide for critical on-going monitoring of an off-site facility.

*E+NR
2/5/91
Attachment 5*

The League is pleased to see that provision has been made for 25% of the environmental permit fund to be credited to the hazardous waste collection fund. League members in several communities/counties have participated actively in the planning and implementation of household hazardous waste collection programs (e.g., Wichita, Great Bend, Riley County, Shawnee County). We recognize the role of a hazardous waste facility in such a collection program and the significance of the \$150,000 funding. We support the provision stated in§(x)(2).

The League appreciates the work of the Special Committee on Ways and Means/Appropriations in considering this timely issue and in proposing HB 2021. We ask your support of this important legislation.

Mary Ann Bradford
League of Women Voters
919½ So. Kansas Ave.
Topeka, KS 66612
(913)234-5152

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES
TESTIMONY RE: HB 2021
Presented by Vic DeJong, Plant Manager of
APTUS, Coffeyville, Kansas
February 5, 1991

Mr. Chairman, members of the committee:

My name is Vic DeJong, and I am vice president and general manager of the APTUS facility located in Coffeyville, Kansas where we provide environmental services and hazardous waste treatment.

Our Coffeyville facility offers a broad range of important and cost-effective environmental services important to Kansas agriculture and industry. We provide effective treatment of polychlorinated biphenyls (PCBs) through a number of processes, including high-temperature incineration. We also offer transportation, a commercial laboratory, site remediation, and emergency spill response. We have applied for a Resource Conservation and Recovery Act (RCRA) permit from the State of Kansas to handle, store, and treat a wider spectrum of waste types. That permit application is currently under review by the Kansas Department of Health and Environment.

We have had a positive economic impact on our community and believe we will be able to continue this role when we have been granted this additional operating permit.

There have been two significant events since our last testimony of July 17, 1990, regarding Proposal No. 41. The first is that the Environmental Protection Agency issued on December 30, 1990, the final rule which expands controls on hazardous waste combustion by regulating air emissions from burning hazardous waste in boilers and industrial furnaces. These units must now comply with not only the (RCRA) air emission standards but also the general facility standards applicable to hazardous waste treatment, storage and disposal facilities. The second is the Coffeyville request for matching state money to conduct a household hazardous waste collection program was denied for insufficient state funds. Therefore this will supersede prior testimony.

The permit fee on page 6 line 39 (of HB2021) of \$175,000 remains far more than surrounding states and states where our competitors are located. We believe our original proposal of \$125,000 is still reasonable. Furthermore, as we have progressed in the regulatory process, it is clear that we will be making improvements to the facility and this fee applies to those modifications. Since such modifications will be based on safety and environmental concerns as well as improving our competitiveness such high fee schedules will have the potential to defer or exclude desirable modifications. Although modifications could be exempted by revising HB2021 the State still needs the funds to process the permit changes; lowering the maximum fee is a better approach.

*E+NR
2/5/91*

Attachment 6

As in our prior testimony, we believe the permit fees should be restricted to processing the permits and recommend deleting item (2)(B) line 9 and (2)(E) line 14 page 7.

Since the EPA has directed all boilers and industrial furnaces to be regulated essentially the same as hazardous waste incinerators, section (bb) line 42 page 8 through line 3 page 9 should be deleted. There are several reasons for this:

1. The resources required to implement the RCRA rules must be provided by the State. It is unreasonable to discriminate between industries which live under the same regulations having one paying fees which will in turn subsidize those industries having no fees.
2. Our kiln requires fuel to destroy hazardous waste; we burn hazardous waste as a fuel source; this enables us to avoid burning natural gas or coal. There is no difference between our facility and these other industries on this point. Both Aptus and these other industries recover useful energy by burning the hazardous waste.
3. Kansas needs a strong household hazardous waste program which encourages all communities to minimize disposal of hazardous chemicals in municipal landfills which generally do not have adequate containment design. Although such a program should be funded by the State as a whole, taxing a few large consumers of hazardous waste is understandable when considering the administrative requirements. By assessing the fees of \$.01 per pound on all industries required to be permitted under RCRA, sufficient funds for a truly effective household waste minimization program would be provided. We also recommend the \$150,000 limitation on line 20, page 8 be deleted.
4. These exempted units in some cases are burning twice as much hazardous waste as we expect to burn when permitted.

