

Carl Dean Holmes
Approved: January 25, 1994
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:30 p.m. on January 10, 1994 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Mary Torrence, Revisor of Statutes
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Charles Jones, KS Dept of Health & Environment
Steve Hurst, Director, KS Water Office

Others attending: See attached list

Chairman Carl Holmes called the meeting to order. Following an introduction by all committee members Chairman Holmes announced the bus to tour Jeffrey Energy Center would leave at 12:00 noon on the south side of the Capitol and members would arrive back at the Capitol in ample time to attend the Governor's State of the State message. He further announced that Thursday, January 13, would be the last day for committee and agency bill requests.

Charles Jones. Mr. Jones spoke briefly to the Committee on the issue of preventing contaminant pollutions into the environment. He invited the Committee members to visit the Hallmark Cards plant in Topeka, stating they have a good pollution control plan. It was the consensus of the Committee that they would attempt to schedule a tour of Hallmark, perhaps during the lunch hour sometime during this Session.

Chairman Holmes asked Mary Torrence from the Revisor's office to give a brief review of six interim committee bills. The Chairman plans hearings on these bills the week of January 17. The bills are as follows: (a copy of these bills are available in the Revisor's office)

3 RS 1371: (See Attachment #1) An act concerning contamination remediation; establishing a program to provide loans to certain municipalities and state agencies for payment of certain costs of contamination remediation projects; authorizing the issuance of bonds.

3 RS 1692 : (See Attachment #2) An act concerning oil and gas; relating to location of certain wells, repealing the existing section in KSA 1993 Supp. 55-150.

3 RS 1706: (See Attachment #3) An act concerning solid waste, repealing the existing section of KSA 1993 Supp. 65-3407.

3 RS 1654: (See Attachment #4) An act concerning pollution control, relating to regulation of certain sludges; requiring certain permits, repealing several sections of the KSA law.

Representative Hendrix moved to incorporate the ideas of the Department with the original draft RS 1654, along with his proposal that includes some of the concerns with respect to the rules and regulations related to sludge. Seconded by Representative Freeborn. The motion carried.

3 RS 1509: (See Attachment #5) An act concerning asbestos and lead control, establishing a program to provide loans to certain municipalities and state agencies for payment of certain costs of asbestos and lead control projects; authorizing the issuance of bonds.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on January 10, 1994.

3 RS 1694: (See Attachment #6) An act concerning certain incinerators; providing for regulation thereof; amending KSA 1993 Supp. 65 -3402

With reference to the Federal Energy Policy Act, Chairman Holmes stated it is his intent to form a subcommittee and he and Representative Ken Groteweil will serve, along with three more members to be appointed. This committee will address federal issues, as well as current law.

Hearing and Action on HB 2561: (See Attachment #7)

Ms. Torrence reviewed **HB 2561**, explaining this bill would authorize establishment of a tipping fee in a segregated fund with the county treasurer's office, assuring those monies will be used for tipping fees only. The fund shall be used only for payment of costs of closure and postclosures.

Representative Shore made a motion to have the provision of a protest petition by the citizens who are effected by the additional tax for the tipping fee to have the right to bring it to a vote of the people. The motion includes that protest the petition must be signed by at least 5% of the members of those people voting for the Secretary of State at the previous election. Seconded by Representative Freeborn. Motion failed.

Representative Myers made a motion to insert into the bill that the tipping fee shall not be more than 10% of the existing operating fee. Motion failed for lack of a second.

Representative McClure made the motion that on Line 16 of **HB 2561** read "adopted pursuant to this section, a 'reasonable' solid waste tonnage fee for each." Motion failed for lack of a second.

Representative Groteweil moved that the bill be passed out favorably. Representative McClure seconded. Motion carried.

During discussion of the above bill Charles Jones informed the committee he is available at any time at the two following numbers: (Office) 913/296 1535 and (Home) 913/841 4598.

Hearing and Action on HB 2562: (See Attachment #8)

Representative Lloyd made the motion to add an amendment to **HB 2562**, Page 3, Section 4, new sub section (b) 2, to read: "exclude from the priority list any project related to the diversion or transportation of water acquired through a water transfer, as defined by KSA 82a-1501 and amendments thereto;" and renumber subsection (2) to (3) and subsection (3) to (4)." Motion was seconded by Representative Alldritt. Motion carried.

Representative Lloyd made a motion to amend on Page 4, Line 25 to strike the language "and may be provided interest free." Representative Alldritt seconded the motion. Motion carried.

Representative Lloyd moved that **HB 2562** be passed out favorably, as amended. Representative Hendrix seconded the motion. Motion passed. Representative Betty Jo Charlton made the request to be recorded as abstaining because she believed that taking action on the bill might conflict with the rules of the House.

Hearing and Action on HB 2563: (See Attachment #9)

Steve Hurst provided explanation **HB 2563**.

Representative Powers moved to adopt an amendment **HB 2563**, adding the following language to Line 14, "or any loans made by the pooled money investment board" and on Line 9, by adding "or loans made by the pooled money investment board" Motion seconded by Representative Groteweil. Motion carried.

Representative Hendrix moved that the bill be passed out favorably, as amended. Representative Groteweil seconded the motion. Motion carried. Representative Betty Jo Charlton asked to be recorded as abstaining because she believed that taking action on the bill might conflict with the rules of the House.

Chairman Holmes announced that he plans to appoint a five-member subcommittee whose charge will be to work with the Appropriations Committee to assure the acquisition of water storage supply capacity in federal reservoirs as outlined in **HB 2563**.

Upon completion of its business, meeting adjourned at 5:20 p.m.

The next meeting is scheduled for January 12, 1994 .

HOUSE BILL NO. _____

By Committee on Energy and Natural Resources

AN ACT concerning contamination remediation; establishing a program to provide loans to certain municipalities and state agencies for payment of certain costs of contamination remediation projects; authorizing the issuance of bonds.

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

Section 1. As used in this act:

(a) "Contamination remediation project" means action consistent with permanent remedy taken to prevent or minimize contamination of soil or groundwater by a substance which, after release into the environment and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(b) "Fund" means the contamination remediation loan fund established by section 2.

(c) "Municipality" means any city, county, township or unified school district.

(d) "Project costs" means all costs or expenses which are necessary or incident to a contamination remediation project and which are directly attributable thereto.

(e) "Secretary" means the secretary of health and environment.

Sec. 2. (a) There is hereby established in the state treasury the contamination remediation loan fund.

(b) Moneys from the following sources shall be credited to the fund:

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(1) Amounts received by the state from the federal government for the purposes of the fund;

(2) amounts appropriated or otherwise made available by the legislature for the purposes of the fund;

(3) proceeds derived from the sale of bonds issued by the Kansas development finance authority for the purposes of the fund to the extent provided in any agreement entered into by the secretary and the authority;

(4) amounts of repayments of loans made under this act, together with payments of interest thereon, in accordance with agreements entered into by the borrower and the secretary;

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

(6) amounts received from any public or private entity for the purposes of the fund.

(c) Subject to the conditions and in accordance with the requirements of this act, moneys credited to the fund shall be used only:

(1) To make loans to state agencies and municipalities for payment of all or part of the costs to such agencies and municipalities for contamination remediation projects;

(2) as a source of revenue or security for the payment of principal and interest on bonds issued by the Kansas development finance authority if, and to the extent that, the proceeds of the sale of such bonds are deposited in the fund;

(3) to earn interest on moneys in the fund; and

(4) for the reasonable costs, as determined by the secretary, of administering the fund and conducting activities under this act. Such costs shall be identified annually in development of the intended use plan as described in section 5.

(d) On the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the contamination remediation loan fund, the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th day of each month, the pooled

money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding period of time specified under this subsection, pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable to money in the contamination remediation loan fund. Such amount of money shall be determined by the pooled money investment board based on:

(1) The average daily balance of moneys in the contamination remediation loan fund during the period of time specified under this subsection as certified to the board by the director of accounts and reports; and

(2) the average interest rate on repurchase agreements of less than 30 days' duration entered into by the pooled money investment board for that period of time. On or before the fifth day of the month for the preceding month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the contamination remediation loan fund for the period of time specified under this subsection.