The \$400,000 cap on page 8, line 12 should be reduced to \$200,000. By applying the fees fairly to all RCRA permitted facilities, there will be a number of revenue generating sources thus broadening the tax base for the household collection program without being a burden on any one business.

We continue to recommend as we did previously that the permit process include time frames which are reasonable and mandatory. We recommend that the permit process period be 240 days starting the day the facilities application is received at KDHE. This can be extended to 480 days for complex processes. Also that the "clock" not run when the applicant is responding to KDHE comments. Provision for mutual extension agreements would be included.

Attached to our testimony is a balloon copy of the bill with all of our proposed amendments.

In conclusion we recommend a reduced maximum permit of \$125,000, a cap of \$200,000 on the treatment fee, no fee exemption for certain industries and a reasonable time frame to process a permit application.

Thank you for the opportunity to testify on this issue.

Attachment

HOUSE BILL No. 2021

By Special Committee on Ways and Means/Appropriations

Re Proposal No. 41

12-28

10 AN ACT concerning health and environment; hazardous wastes; fees;
11 amending K.S.A. 65-3437 and K.S.A. 1990 Supp. 65-3431 and , K.S.A. 65-3438
12 repealing the existing sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 1990 Supp. 65-3431 is hereby amended to read
16 as follows: 65-3431. The secretary is authorized and directed to: (a)
17 Adopt such rules and regulations, standards and procedures relative
18 to hazardous waste management as shall *may* be necessary to protect
19 the public health and environment and enable the secretary to carry
20 out the purposes and provisions of this act.

21 (b) Report to the legislature on further assistance needed to ad-
22 minister the hazardous waste management program.

23 (c) Administer the hazardous waste management program pur-
24 suant to provisions of this act.

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

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

29 (f) Provide technical assistance, including the training of person-
30 nel, to industry, local units of government and the hazardous waste
31 management industry to meet the requirements of this act.

32 (g) Initiate, conduct and support research, demonstration proj-
33 ects, and investigations and coordinate all state agency research pro-
34 grams with applicable federal programs pertaining to hazardous waste
35 management.

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

37 (i) Authorize issuance of such permits and orders, conduct in-
38 spections and collect samples or require information and copy records
39 or data as may be necessary to implement the provisions of this act
40 and the rules and regulations and standards adopted pursuant to this
41 act.

42 (j) Conduct and contract for research and investigations in the
43 overall area of hazardous waste storage, collection, transportation,

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1 treatment, recovery and disposal including, but not limited to, new
2 and novel procedures.

3 (k) Adopt rules and regulations establishing criteria for identifying
4 the characteristics of hazardous waste and for listing hazardous waste.
5 The secretary shall prepare and keep current a listing of hazardous
6 wastes and set of characteristics based on the rules and regulations
7 adopted pursuant to this subsection. The listing shall identify, but
8 need not be inclusive of, all the hazardous waste subject to the
9 provisions of this act. The criteria for identification and listing shall
10 be consistent with the criteria for identification and listing adopted
11 by the administrator of the United States environmental protection
12 agency under the authority vested in the administrator by the Re-
13 source Conservation and Recovery Act of 1976 (42 USC 6921) as
14 amended by the Solid Waste Disposal Act of 1980 (P.L. 94-482,
15 October 21, 1980), and as amended by the Hazardous and Solid
16 Waste Act of 1984 (P.L. 98-616, November 8, 1984).

17 (l) Adopt rules and regulations establishing: (1) Appropriate meas-
18 ures for monitoring generators, transporters and facilities during op-
19 eration, closure, and after closure of such facilities to insure
20 compliance with the rules and regulations adopted under this act
21 and any permit issued under this act; (2) procedures to suspend
22 operation of such generators, transporters or facilities as may be
23 required to protect the public health and safety or the environment;
24 and (3) appropriate measures to insure that any use of a hazardous
25 waste disposal facility after closure will not endanger the public
26 health or safety or the environment.

27 (m) Adopt rules and regulations establishing standards for haz-
28 ardous waste generators including, but not limited to, notification of
29 hazardous waste generation, reporting, recordkeeping, labeling, con-
30 tainerization, source separation, storage, manifests, monitoring, sam-
31 pling and analysis and manner of filing notifications, reports and
32 manifests.

33 (n) Adopt rules and regulations prescribing the form of the man-
34 ifest and requiring such manifest to accompany any hazardous waste
35 collected, transported, treated, recovered or disposed of, and pre-
36 scribing the contents of the manifest which shall include, but not
37 be limited to, the quantity and composition of the hazardous waste,
38 generator, transporter, destination, facility and the manner of signing
39 and filing of the manifest and for the maintenance of records.

40 (o) Adopt rules and regulations establishing standards for routes
41 used for transporting hazardous waste within the state with the con-
42 currence of the state corporation commission. Such standards shall
43 be consistent with those of the United States department of trans-

1 portation and the state corporation commission, with respect to trans-
2 portation of hazardous materials. Motor vehicles which are used for
3 the transportation of hazardous waste in accordance with this act
4 shall be exempt from the requirements of K.S.A. 66-1,108 *et seq.*
5 and amendments thereto, and any rules and regulations adopted
6 thereunder pertaining to routes which shall be under the jurisdiction
7 of the secretary as provided in this act including any rules and
8 regulations adopted thereunder. Otherwise such motor vehicles shall
9 be subject to the requirements of K.S.A. 66-1,108 *et seq.* and amend-
10 ments thereto, and any rules and regulations adopted thereunder.

11 (p) Adopt rules and regulations establishing standards for trans-
12 porters of hazardous waste including, but not limited to, notification
13 of hazardous waste transport, manifests, labeling, recordkeeping and
14 the filing of reports.

15 (q) Adopt rules and regulations establishing standards and pro-
16 cedures to protect public health and the environment from any
17 release of hazardous waste into the environment and to insure the
18 prompt correction of any such release and damage, resulting there-
19 from by the person transporting, handling or managing such haz-
20 ardous waste.

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

28 (s) Adopt rules and regulations establishing a permit system
29 which includes standards for facilities and procedures for imple-
30 mentation of a permit system for the construction, alteration, or
31 operation of a hazardous waste treatment, storage or disposal facility
32 including, but not limited to, content of applications, evidence of
33 financial responsibility, existing hydrogeological characteristics, en-
34 vironmental assessment, training of personnel, maintenance of op-
35 erations, qualifications of ownership, continuity of operation, public
36 notification and participation and compliance with those standards
37 established pursuant to subsection (t).

38 (t) Adopt rules and regulations establishing minimum standards
39 for the design, location, construction, alteration, operation, termi-
40 nation, closing and long-term care of facilities for the treatment,
41 storage or disposal of hazardous waste including, but not limited to,
42 notification of hazardous waste treatment, storage or disposal, general
43 facility standards, contingency plans, emergency procedures, mani-

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1 fest system, recordkeeping, inspections, monitoring, reporting, clo-
2 sure and postclosure plans and financial requirements. The operator
3 of the facility shall be responsible for long-term care of the facility
4 for 30 years after closure of the facility except that the secretary
5 may modify the long-term care requirements for any facility when
6 all hazardous waste is removed from the facility at closure. The
7 secretary may extend the long-term care responsibility of any op-
8 erator of a facility as the secretary may deem necessary to protect
9 the public health and safety or the environment. Any person ac-
10 quiring rights of possession or operation of any facility permitted by
11 the secretary for the treatment, storage or disposal of hazardous waste
12 at any time after the facility has begun to accept waste and prior to
13 the end of the required period of long-term care shall be subject to
14 all of the requirements, terms and conditions of the permit for the
15 facility including all requirements relating to long-term care of the
16 facility. The sale or acquisition of a hazardous waste disposal facility
17 during the long-term care period shall be subject to the assignment
18 of long-term care responsibilities as determined by the secretary.