(e) All payments and disbursements from the fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary. All payments and disbursements from the fund, and beginning and ending balances thereof, shall be subject each year to post audit in accordance with article 11 of chapter 46 of the Kansas Statutes Annotated.

Sec. 3. The secretary shall administer the provisions of this act and shall be responsible for administration and management of the fund. The secretary is hereby authorized to:

(a) Enter into binding commitments for the provision of loans in accordance with the provisions of this act;

(b) review applications of state agencies and municipalities for loans and select the contamination remediation projects for which loans will be made available;

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(c) provide the governor and the legislature an annual report prepared in accordance with section 9 and with copies of the audit required under section 2; and

(d) adopt rules and regulations necessary for effectuation of the provisions of this act.

Sec. 4. (a) There is hereby established a project priority advisory committee consisting of nine members as follows:

(1) The director of the division of environment of the department of health and environment, or the director's designee;

(2) the director of the division of health of the department of health and environment, or the director's designee;

(3) the director of the Kansas water office, or the director's designee;

(4) the chief engineer of the division of water resources of the state board of agriculture, or the chief engineer's designee;

(5) the chairperson of the state corporation commission or the chairperson's designee;

(6) one member appointed by the governor from among three persons nominated by environmental interest groups;

(7) one member appointed by the governor from among three persons nominated by river basin advisory boards;

(8) one member appointed by the governor from among three persons nominated by the Kansas chamber of commerce and industry; and

(9) one member appointed by the governor from among three persons nominated by state universities under the board of regents.

(b) Members listed in subsections (a)(1) through (a)(5) shall serve ex officio. Of the members first appointed pursuant to subsections (a)(6) through (a)(9), one shall serve for a term expiring June 30, 1995; one for a term expiring June 30, 1996; and two for terms expiring June 30, 1997. Thereafter, a member appointed by the governor shall serve for a term expiring on June 30 of the third year following expiration of the term of the member's predecessor. A member shall serve until a successor is

appointed and qualifies. In case of a vacancy, a person of like qualifications shall be appointed by the governor to fill the unexpired term. No member shall be appointed to serve more than two full terms.

(c) The committee shall select a chairperson and a secretary from among the membership of the committee.

(d) The committee shall meet at least one time each fiscal year and not more than four times each fiscal year. The first meeting of the committee shall be called by the secretary. Thereafter, the committee shall meet on call of the chairperson or at the request of a majority of the members of the committee.

(e) Members of the committee shall receive amounts provided for by subsection (e) of K.S.A. 75-3223 and amendments thereto for each day of attendance at any meeting of the committee. Such amounts shall be paid from the fund.

(f) The committee shall make recommendations to the secretary regarding the priority system and priority list to be developed by the secretary pursuant to section 5, shall advise the secretary on the selection of projects for which loans will be made available under this act and shall assist the secretary in preparing the plan provided for by section 6.

Sec. 5. (a) Taking into consideration the recommendations of the project priority advisory committee, the secretary shall develop a priority system for contamination remediation projects, establish ranking criteria therefor, review applications of state agencies and municipalities for loans and prepare an annual contamination remediation project priority list. The priority list shall include a description of each contamination remediation project; the purpose, cost and schedule therefor; and the state agency or municipality applying for the loan. After preparation of the priority list and upon consultation with the project priority advisory committee, the secretary shall select from such list the contamination remediation projects for which loans will be made available.

(b) In performing the functions and duties required by

subsection (a), the secretary shall:

(1) Include on the list only contamination remediation projects to prevent or minimize contamination by a release from a source owned or operated by a state agency or municipality at the time of the release unless the secretary determines that: (A) The source is owned or operated by a state agency or municipality at the time of the contamination remediation project; and (B) the state agency or municipality has made reasonable efforts to identify and hold responsible for the costs of remediation each owner or operator of the source at the time of the release;

(2) ensure that a fair proportion, at least but not limited to 10%, of the total dollar amount of loans to be made available from the fund in each year will be made available for contamination remediation projects of municipalities having populations of 5,000 or less. If the municipalities to which this subsection applies are unable to utilize the total amount made available under this subsection, the secretary is authorized to make the unused amount available for other contamination remediation projects on the priority list.

Sec. 6. After providing for public comment and review each year and with the assistance of the project priority advisory committee, the secretary shall prepare a plan identifying the intended uses of the moneys available in the fund. The intended use plan shall include, but not be limited to:

- (a) The contamination remediation project priority list;
- (b) a description of the short- and long-term goals and objectives of the fund;
- (c) information on the contamination remediation projects to be financed, including a description thereof, the terms of loans to be provided and the state agencies and municipalities receiving the loans; and
- (d) the criteria and method established for the provision of loans to be made from the fund.

Sec. 7. (a) State agencies and municipalities which desire the provision of a loan under this act shall submit an

application therefor to the secretary. Applications shall be in such form and shall include such information as the secretary requires and shall be submitted in a manner and at a time to be determined by the secretary.

(b) The secretary may enter into agreements with any state agency or municipality for the provision of a loan thereto for payment of all or a part of contamination remediation project costs and any state agency or municipality may enter into such an agreement and may accept such loan when so authorized in accordance with law. The purposes of the loan to be provided, the amount thereof, the interest rate thereon and the repayment terms and conditions thereof, all of which may vary among state agencies and municipalities, shall be included in the agreements. Loans shall be provided at or below market interest rates and may be provided interest free. All such agreements with municipalities shall require that municipalities establish a dedicated source of revenue for repayment of the loans as provided in section 8. Such agreements shall further provide that repayment of any loan received shall begin not later than one year after completion of the contamination remediation project and that such loan shall be repaid in full no later than 20 years thereafter.

(c) If a state agency or municipality to which a loan is made available under this act fails to enter into an agreement with the secretary for the provision of such loan in accordance with the requirements of this act, the secretary may make the amount of the loan available for one or more other contamination remediation projects on the priority list.

(d) The secretary shall provide any state agency or municipality, upon request, with technical advice and assistance regarding a contamination remediation project or an application for a loan for the payment of all or part of project costs.

Sec. 8. (a) The dedicated source of revenue for repayment of a loan to a municipality may include property taxes, grants or any other source of revenue lawfully available to the

municipality for such purpose.

(b) Upon the failure of a municipality to meet the repayment terms and conditions of the agreement, the secretary may order the treasurer of the county in which the municipality is located to pay to the secretary such portion of the municipality's share of the local ad valorem tax reduction fund as may be necessary to meet the terms of the agreement, notwithstanding the provisions of K.S.A. 79-2960 and 79-2961, and amendments thereto. Upon the issuance of such an order, the municipality shall not be required to make the tax levy reductions otherwise required by K.S.A. 79-2960 and 79-2961, and amendments thereto.

(c) State agencies and municipalities which are provided with loans under this act shall maintain project accounts in accordance with generally accepted government accounting standards.

(d) Any loans received by a municipality under the provisions of this act shall be construed to be bonds for the purposes of K.S.A. 10-1116 and 79-5028, and amendments thereto, and the amount of such loans shall not be included within any limitation on the bonded indebtedness of the municipality.

Sec. 9. The secretary shall prepare an annual report describing how the state has met the goals and objectives for the previous year as identified in the intended use plan prepared pursuant to section 6.

Sec. 10. The activities of the secretary in administering and performing the powers, duties and functions prescribed by the provisions of this act from the proceeds of bonds issued for such purpose by the Kansas development finance authority are hereby approved for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of such bonds by the Kansas development finance authority in accordance with that statute. The provisions of subsection (a) of K.S.A. 74-8905 and amendments thereto shall not prohibit the issuance of bonds for such purposes when so authorized and any such issuance of bonds is exempt from the provisions of subsection (a) of

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K.S.A. 74-8905 and amendments thereto.

Sec. 11. Nothing in this act shall establish or create any liability or responsibility on the part of the state, or any officer, employee or agency of the state, for damages arising from the conduct of, or failure to conduct, any contamination remediation project.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL NO. _____

By Committee on Energy and Natural Resources

AN ACT concerning oil and gas; relating to location of certain wells; amending K.S.A. 1993 Supp. 55-150 and repealing the existing section.

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

Section 1. K.S.A. 1993 Supp. 55-150 is hereby amended to read as follows: 55-150. As used in this act unless the context requires a different meaning:

(a) "Commission" means the state corporation commission₇.

(b) "Contractor" means any person who acts as agent for an operator as a drilling, plugging, service rig or seismograph contractor in such operator's oil and gas operations₇.

(c) "Disposal well" means a well described in subsection (k)(4).

~~(e)~~ (d) "Fresh water" means water containing not more than 1,000 milligrams per liter, total dissolved solids₇.

(e) "Injection well" means a well described in subsection (k)(2).

(f) "Municipal water supply system" means a public water supply system, as defined by K.S.A. 65-162 and amendments thereto, owned or operated by a city, water district or other political or taxing subdivision of the state.

~~(d)~~ (g) "Operator" means a person who is responsible for the physical operation and control of a well₇.

~~(e)~~ (h) "Person" means any natural person, partnership, governmental or political subdivision, firm, association, corporation or any other legal entity₇.

~~(f)~~ (i) "Rig" means any crane machine used for drilling or plugging wells₇.

~~(g)~~ (j) "Usable water" means water containing not more than 10,000 milligrams per liter, total dissolved solids₇.

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~~(h)~~ (k) "Well" means a hole drilled for the purpose of:

- (1) Producing oil or gas;
- (2) injecting fluid, air or gas in the ground in connection with the exploration for or production of oil or gas;
- (3) obtaining geological information in connection with the exploration for or production of oil or gas by taking cores or through seismic operations;
- (4) disposing of fluids produced in connection with the exploration for or production of oil or gas; or
- (5) providing cathodic protection to prevent corrosion to lines.

New Sec. 2. (a) On and after the effective date of this act, no operator shall drill a disposal well or injection well within five miles of any reservoir, watercourse or well supplying water to a municipal water supply system unless the operator first obtains the approval of the governing body of the municipality and provides to the commission such evidence of the approval as required by the commission.

(b) On and after the effective date of this act, no operator shall inject any fluid or solid for enhanced recovery or disposal purposes into any well, other than a disposal well or injection well, located within five miles of any reservoir, watercourse or well supplying water to a municipal water supply system unless the operator first obtains the approval of the governing body of the municipality and provides to the commission such evidence of the approval as required by the commission.

Sec. 3. K.S.A. 1993 Supp. 55-150 is hereby repealed.

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

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HOUSE BILL NO. _____

By Committee on Energy and Natural Resources

AN ACT concerning solid waste management; amending K.S.A. 1993
Supp. 65-3407 and repealing the existing section.

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

Section 1. K.S.A. 1993 Supp. 65-3407 is hereby amended to read as follows: 65-3407. (a) It shall be unlawful for any person to construct, alter or operate a solid waste processing facility or a solid waste disposal area of a solid waste management system, except for clean rubble disposal sites, without first obtaining a permit from the secretary.

(b) Every person desiring to obtain a permit to construct, alter or operate a solid waste storage, treatment or processing facility or disposal area shall make application for such a permit on forms provided for such purpose by the rules and regulations of the secretary and shall provide the secretary with such information as necessary to show that the facility or area will comply with the purpose of this act. Upon receipt of any application and payment of the application fee, the secretary, with advice and counsel from the local health authorities and the county commission, shall make an investigation of the proposed solid waste processing facility or disposal area and determine whether it complies with the provisions of this act and any rules and regulations and standards adopted thereunder. The secretary also may consider the need for the facility or area in conjunction with the county or regional solid waste management plan. When the investigation reveals that the facility or area does conform with the provisions of the act and the rules and regulations and standards adopted thereunder the secretary shall approve the application and shall issue a permit for the operation of each solid waste processing or disposal facility or area set forth in the application. In the event that the facility

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or area fails to meet the rules and regulations and standards required by this act the secretary shall issue a report to the applicant stating the deficiencies in the application. The secretary may issue temporary permits conditioned upon corrections of construction methods being completed and implemented.

(c) Before reviewing any application for permit, the secretary shall conduct a background investigation of the applicant. The secretary shall consider the financial, technical and management capabilities of the applicant as conditions for issuance of a permit. The secretary may reject the application prior to conducting an investigation into the merits of the application if the secretary finds that:

(1) The applicant currently holds, or in the past has held, a permit under this section and while the applicant held a permit under this section the applicant violated a provision of subsection (a) of K.S.A. 65-3409, and amendments thereto; or

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

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

(4) the applicant is a corporation and any principal, shareholder, or other person capable of exercising total or partial control of such corporation could be determined ineligible to receive a permit pursuant to subsection (c)(1), (2) or (3) above.

(d) Before reviewing any application for a permit, the secretary may request that the attorney general perform a comprehensive criminal background investigation of the applicant; or in the case of a corporate applicant, any principal, shareholder or other person capable of exercising total or partial control of the corporation. The secretary may reject the application prior to conducting an investigation into the merits of the application if the secretary finds that serious criminal violations have been committed by the applicant or a principal of the corporation.

(e) The fees for a solid waste processing or disposal permit shall be established by rules and regulations adopted by the secretary. The fee for the application and original permit shall not exceed \$5,000. The annual permit renewal fee shall not exceed \$2,000. No refund shall be made in case of revocation. All fees shall be deposited in the state treasury and credited to the solid waste management fund. A city, county, other political subdivision or state agency shall be exempt from payment of the fee but shall meet all other provisions of this act.

(f) Plans, designs and relevant data for the construction of solid waste processing facilities and disposal sites shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, alteration or operation of such facility or area. In adopting rules and regulations, the secretary may specify sites, areas or facilities where the environmental impact is minimal and may waive such preparation requirements provided that a review of such plans is conducted by a professional engineer licensed to practice in Kansas.

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

(h) As a condition of granting a permit to operate any processing facility or disposal area for solid waste, the secretary shall require the permittee to provide a trust fund, surety bond, cash bond, a secured trust fund, irrevocable letter of credit or insurance to pay costs of closure and postclosure cleanup, or shall require the permittee to meet a financial test established by the secretary for closure and postclosure, which test may be met by a permittee's ad valorem taxing power. In addition, the secretary shall require the permittee to provide liability insurance, including coverage against sudden and nonsudden occurrences, or any combination thereof, in such amount as determined necessary by the secretary to insure the financial responsibility of the permittee for any: (1) Operational activities contemplated by the act, rules and regulations adopted pursuant thereto, and the permit; and (2) liability incurred in the operation of the facility or area and to insure that, upon abandonment, cessation or interruption of the operation of the facility or area, all appropriate measures are taken to prevent present or future damage to human health and the environment. Any such liability insurance as may be required pursuant to this subsection or pursuant to the rules and regulations of the secretary shall be issued by an insurance company authorized to do business in Kansas or by a licensed insurance agent operating under authority of K.S.A. 40-246b, and amendments thereto, and shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance pursuant to K.S.A. 40-216, and amendments thereto, except as authorized by K.S.A. 40-246b, and amendments thereto. Nothing contained in this subsection shall be deemed to apply to any state agency or department or agency of the federal government.

(i) Permits granted by the secretary, as provided in this act: (1) Shall not be transferable; and (2) shall be revocable or subject to suspension whenever the secretary shall determine that the solid waste processing or disposal facility or area is, or has been constructed or operated in violation of this act or the

rules and regulations or standards adopted pursuant to the act, or is creating or threatens to create a hazard to persons or property in the area or to the environment, or is creating or threatens to create a public nuisance, or upon the failure to make payment of any fee required under this act. The secretary also may revoke, suspend or refuse to issue a permit when the secretary determines that past or continuing violations of the provisions of subsection (c)(3) of K.S.A. 65-3407, and amendments thereto, have been committed by a permittee, or any principal, shareholder or other person capable of exercising partial or total control over a permittee.