19 (u) Adopt rules and regulations establishing a schedule of annual
20 fees to be paid to the secretary by: (1) *Permittees Persons owning*
21 *or operating hazardous waste treatment, storage or disposal facilities;*
22 *(2) hazardous waste transporters; or (3) hazardous waste generators*
23 *producing or bringing into existence hazardous waste in Kansas. The*
24 *fees shall be for monitoring facilities both during and after operation,*
25 *for monitoring generators of hazardous waste in Kansas and for mon-*
26 *itoring the transportation of hazardous wastes. The fees shall be*
27 *sufficient to reimburse the cost of the state in performing these*
28 *monitoring responsibilities. The fee established under this subsection*
29 *for each hazardous waste disposal facility shall not exceed \$25,000*
30 *\$50,000 annually. In setting fees, the secretary may exempt those*
31 *fees which would be payable by generators for hazardous waste which*
32 *is treated to recover substantial amounts of either energy or materials*
33 *from hazardous wastes. The secretary shall remit at least monthly*
34 *any moneys collected from such fees to the state treasurer. Upon*
35 *receipt of any such remittance, the state treasurer shall deposit the*
36 *entire amount thereof in the state treasury to the credit of the state*
37 *general fund.*

38 (v) (1) Adopt rules and regulations establishing a schedule of fees
39 to be paid to the secretary by permittees operating hazardous waste
40 disposal facilities. In establishing fees, the secretary shall give con-
41 sideration to degree of hazard, costs of treatment and disposal, es-
42 timated future receipts and estimated future expenses to the state
43 for monitoring, maintenance and supervision of the facilities after

1 closure. Fees shall be in an amount of not to exceed \$.25 per cubic
2 feet \$.01 per pound of hazardous waste disposed of. Each permittee,
3 as an advance payment of the fees authorized under this subsection,
4 shall remit to the secretary an amount to be established by the
5 secretary not to exceed \$25,000 upon request and notification by
6 the secretary that an initial application for a permit or initial renewal
7 thereof has been approved, subject to receipt of the advance pay-
8 ment. Commencing with the second renewal, no advance payment
9 shall be required. The advance payment shall constitute a credit
10 against any fee which may be assessed pursuant to this subsection.
11 (2) The secretary shall remit *at least monthly* any moneys col-
12 lected pursuant to this subsection to the state treasurer to be de-
13 posited. *Upon receipt of any such remittance, the state treasurer*
14 *shall deposit the entire amount thereof* in the state treasury and
15 credited to the *credit of the hazardous waste perpetual care trust*
16 fund, which fund is hereby limited to the following uses: (A) Payment
17 of extraordinary costs of monitoring a permitted hazardous waste
18 disposal facility after the responsibility of the operator has terminated;
19 (B) payment of costs of repairing a hazardous waste disposal facility,
20 as a result of a postclosure occurrence which poses a substantial
21 hazard to public health or safety or to the environment. If an ex-
22 penditure made under this subsection would not have been necessary
23 had the person responsible for the operation or long-term care of
24 the permitted hazardous waste disposal facility complied with the
25 requirements of a plan of operation approved by the secretary when
26 the permit was issued, a cause of action in favor of the *hazardous*
27 *waste perpetual care trust* fund shall be accrued to the state of
28 Kansas against such person, and the secretary shall take such action
29 as is appropriate to enforce this cause of action by recovering any
30 amounts so expended. The net proceeds of any such recovery shall
31 be ~~paid into~~ *deposited in the state treasury and credited to the*
32 *hazardous waste perpetual care trust* fund; and (C) on an emergency
33 basis up to 20% of the balance in the hazardous waste perpetual
34 care trust fund may be allocated for investigation, engineering and
35 construction related to the removal, treatment and disposal of haz-
36 ardous waste disposed of in any hazardous waste disposal facility
37 closed prior to the date of this act, when such hazardous waste
38 is found to pose an imminent and substantial risk to the public health
39 or safety or the environment.
40 (3) The pooled money investment board may invest and
41 reinvest moneys in the perpetual care trust fund established
42 under this subsection in obligations of the United States or
43 obligations the principal and interest of which are guaranteed