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

(k) (1) No permit to construct or operate a solid waste disposal area shall be issued on or after the effective date of this act if such area is located within 1/2 mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

(2) Any permit, issued before the effective date of this act, to construct or operate a solid waste disposal area is hereby declared void if such area is not yet in operation and is located within 1/2 mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

(3) The provisions of this subsection shall not be construed to prohibit: (A) Issuance of a permit for lateral expansion onto land contiguous to a permitted solid waste disposal area in operation on the effective date of this act; (B) issuance of a permit for a solid waste disposal area for disposal of a solid waste by-product produced on-site; (C) renewal of an existing permit for a solid waste area in operation on the effective date of this act; or (D) activities which are regulated under K.S.A. 65-163 through 65-165 or 65-171d, and amendments thereto.

(1) The secretary shall not: (1) Issue any permit to construct, alter or operate a solid waste processing facility or solid waste disposal area unless the facility or area will comply with all applicable zoning regulations, as defined by K.S.A. 12-742 and amendments thereto; or (2) impose standards governing the appearance, percentage of lot occupied, setback distance or other aesthetics of a solid waste processing facility or solid waste disposal area which will comply with all such zoning regulations.

Sec. 2. K.S.A. 1993 Supp. 65-3407 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL NO. _____

By Committee on Energy and Natural Resources

AN ACT concerning pollution control; relating to regulation of certain sludges; requiring certain permits; amending K.S.A. 65-161, 65-164, 65-165, 65-166, 65-166a, 65-167, 65-169, 65-170, 65-170b, 65-170g and 65-171d and repealing the existing sections.

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

Section 1. K.S.A. 65-161 is hereby amended to read as follows: 65-161. As used in this act section and in K.S.A. 65-161, 65-164, 65-165, 65-166, 65-166a, 65-167, 65-169 and 65-170, and amendments thereto:

~~{a}-"Waters-of-the-state"-means-all-streams-and-springs,-and all-bodies-of-surface-and-subsurface-waters-within-the-boundaries of-the-state,~~

(a) "Direct discharge" means the discharge of sewage into waters of the state.

(b) "Discharge" means, when used without qualification: (1) The causing or permitting of sewage to enter, either directly or indirectly, into waters of the state; or (2) the causing or permitting of municipal sewage sludge or municipal water treatment sludge to enter, either directly or indirectly, onto or into the soil of the state.

(c) "Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any nondomestic source,-and.

~~{d}--"direct--discharge"--means--the-discharge-of-sewage-into waters-of-the-state-~~

(d) "Municipal sewage sludge" means any solid, semisolid or liquid residue generated during the treatment, recycling or reclamation of human or household sewage, or such sewage mixed with other sewage, in a treatment works. Municipal sewage sludge

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includes but is not limited to domestic septage; scum or solids removed in primary, secondary or advanced waste water treatment processes; and any material derived from sewage sludge. Municipal sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of sewage in a treatment works.

(e) "Municipal water treatment sludge" means any solid, semisolid or liquid residue generated during the treatment of water in a treatment works. Municipal water treatment sludge includes but is not limited to scum or solids removed in primary, secondary or advanced water treatment processes and any material derived from water treatment sludge.

(f) "Person" means any individual, association, partnership, corporation, institution, government or other public or private entity.

(g) "Secretary" means the secretary of health and environment.

(h) "Sewage" means: (1) Any substance that contains any of the waste products or excrementitious or other discharges from the bodies of human beings or animals, or chemical or other wastes from domestic, manufacturing or other forms of industry; (2) any substance which, due to its release into the environment, is no longer capable of being used for its original purpose; (3) any municipal sewage sludge; and (4) any municipal water treatment sludge.

(i) "Soil of the state" means all soil within the boundaries of the state.

(j) "Waters of the state" means all streams and springs, and all bodies of surface and subsurface waters within the boundaries of the state.

Sec. 2. K.S.A. 65-164 is hereby amended to read as follows:
65-164. (a) ~~No--person,--company,--corporation,--institution--or municipality--shall--place-or-permit-to-be-placed-or-discharge-or permit-to-flow-into-any-of-the-waters-of-the--state--any--sewage,~~

~~except--as--hereinafter--provided~~ Except as provided by law, no person shall: (1) Discharge any sewage into any waters of this state; or (2) discharge any municipal sewage sludge or municipal water treatment sludge onto or into any soil of the state.

(b) This act shall not prevent the discharge of sewage from any public sewer system owned and maintained by a municipality or sewerage company, if such sewer system was in operation and was discharging sewage into the waters of the state on March 20, 1907, but this exception shall not permit the discharge of sewage from any sewer system that has been extended subsequent to such date, nor shall it permit the discharge of any sewage which, upon investigation by the secretary ~~of-health-and-environment~~ as hereinafter provided, is found to be polluting the waters of the state in a manner prejudicial to the health of the inhabitants thereof.

~~{b)--For--the--purposes--of--this--act,--"sewage"--means--any substance---that---contains---any---of---the--waste--products--or excrementitious-or-other-discharges--from--the--bodies--of--human beings--or--animals,--or--chemical-or-other-wastes-from-domestic, manufacturing-or-other-forms-of-industry.~~

(c) Whenever a complaint is made to the secretary ~~of--health and-environment~~ by the mayor of any city of the state, by a local health officer or by a county or joint board of health, complaining of the pollution or of the polluted condition of any of the soil or waters of the state situated within the county within which the city, local health officer or county or joint board of health is located, it shall be the duty of the secretary ~~of-health-and--environment~~ to cause an investigation of the pollution or the polluted condition complained of. Also, whenever the secretary ~~of-health-and-environment~~ otherwise has reason to believe that any of the soil or waters of the state are being polluted in a manner prejudicial to the health of any of the inhabitants of the state, the secretary may initiate an investigation of such pollution.

(d) Whenever an investigation is undertaken by the secretary

~~of--health-and-environment~~, under subsection (c), it shall be the duty of any person~~,--company,--corporation,---institution---or municipality~~ concerned in such pollution to furnish, on demand, to the secretary ~~of-health-and-environment~~ such information as required relative to the amount and character of the polluting material discharged into the waters or onto or into the soil by such person~~,--company,--corporation,--institution--or-municipality~~. If the secretary ~~of-health-and-environment~~ finds that any of the soil or waters of the state have been or are being polluted in a manner prejudicial to the health of any of the inhabitants of the state, the secretary ~~of-health-and--environment~~ shall have the authority to make an order requiring: (1) Such pollution to cease within a reasonable time; (2) ~~requiring~~ such manner of treatment or of disposition of the sewage or other polluting material as, in the secretary's judgment, is necessary to prevent the future pollution of such soil or waters; or (3) both. It shall be the duty of the person~~,--company,--corporation,--institution--or municipality~~ to whom such order is directed to fully comply with the order of the secretary ~~of-health-and-environment~~.

(e) Any action of the secretary pursuant to subsection (d) is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. The court on review shall hear the case without delay.

Sec. 3. K.S.A. 65-165 is hereby amended to read as follows:
65-165. (a) ~~Upon-application-made-to-the-secretary-of-health-and environment-by-the-public-authorities-having-by-law-the-charge-of the-sewer-system-of-any-municipality,--township,--county-or-legally constituted-sewer-district,--or-any-person,--company,--corporation, institution,--municipality--or--federal--agency,--the-secretary-of health-and-environment-shall-consider-the-case-of-such--a--sewage discharge--or-sewer-system,--otherwise-prohibited-by-this-act-from discharging-sewage-into-any-of-the-waters-of-the--state,--or--the extension--of--a--sewer-system-and-whenever-it-is-the-secretary's opinion-that~~ Any person may apply to the secretary for a permit to discharge sewage into the waters of this state or to extend a

sewer system. The secretary shall issue a permit for the discharge of sewage into the waters of the state or the extension of a sewer system, or both, if the secretary determines that: (1) The general interests of the public health would be served thereby,--or-that-the-discharge-of-such-sewage by issuance of the permit; (2) the discharge would not detract from the quality of the waters of the state for their beneficial uses for-domestic-or public---water---supply,--agricultural--needs,--industrial--needs, recreational-needs-or-other-beneficial-use-and-that-such; and (3) the discharge meets or will meet all applicable state water quality--standards--and--applicable--federal--water--quality--and effluent--standards--under--the--provisions--of--the--federal-water pollution-control-act-and-amendments--thereto--as--in--effect--on January--1,--1989,--the-secretary-of-health-and-environment-shall issue-a-permit-for-the-extension-of-a-sewer--system--or--for--the discharge-of-sewage,--or-both, and federal standards.