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1 by the United States or in interest-bearing time deposits in any
 2 commercial bank located in Kansas or, if the board determines
 3 that it is impossible to deposit such moneys in such time de-
 4 posits, in repurchase agreements of less than 30 days' duration
 5 with a Kansas bank or with a primary government securities
 6 dealer which reports to the market reports division of the fed-
 7 eral reserve bank of New York for direct obligations of, or
 8 obligations that are insured as to principal and interest by, the
 9 United States government or any agency thereof. Any income
 10 or interest earned by such investments shall be credited On or
 11 before the 10th day of each month, the director of accounts and
 12 reports shall transfer from the state general fund to the hazardous
 13 waste perpetual care trust fund the amount of money certified by
 14 the pooled money investment board in accordance with this para-
 15 graph. Prior to the 10th day of each month, the pooled money
 16 investment board shall certify to the director of accounts and reports
 17 the amount of money equal to the proportionate amount of all the
 18 interest credited to the state general fund for the preceding month,
 19 pursuant to K.S.A. 75-4210a and amendments thereto, that is at-
 20 tributable to moneys in the hazardous waste perpetual care trust
 21 fund. Such amount of money shall be determined by the pooled
 22 money investment board based on: (A) The average daily balance of
 23 moneys in the hazardous waste perpetual care trust fund during the
 24 preceding month as certified to the board by the director of accounts
 25 and reports and (B) the average interest rate on time deposit, open
 26 accounts for that period as determined under K.S.A. 75-4212 and
 27 amendments thereto. On or before the fifth day of each month, the
 28 director of accounts and reports shall certify to the pooled money
 29 investment board the average daily balance of moneys in the haz-
 ardous waste perpetual care trust fund during the preceding month.

(4) All expenditures from the hazardous waste perpetual care trust
 32 fund shall be made in accordance with appropriation acts upon war-
 33 rants of the director of accounts and reports issued pursuant to
 34 vouchers approved by the secretary for the purposes set forth in
 35 this subsection.

(w) (1) Adopt rules and regulations establishing a schedule of
 36 fees to be paid to the secretary by applicants for permits to construct,
 37 modify or operate a hazardous waste facility. The fees established
 38 under this subsection shall not exceed ~~\$175,000~~ \$125,000 for each application
 39 submitted. These fees shall be based upon resources required to
 40 review the application, the type of facility, quantity of waste pro-
 41 cessed, type of waste processed, degree of hazard and potential
 42 impact upon human health and environment.
 43

1 (2) The secretary shall remit at least monthly any money collected
 2 pursuant to this subsection to the state treasurer. Upon receipt of
 3 any such remittance, the state treasurer shall deposit the entire
 4 amount thereof in the state treasury to the credit of the environ-
 5 mental permit fund, which fund is hereby established in the state
 6 treasury. Moneys in the environmental permit fund may be expended
 7 for the following purposes: (A) Technical reviews of applications for
 8 permits including permit modifications and permit renewals for haz-
 9 arduous waste facilities; (B) ~~evaluating options available to applicants~~
 10 ~~for minimizing the generation of hazardous wastes;~~ (C) completing
 11 background investigations of applicants pursuant to subsection (c)
 12 of K.S.A. 65-3437 and amendments thereto; ~~(D) completing the site~~ or (C)
 13 ~~investigations pursuant to subsection (d) of K.S.A. 65-3437 and~~
 14 ~~amendments thereto; or (E) assuring that the permittee fulfills all~~
 15 ~~permit conditions during the effective period of the permit.~~

16 (3) On or before the 10th day of the month following the month
 17 in which moneys are first credited to the environmental permit fund,
 18 and monthly thereafter on or before the 10th day of the month, the
 19 director of accounts and reports shall transfer from the state general
 20 fund to the environmental permit fund, the amount of money certified
 21 by the pooled money investment board in accordance with this par-
 22 agraph. Prior to the 10th day of the month following the month in
 23 which moneys are first credited to the environmental permit fund,
 24 and monthly thereafter prior to the 10th day of the month, the
 25 pooled money investment board shall certify to the director of ac-
 26 counts and reports the amount of money equal to the proportionate
 27 amount of all the interest credited to the state general fund for the
 28 preceding month, pursuant to K.S.A. 75-4210a and amendments
 29 thereto, that is attributable to moneys in the environmental permit
 30 fund. Such amount of money shall be determined by the pooled
 31 money investment board based on: (A) The average daily balance of
 32 moneys in the environmental permit fund during the preceding month
 33 as certified to the board by the director of accounts and reports
 34 and (B) the average interest rate on time deposit, open accounts for
 35 that period as determined under K.S.A. 75-4212 and amendments
 36 thereto. On or before the fifth day of the month following the month
 37 in which moneys are first credited to the environmental permit fund,
 38 and monthly thereafter on or before the fifth day of the month, the
 39 director of accounts and reports shall certify to the pooled money
 40 investment board the average daily balance of moneys in the envi-
 41 ronmental permit fund during the preceding month.

42 (4) All expenditures from the environmental permit fund shall
 43 be made in accordance with appropriation acts upon warrants of

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1 the director of accounts and reports issued pursuant to vouchers
2 approved by the secretary for the purposes set forth in this
3 subsection.

4 (x) (1) Adopt rules and regulations establishing a schedule of fees
5 to be paid to the secretary by off-site hazardous waste treatment
6 and disposal facilities. In establishing fees, the secretary shall give
7 consideration to the degree of hazard, quantity of waste, costs of
8 treatment or disposal, and estimated future receipts. Fees shall be
9 in an amount not to exceed \$.01 per pound of hazardous waste
10 treated, except that in no event shall the fees established under this
11 subsection for treatment of hazardous waste exceed a total amount
12 of ~~of \$100,000~~ per year for any such facility, and in an amount not
13 to exceed \$.05 per pound of hazardous waste disposed of. \$200,000

14 (2) The secretary shall remit at least monthly any money collected
15 pursuant to this subsection to the state treasurer. Upon receipt of
16 any such remittance, the state treasurer shall deposit the entire
17 amount thereof in the state treasury to the credit of the environ-
18 mental permit fund, except that 25% of any such deposit shall be
19 deposited to the credit of the hazardous waste collection fund until
20 \$150,000 has been credited to the hazardous waste collection fund
21 during a fiscal year and thereafter 100% of any such deposit shall
22 be credited to the environmental permit fund during such fiscal year.

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

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

32 (y) (aa) Adopt rules and regulations concerning the generation,
33 transportation, storage, blending, marketing, burning and types of
34 hazardous waste for which any method, technique or process to
35 recover energy will be considered hazardous waste treatment. Such
36 rules and regulations should specify a minimum heat value of the
37 waste so as to ensure that a legitimate energy recovery will occur
38 and should consider other characteristics of the waste which are
39 appropriate to ensure that such method, technique or process for
40 energy recovery will not pose a threat to the public health or
41 environment.

42 ~~(bb) Any facility which recycles and utilizes hazardous waste~~
43 ~~primarily to recover useful energy, including but not limited to the~~

6-12

1 ~~incineration of hazardous waste in kilns to recover energy for use~~
2 ~~in the commercial production of cement, is exempt from all fees~~
3 ~~established under this section.~~

4 Sec. 2. K.S.A. 65-3437 is hereby amended to read as follows:
5 65-3437. (a) No person shall construct, modify or operate a hazardous
6 waste facility or otherwise dispose of hazardous waste within this
7 state without a permit from the secretary.