(b) Any person may apply to the secretary for a permit to discharge municipal sewage sludge or municipal water treatment sludge onto or into the soil of the state. The secretary shall issue a permit for the discharge of municipal sewage or municipal water treatment sludge onto or into the soil of the state if the secretary determines that: (1) The general interests of the public health would be served by issuance of the permit; (2) the discharge would not detract from the quality of the soil or waters of the state for their beneficial uses; and (3) the discharge meets or will meet all applicable state and federal standards.

(c) The secretary shall stipulate in the permit the conditions on which such the discharge will be permitted and shall require such treatment of the sewage or sludge as determined necessary to protect the soil of the state and to protect beneficial uses of the waters of the state in accordance with the statutes and rules and regulations defining the quality of the water affected by such discharge and. The secretary may require treatment of the sewage or sludge in accordance with

rules and regulations predicated upon technologically based effluent limitations. Indirect dischargers shall comply with all applicable pretreatment regulations and water quality standards.

~~(b)~~ (d) If, in the opinion of the secretary ~~of--health--and environment~~, issuance of general permits is more appropriate than issuance of individual permits, the secretary may establish, by rule and regulation, procedures for issuance of general permits to the following sources and facilities if such sources and facilities involve similar types of operations, discharge the same types of wastes ~~or~~, engage in the same types of sludge use or disposal practices, require similar monitoring requirements or require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal: (1) A category of point and nonpoint sources of sewage such as storm water; (2) other categories of point and nonpoint sources of sewage; or (3) categories of facilities treating domestic sewage or water. Availability of general permits shall be limited to areas defined by geographical or political boundaries such as, but not limited to, city, county or state boundaries, state or county roads and highways or natural boundaries such as drainage basins. The secretary may establish, by rule and regulation, procedures for the issuance, revocation, modification and change, reissuance or termination of general permits in the manner provided by law.

~~(c)~~ (e) Every permit ~~for--the--discharge--of--sewage~~ issued pursuant to this section shall be revocable, or subject to modification and change, by the secretary ~~of---health---and environment~~, ~~upon--notice--having--been--served--on--the--public authorities--having~~, ~~by--law~~, ~~the--charge--of--the--sewer--system--any municipality~~, ~~township~~, ~~county~~ ~~or~~ ~~legally--constituted--sewer district--or--on--the--person~~, ~~company~~, ~~corporation~~, ~~institution~~, ~~municipality~~ ~~or~~ ~~federal--agency--owning~~, ~~maintaining--or--using--the sewage-system~~ upon notice to the person holding the permit. The length of time after receipt of the notice within which the discharge ~~of--sewage~~ shall be discontinued may be stated in the permit, but in no case shall it be less than 30 days or exceed

two years~~7~~. If the length of time is not specified in the permit, it shall be 30 days. On the expiration of the period of time prescribed, after the service of notice of revocation, modification or change from the secretary ~~of---health---and environment~~, the right to discharge municipal sewage sludge or municipal water treatment sludge onto or into any soil of the state or the right to discharge sewage into any of the waters of the state shall cease and terminate, and the prohibition of this act against ~~such~~ the discharge shall be in full force, as though no permit had been granted~~7-but~~. A new permit may thereafter again be granted, as ~~hereinbefore~~ provided by this section.

Sec. 4. K.S.A. 65-166 is hereby amended to read as follows:
 65-166. ~~It-is-required-of-public-authorities-having--by--law--the charge-of-the-sewer-system-of-any-municipality7-township7-county7 or--legally--constituted--sewer--district7--and-of-each-and-every person7--company7--corporation7--institution7--municipality7--or federal--agency7--that--upon--making~~ (a) Each application for a permit to discharge sewage into any waters of the state, or the ~~extension-of~~ to extend any sewer system~~7-the-application~~ shall be accompanied by plans and specifications for the construction of the sewage collection systems and/or sewage treatment or disposal facilities~~7-and~~. Each application for a permit to discharge municipal sewage sludge or municipal water treatment sludge onto or into any soil of the state shall be accompanied by plans and specifications for the construction of the treatment works and sludge treatment and disposal facilities.

(b) The secretary may require any applicant for a permit to provide the secretary any additional facts and information ~~as required by the secretary of-health-and-environment--may--require~~ to determine adequate protection of the public health of the state, the soil of the state and the beneficial uses of the waters of the state.

Sec. 5. K.S.A. 65-166a is hereby amended to read as follows:
 65-166a. (a) ~~The secretary of--health--and--environment--is authorized-and-directed-to-establish-by--duly--adopted--rules--or~~

shall establish by rules and regulations a schedule of fees to defray ~~all-or-any-part-of~~ the costs of administering the ~~water pollution--control~~ permit system established by K.S.A. 65-165 and 65-166, and amendments ~~to-these-statutes~~ thereto. The amount of the fees so established shall be based upon the quantity of raw wastes or sludges or treated wastes or sludges to be discharged, units of design capacity of treatment facilities or structures, numbers of potential pollution units, physical or chemical characteristics of discharges, costs of testing discharges and staff time necessary for review and evaluation of proposed projects. In establishing the fee schedule, the secretary of ~~health-and-environment~~ shall not assess fees for permits required in the extension of a sewage collection system, but such fees shall be assessed for all treatment devices, facilities or discharges where a permit is required by law and is issued by the secretary of ~~health-and-environment~~ or the secretary's designated representative. Such fees shall be nonrefundable.

(b) Any ~~such~~ permit for which a fee is assessed shall expire five years from the date of its issuance. ~~The secretary of health and--environment--may-issue-permits-pursuant-to-K.S.A.-65-165-and amendments-thereto-for-terms-of-less-than-five-years,--if~~ unless the secretary determines valid cause exists for issuance of the permit ~~with~~ for a term of less than five years. The minimum fee assessed for any permit issued pursuant to K.S.A. 65-165 and amendments thereto shall be for a period of not less than one year. Permit fees may be assessed and collected on an annual basis and failure to pay the assessed fee shall be cause for revocation of the permit. Any permit which has expired or has been revoked may be reissued upon payment of the appropriate fee and submission of a new application for a permit as provided in K.S.A. 65-165 and 65-166, and amendments ~~to--those--statutes~~ thereto.

(c) The secretary of ~~health-and-environment~~ shall remit all moneys received from the fees established pursuant to this act to the state treasurer at least monthly. Upon receipt of ~~such~~ the

remittance, the state treasurer shall deposit the entire amount thereof in the state treasury ~~to-the-credit-of-the-state--general fund~~ and credit it to the pollution control fund created by section 6.

New Sec. 6. (a) There is hereby established in the state treasury the pollution control fee fund. Moneys shall be credited to the fund as provided by law.

(b) Moneys credited to the pollution control fund shall be expended only by the department of health and environment to inspect, investigate, permit and regulate activities impacting water and soil quality and to provide training and technical assistance to operators or facilities engaging in such activities.

(c) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the pollution control fee fund the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th day of each month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding month, pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable to moneys in the pollution control fee fund. Such amount of money shall be determined by the pooled money investment board based on: (1) The average daily balance of moneys in the pollution control fee fund during the preceding month as certified to the board by the director of accounts and reports; and (2) the average interest rate on repurchase agreements of less than 30 days' duration entered into by the pooled money investment board for that period of time. On or before the 5th day of each month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the pollution control fee fund during the preceding month.

(d) All expenditures from the pollution control fee fund

shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment for the purposes set forth in this section.

Sec. 7. K.S.A. 65-167 is hereby amended to read as follows:

~~65-167. Upon conviction, the penalty for the willful or negligent discharge of sewage into or from the sewer system of any municipality, township, county or legally constituted sewer district by the public authorities having by law charge thereof or by any person, company, corporation, institution, municipality or federal agency, into any of the~~ (a) No person shall willfully or negligently: (1) Discharge sewage into or from any sewer system into any waters of the state without a permit, as required by this act, or in violation of; (2) discharge municipal sewage sludge or municipal water treatment sludge onto or into any soil of the state without a permit, as required by this act; (3) violate any term or condition of a permit issued by the secretary of health and environment, or in violation of; or (4) violate any requirements made imposed pursuant to K.S.A. 65-164, 65-165 or 65-166, and amendments thereto.

(b) Upon conviction, the penalty for a violation of subsection (a) shall be not less than \$2,500 and not more than \$25,000, and a further penalty of not more than \$25,000 per day for each day the offense is maintained violation continues. The penalty for the discharge of sewage into or from any sewage system into any waters of the state, or for the discharge of municipal sewage sludge or municipal water treatment sludge onto or into the soil, without filing a report, ~~in any case in which a report is~~ required by this act ~~to be filed~~ shall be not less than \$1,000 and not more than \$10,000 per day for each day the ~~offense is maintained~~ report remains unfiled.

Sec. 8. K.S.A. 65-169 is hereby amended to read as follows:

65-169. Any ~~person, company, corporation, institution or municipality who shall fails~~ who fails to furnish, on demand, to the secretary of health and environment such information as may

be required by ~~said~~ the secretary under the provisions of this act ~~shall--be--deemed~~ is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ~~fifty dollars--(\$50)~~ \$50 and not more than ~~five-hundred-dollars--(\$500)~~ \$500. Any ~~person,---company,---corporation,---institution---or municipality--who--shall--fail~~ who fails to fully comply with the requirements of the secretary of ~~health--and--environment--herein~~ authorized--to--be-made--shall-be-deemed as authorized by this act is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ~~twenty-five-dollars--(\$25)~~ \$25 and not more than ~~one-hundred-dollars--(\$100)~~ \$100 for each offense. Each day that the failure to comply with such requirements in--each--day in--which--such--failure--is--made continues shall be considered to constitute a separate offense.

Sec. 9. K.S.A. 65-170 is hereby amended to read as follows:
 65-170. (a) For the purpose of carrying out the provisions of this act ~~it--shall--be--the--duty--of~~ the director of the division of environment to investigate and report upon all matters that come before the secretary for investigation or action relating to: (1) Water supply and-sewerage, sewage and the pollution of the waters of the state that--may--come--before--the--secretary--of--health--and--environment--for--investigation--or--action,--and--to; and (2) municipal sewage sludge, municipal water treatment sludge and the pollution of the soil. The director of the division of environment shall make such recommendations in relation thereto as the director ~~may--deem~~ considers wise and proper, and ~~to~~ make such special investigations in relation to methods of sewage disposal and to public water supply and the purification of water as may be necessary in order to make proper recommendations in regard thereto, or as may be required by the secretary ~~of--health and--environment.~~

(b). Suits under the provisions of this act shall be brought in the name of the state of Kansas by the attorney general of the state in any court of competent jurisdiction, and the penalties and fines recoverable under the provisions of this act shall be

paid to the state treasurer as provided in K.S.A. 20-2801 and amendments thereto.

Sec. 10. K.S.A. 65-170b is hereby amended to read as follows: 65-170b. In performing investigations or administrative functions relating to water and soil pollution or a public water supply system as provided by K.S.A. 65-161 ~~to-65-171j, inclusive,~~ ~~or--any~~ through 65-171j, and amendments thereto, the secretary of health and environment or the secretary's duly authorized representatives, upon presenting appropriate credentials, may enter any property or facility which is subject to the provisions of K.S.A. 65-161 ~~to-65-171j, inclusive, or-any~~ through 65-171j, and amendments thereto, for the purpose of observing, monitoring, collecting samples, examining records and facilities to determine compliance or noncompliance with state laws and rules and regulations relating to water and soil pollution or public water supply.

The secretary of health and environment or the secretary's duly authorized representative shall make such requirements as they deem necessary relating to the inspection, monitoring, recording and reporting by any holder of a ~~sewage-discharge~~ permit issued under K.S.A. 65-165, and amendments thereto or any holder of a public water supply system permit issued under K.S.A. 65-163 and amendments thereto.

Sec. 11. K.S.A. 65-170g is hereby amended to read as follows: 65-170g. (a) Records, reports, data or other information obtained relative to or from sources or potential sources of discharges of water or soil pollutants shall be available to the public except that, upon a showing satisfactory to the secretary of health and environment by any person that such records, reports, data or other information would divulge methods or processes entitled to protection as trade secrets, ~~then~~ the secretary of health and environment shall consider such records, reports, data, or other information as confidential: ~~--Provided,~~ That.

(b) Nothing in this act shall be construed to make

confidential any effluent data, including records, reports or information, and permits, draft permits and permit applications.

(c) Any ~~such~~ records, reports, data, or other information considered confidential under this section may be made available to other officers, employees, or authorized representatives of the federal, state, and local government with responsibilities in water or soil pollution control and additionally may be utilized in any proceeding whether civil or criminal.

Sec. 12. K.S.A. 65-171d is hereby amended to read as follows: 65-171d. (a) ~~For-the-purpose-of-preventing~~ To prevent surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, ~~and-to protect the soil and the~~ beneficial uses of the waters of the state and ~~to~~ require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall ~~make~~ adopt such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgment be necessary to: (1) Clean up pollution resulting from oil and gas activities regulated by the state corporation commission; (2) protect the soil and waters of the state from pollution resulting from (A) oil and gas activities not regulated by the state corporation commission or (B) underground storage reservoirs of hydrocarbons, natural gas and liquid petroleum gas; (3) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164 and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or facilities owned or operated, or both, by them; and (4) establish water quality standards for the waters of the state to protect their beneficial uses.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality ~~and~~, effluent standards and sewage treatment, use, disposal, discharge or escape promulgated by the federal government pursuant to the

provisions of the federal clean water act and amendments thereto, as in effect on ~~January 17, 1989~~ July 1, 1993, which the secretary is otherwise authorized by law to adopt.

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h and amendments thereto, pollution means: (1) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated beneficial uses; or (2) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(d) In adopting rules and regulations, the secretary of health and environment, taking into account the varying conditions that are probable for each source of sewage and its possible use, place of disposal, discharge or escape, may provide for varying the control measures required in each case according to those the secretary finds to be necessary to prevent pollution. If a freshwater reservoir or farm pond is privately owned and ~~where~~ complete ownership of land bordering the reservoir is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards except as it relates to water discharge or seepage from the reservoir to waters of the state, either surface or groundwater, or as it relates to the public health of persons using the reservoir or pond or its waters ~~therefrom~~.

(e) (1) Whenever the secretary of health and environment or the secretary's duly authorized agents find that the soil or waters of the state are not being protected from pollution resulting from oil and gas activities not regulated by the state corporation commission or from underground storage reservoirs of hydrocarbons, natural gas and liquid petroleum gas or that storage or disposal of salt water or oil not regulated by the state corporation commission or refuse in any surface pond is

causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary's duly authorized agents shall issue an order prohibiting such activity, underground storage reservoir or surface pond. Any person aggrieved by such order may within 15 days of service of the order request in writing a hearing on the order.

(2) Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

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

(f) The secretary may adopt rules and regulations establishing fees for the following services:

(1) Plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place;

(2) permitting, monitoring and inspecting salt solution mining operators, for which the annual fee shall not exceed \$1,950 per company; and

(3) permitting, monitoring and inspecting hydrocarbon storage wells and well systems, for which the annual fee shall not exceed \$1,875 per company.

(g) Agents of the secretary shall have the right of ingress and egress upon any lands to clean up pollution resulting from oil and gas activities. Such agents shall have the power to occupy such land if necessary to investigate and clean up such pollution. Any agent entering upon any land to conduct cleanup activities shall not be liable for any damages necessarily resulting therefrom except damages to growing crops, livestock or improvements on the land.

Sec. 13. K.S.A. 65-161, 65-164, 65-165, 65-166, 65-166a, 65-167, 65-169, 65-170, 65-170b, 65-170g and 65-171d are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL NO. _____

By Committee on Energy and Natural Resources

AN ACT concerning asbestos and lead control; establishing a program to provide loans to certain municipalities and state agencies for payment of certain costs of asbestos and lead control projects; authorizing the issuance of bonds.

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

Section 1. As used in this act:

(a) "Asbestos" means the asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonitegrunerite), anthophyllite, tremolite and actinolite.