8 (b) The application for a permit shall contain the name and ad-
9 dress of the applicant, the location of the proposed facility and other
10 information considered necessary by the secretary, including proof
11 of financial capability. ~~For initial review of an application for a~~
12 ~~hazardous waste underground injection well, the applicant shall~~
13 ~~submit an application fee not to exceed \$25,000 with the permit~~
14 ~~application. After the initial review of a permit application, the~~
15 ~~secretary shall determine the cost of such review. If the cost~~
16 ~~is less than the application fee required by this subsection, the~~
17 ~~secretary shall refund to the applicant the amount which ex-~~
18 ~~ceeds the cost of review. In cases of a permitted facility sub-~~
19 ~~mitting an application for the construction and operation of an~~
20 ~~additional well on the permitted site, the permit fee shall not~~
21 ~~exceed \$10,000. For renewal of a hazardous waste underground~~
22 ~~injection well permit, the permit holder shall submit a permit~~
23 ~~renewal fee not to exceed \$10,000, the amount of which shall~~
24 ~~be determined by the secretary.~~

25 (c) Before reviewing any application for permit, the secretary
26 shall conduct a background investigation of the applicant. The sec-
27 retary shall consider the financial, technical and management ca-
28 pabilities of the applicant as conditions for issuance of a permit. The
secretary may reject the application without conducting an investi-
gation into the merits of the application if the secretary finds that:

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

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

35 (3) the applicant failed or continues to fail to comply with any
36 of the provisions of the air, water or waste statutes, including rules
37 and regulations issued thereunder, relating to environmental pro-
38 tection or to the protection of public health in this or any other
39 state or the federal government of the United States, or any condition
40 of any permit or license issued by the secretary; or if the secretary
41 finds that the applicant has shown a lack of ability or intention to
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1 comply with any provision of any law referred to in this subsection
2 or any rule or regulation or order or permit issued pursuant to any
3 such law as indicated by past or continuing violations.

4 In case of a corporate applicant, the secretary may deny the is-
5 suance of a permit if the secretary finds that the applicant or any
6 person who holds an interest in, or exercises total or partial control
7 of or does business with the applicant or a principal of the corporation
8 was a principal of another corporation which would not be eligible
9 to receive a permit because of the provisions of this act.

10 (d) Upon receipt of a permit application meeting the require-
11 ments of this section, the secretary or an authorized representative
of the secretary shall inspect the location of the proposed facility
14 and determine if the same complies with this act and the rules and
15 regulations promulgated under this act. An inspection report shall
16 be made available for public review.

17 ~~Sec. 3. K.S.A. 65-3437 and K.S.A. 1990 Supp. 65-3431 are~~ 4
18 ~~hereby repealed.~~ 5

19 Sec. 4. This act shall take effect and be in force from and after
20 its publication in the statute book.

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5
K.S.A. 65-3438

New Section 3.

65-3438. Same; secretary's decision on permit application; time period, extensions. The secretary shall make a final decision on a permit application which does not require approval of the board within 240 days of the receipt of the application unless the time for such decision has been extended by the applicant in writing or by rules and regulations adopted by the secretary for the issuance of permits under this act. In the issuance of such permits, the secretary may include conditions specifically applicable to the operation of the facility. No local ordinance, permit or other requirements may prohibit operation of a facility having a permit under this act.

original application for permit filed by the applicant at the secretary's office unless 1) the secretary finds in writing that the application is too complex to review within 240 days, in which case the period provided herein shall be 480 days; 2) ; or 3) the period for review has been extended.

In promulgating such regulations, the secretary may exclude from the total days time waiting for a response from the applicant.

History: L. 1981, ch. 251, § 10; July 1.

For purposes of this act, "receipt of the application" shall mean the initial receipt of the application for permit, whether or not such application subsequently is modified.