(b) "Asbestos-containing material" means any material or product which contains more than 1% asbestos.

(c) "Asbestos control project" means any activity which is necessary or incidental to the control of asbestos-containing material in buildings of state agencies or municipalities and includes, but not by way of limitation, any activity undertaken for:

(1) The removal or encapsulation of asbestos-containing material;

(2) any remodeling, renovation, replacement, rehabilitation or other restoration necessitated by such removal or encapsulation;

(3) conducting inspections, reinspections and periodic surveillance of buildings;

(4) performing response actions;

(5) developing, implementing and updating operations and maintenance programs and management plans; and

(6) all preparation, cleanup, disposal and postabatement clearance testing measures associated with such activities.

(d) "Fund" means the asbestos and lead control loan fund

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established by section 2.

(e) "Lead control project" means any activity which is necessary or incidental to the control of any lead hazard in any building of a municipality and includes, but not by way of limitation, any activity undertaken for:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil;

(2) any remodeling, renovation, replacement, rehabilitation or other restoration necessitated by such removal or encapsulation;

(3) conducting inspections, reinspections and periodic surveillance of buildings;

(4) performing response actions;

(5) developing, implementing and updating operations and maintenance programs and management plans; and

(6) all preparation, cleanup, disposal and postabatement clearance testing measures associated with such activities.

(f) "Lead hazard" means any condition which causes exposure to lead that would result in adverse human health effects, as determined by the secretary.

(g) "Municipality" means any city, county, township or unified school district.

(h) "Project costs" means all costs or expenses which are necessary or incident to an asbestos or lead control project and which are directly attributable thereto.

(i) "Secretary" means the secretary of health and environment.

Sec. 2. (a) There is hereby established in the state treasury the asbestos and lead control loan fund.

(b) Moneys from the following sources shall be credited to the fund:

(1) Amounts received by the state from the federal government for the purposes of the fund;

(2) amounts appropriated or otherwise made available by the legislature for the purposes of the fund;

(3) proceeds derived from the sale of bonds issued by the Kansas development finance authority for the purposes of the fund to the extent provided in any agreement entered into by the secretary and the authority;

(4) amounts of repayments of loans made under this act, together with payments of interest thereon, in accordance with agreements entered into by the borrower and the secretary;

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

(6) amounts received from any public or private entity for the purposes of the fund.

(c) Subject to the conditions and in accordance with requirements of this act, moneys credited to the fund shall be used only:

(1) To make loans to state agencies and municipalities for payment of all or part of the costs to such agencies and municipalities for asbestos or lead control projects;

(2) as a source of revenue or security for the payment of principal and interest on bonds issued by the Kansas development finance authority if, and to the extent that, the proceeds of the sale of such bonds are deposited in the fund;

(3) to earn interest on moneys in the fund; and

(4) for the reasonable costs, as determined by the secretary, of administering the fund and conducting activities under this act. Such costs shall be identified annually in development of the intended use plan as described in section 5.

(d) On the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the asbestos and lead control loan fund, the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th day of each month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount

of all the interest credited to the state general fund for the preceding period of time specified under this subsection, pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable to money in the asbestos and lead control loan fund. Such amount of money shall be determined by the pooled money investment board based on:

(1) The average daily balance of moneys in the asbestos and lead control loan fund during the period of time specified under this subsection as certified to the board by the director of accounts and reports; and

(2) the average interest rate on repurchase agreements of less than 30 days' duration entered into by the pooled money investment board for that period of time. On or before the fifth day of the month for the preceding month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the asbestos and lead control loan fund for the period of time specified under this subsection.

(e) All payments and disbursements from the fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary. All payments and disbursements from the fund, and beginning and ending balances thereof, shall be subject each year to post audit in accordance with article 11 of chapter 46 of the Kansas Statutes Annotated.

Sec. 3. The secretary shall administer the provisions of this act and shall be responsible for administration and management of the fund. The secretary is hereby authorized to:

(a) Enter into binding commitments for the provision of loans in accordance with the provisions of this act;

(b) review applications of state agencies and municipalities for loans and select the asbestos control projects and the lead control projects for which loans will be made available;

(c) provide the governor and the legislature an annual report prepared in accordance with section 8 and with copies of

the audit required under section 2; and

(d) adopt rules and regulations necessary for effectuation of the provisions of this act.

Sec. 4. (a) The secretary shall develop a priority system for asbestos control projects and lead control projects, establish ranking criteria therefor, review applications of state agencies and municipalities for loans and prepare an annual asbestos control project and lead control project priority list. The priority list shall include a description of each asbestos control project and each lead control project; the purpose, cost and schedule therefor; and the state agency or municipality applying for the loan. After preparation of the priority list, the secretary shall select from such list the asbestos control projects and lead control projects for which loans will be made available.

(b) In performing the functions and duties required by subsection (a), the secretary shall ensure that a fair proportion, at least but not limited to 10%, of the total dollar amount of loans to be made available from the fund in each year will be made available for asbestos control projects and lead control projects of municipalities having populations of 5,000 or less. If the municipalities to which this subsection applies are unable to utilize the total amount made available under this subsection, the secretary is authorized to make the unused amount available for other asbestos control projects and lead control projects on the priority list.

Sec. 5. After providing for public comment and review each year, the secretary shall prepare a plan identifying the intended uses of the moneys available in the fund. The intended use plan shall include, but not be limited to:

- (a) The asbestos and lead control project priority list;
- (b) a description of the short- and long-term goals and objectives of the fund;
- (c) information on the asbestos control projects and lead control projects to be financed, including a description thereof,

the terms of loans to be provided and the state agencies and municipalities receiving the loans; and

(d) the criteria and method established for the provision of loans to be made from the fund.

Sec. 6. (a) State agencies and municipalities which desire the provision of a loan under this act shall submit an application therefor to the secretary. Applications shall be in such form and shall include such information as the secretary shall require and shall be submitted in a manner and at a time to be determined by the secretary.

(b) The secretary may enter into agreements with any state agency or municipality for the provision of a loan thereto for payment of all or a part of asbestos control project costs or lead control project costs and any state agency or municipality may enter into such an agreement and may accept such loan when so authorized in accordance with law. The purposes of the loan to be provided, the amount thereof, the interest rate thereon and the repayment terms and conditions thereof, all of which may vary among state agencies and municipalities, shall be included in the agreements. Loans shall be provided at or below market interest rates and may be provided interest free. All such agreements with municipalities shall require that municipalities establish a dedicated source of revenue for repayment of the loans as provided in section 7. Such agreements shall further provide that repayment of any loan received shall begin not later than one year after completion of the asbestos control project or lead control project and that such loan shall be repaid in full no later than 20 years thereafter.

(c) If a state agency or municipality to which a loan is made available under this act fails to enter into an agreement with the secretary for the provision of such loan in accordance with the requirements of this act, the secretary may make the amount of the loan available for one or more other asbestos control projects or lead control projects on the priority list.

(d) The secretary shall provide any state agency or

municipality, upon request, with technical advice and assistance regarding an asbestos control project or lead control project or an application for a loan for the payment of all or part of project costs.

Sec. 7. (a) The dedicated source of revenue for repayment of a loan to a municipality may include property taxes, grants or any other source of revenue lawfully available to the municipality for such purpose.

(b) Upon the failure of a municipality to meet the repayment terms and conditions of the agreement, the secretary may order the treasurer of the county in which the municipality is located to pay to the secretary such portion of the municipality's share of the local ad valorem tax reduction fund as may be necessary to meet the terms of the agreement, notwithstanding the provisions of K.S.A. 79-2960 and 79-2961, and amendments thereto. Upon the issuance of such an order, the municipality shall not be required to make the tax levy reductions otherwise required by K.S.A. 79-2960 and 79-2961, and amendments thereto.

(c) State agencies and municipalities which are provided with loans under this act shall maintain project accounts in accordance with generally accepted government accounting standards.

(d) Any loans received by a municipality under the provisions of this act shall be construed to be bonds for the purposes of K.S.A. 10-1116 and 79-5028, and amendments thereto, and the amount of such loans shall not be included within any limitation on the bonded indebtedness of the municipality.

Sec. 8. The secretary shall prepare an annual report describing how the state has met the goals and objectives for the previous year as identified in the intended use plan prepared pursuant to section 5.

Sec. 9. The activities of the secretary in administering and performing the powers, duties and functions prescribed by the provisions of this act from the proceeds of bonds issued for such purpose by the Kansas development finance authority are hereby

approved for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of such bonds by the Kansas development finance authority in accordance with that statute. The provisions of subsection (a) of K.S.A. 74-8905 and amendments thereto shall not prohibit the issuance of bonds for such purposes when so authorized and any such issuance of bonds is exempt from the provisions of subsection (a) of K.S.A. 74-8905 and amendments thereto.

Sec. 10. Nothing in this act shall establish or create any liability or responsibility on the part of the state, or any officer, employee or agency of the state, for damages arising from the conduct of, or failure to conduct, any asbestos control project or lead control project.

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

HOUSE BILL NO. _____

By Committee on Energy and Natural Resources

AN ACT concerning certain incinerators; providing for regulation thereof; amending K.S.A. 1993 Supp. 65-3402 and repealing the existing section.

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

New Section 1. (a) Except as provided in subsection (b), this act regulates the construction and operation of solid waste incinerators, refuse-derived fuel processing facilities and solid waste pyrolysis units. Construction and operation of solid waste incinerators for the purposes of air pollution control are governed by the Kansas air quality act.

(b) Solid waste incinerators existing on July 1, 1994, that have a total design capacity of less than 2,000 pounds of solid waste per hour are exempt from this act.

New Sec. 2. As used in this act:

(a) "Downtime waste" means the amount of waste that cannot be processed due to breakdowns and scheduled or unscheduled maintenance and repairs.

(b) "Nonprocessable waste" means, for a solid waste incinerator, that portion of the municipal solid waste stream which cannot be incinerated due to legal, technical or environmental limitations. Nonprocessable wastes include, but are not limited to: Batteries, such as dry cell batteries, mercury batteries and vehicle batteries; refrigerators; stoves; freezers; washers; dryers; bedsprings; vehicle frame parts; crankcases; transmissions; engines; lawn mowers; snow blowers; bicycles; file cabinets; air conditioners; hot water heaters; water storage tanks; water softeners; furnaces; oil storage tanks; metal furniture; propane tanks; and yard waste.

(c) "Processible waste" means, for a solid waste incinerator, that portion of the municipal solid waste stream

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which after being subjected to the maximum feasible recycling requires disposal including, but not limited to: Newspaper; junk mail; corrugated cardboard; office paper; magazines; books; kraft; paperboard; other paper; glass containers (nondeposit); steel cans (nondeposit); aluminum cans (nondeposit); other glass; ferrous and nonferrous metals; plastics; rubber; textiles; and leather from residential, commercial and institutional sources only; wood; food wastes; and other combustible portions of the municipal solid waste stream as approved by the department.

(d) "Pyrolysis" means a process using applied heat in an oxygen-deficient or oxygen-free environment for chemical decomposition of solid waste. For purposes of this act, any by-products or residues of pyrolysis are not considered refuse-derived fuel. Residues remaining after pyrolysis must be managed pursuant to the provisions of section 6.

(e) Terms defined by K.S.A. 65-3402 and amendments thereto have the meanings provided by that statute.

New Sec. 3. (a) Except as provided by subsection (b), no person shall construct, alter or operate a solid waste incinerator, refuse-derived fuel processing facility or solid waste pyrolysis unit in this state without first obtaining a permit from the secretary.

(b) A permit shall not be required to construct, alter or operate an energy recovery incinerator or solid waste pyrolysis unit that accepts off-site generated solid waste as alternate fuels if:

(1) Such incinerator or unit is registered with the secretary in accordance with rules and regulations adopted by the secretary;

(2) the solid waste is nonhazardous, nonputrescible, recognizable, unadulterated and uncontaminated;

(3) the storage of solid waste prior to combustion or pyrolysis must be located on surfaces capable of minimizing leachate release into the groundwater underneath the site and surrounding land;

(4) all leachate must be collected and treated by a method approved by the secretary;

(5) an annual report must be prepared and submitted to the secretary in accordance with subsection (f)(3) of section 5; and

(6) representative samples must demonstrate that the alternate fuels have a minimum heating value of 4,000 BTU per pound as received.

New Sec. 4. An application for a permit shall contain the following:

(a) An engineering report that must include:

(1) A general description of the overall process and functional description of all equipment to be used, with design criteria, anticipated performance and process flow diagrams.

(2) Pertinent facts and calculations relating to the development of the material and energy balances.

(3) A description of the proposed service area.

(4) Identification of sufficient support equipment to maintain operation of equipment functions.

(5) A general description of the facility operation which includes: (A) A sequential description of the major components used for the treatment of the solid waste, starting from its delivery at a weigh scale and continuing through the residue and ash residue treatment and loading operations; (B) procedures for facility start-up and scheduled and unscheduled shutdowns; (C) a description of how the operator will utilize the process and instrumentation controls for start-up and shutdown operation; (D) a description of the internal communications system; (E) a description of potential safety hazards and methods of control, including but not limited to arrangements to detect explosion potential and equipment installed to minimize the impact of explosion; (F) a description of methods which will be used to minimize vectors, noise, dust, litter, blowing debris and odors; (G) a description of the ash residue system and ash residue removal procedures in case of a mechanical system breakdown (in the case of facilities utilizing a wet ash system, drag conveyors

must be of sufficient length and incline to remove free liquid); (H) a description of the method of solid waste removal from the feed hopper or mechanism in case of mechanical system breakdown; and (I) a description of the methods and equipment to recover materials, if provided.

(6) A description of the processible waste proposed to be treated, processed or disposed of for the initial year and annually for the projected life of the facility including estimates of the quantity and composition of the current waste stream, demographic projections and future per capita waste generation rates, facility downtime, the need to account for seasonal variations, the success of waste reduction and recycling programs and the BTU value of the waste stream that will be incinerated.

(7) A description of the storage methods to be used at the facility, which shall conform to the following: (A) Solid waste or refuse-derived fuel must be stored inside an enclosed structure or building which provides a minimum of three days storage capacity of solid waste and/or refuse-derived fuel, considering both volume (cubic yards) and weight (tons), at the installed design capacity of the facility; (B) except for solid waste incinerators which combust only nonputrescible solid waste, the solid waste storage area and tipping area must be designed to contain a negative air pressure, compared to atmospheric conditions, when the facility is in operation; and (C) the solid waste storage area and tipping area must include fire-detection and protection equipment and must be separated from the solid waste combustion or pyrolysis equipment by a wall.

(8) A summary of the utility requirements, including: (A) An estimate of the type, quantity and on-site storage of fuels needed for the facility; (B) estimates of steam generated and used on-site in terms of pressure, temperature and pounds per hour; (C) estimates of the total electric power consumed and generated on-site in kilowatts; and (D) estimates of water used for cooling, quench, sanitary and processing, including that

which is, or may be, recycled or treated.

(9) Estimates of stormwater run-off and drainage and construction dewatering, and a description of its use or disposal, including point of discharge.

(10) A list and description of all authorizations, permits and approvals that may be required for this facility, including, but not limited to, those from the department, other state agencies, federal agencies and local governments.

(11) A description of the facility's equipment. A solid waste incinerator facility must have at least three separate solid waste process trains capable of being operated independently of each other. However, an alternative number of process trains may be approved if it can be demonstrated to the secretary's satisfaction that, there would be a significant increase in capital and operating costs that would outweigh the benefits associated with the installation of three process trains, and that other provisions are made to minimize downtime and bypass waste, and to ensure that the facility does not create economic incentives for diverting solid wastes from recycling.

(12) A description of the auxiliary power to be provided and sized to enable emergency shutdown of the facility to occur.

(13) A description of the pertinent economic information, including: (A) An estimate of annual tipping fees over the projected life of the facility; and (B) projections, for each year of the anticipated life of the project, of the minimum solid waste that must be treated at the facility.

(b) The engineering plans and specifications which shall include:

(1) An identification of the vendor and supplier of the combustion equipment.

(2) Engineering plans that contain information on known site conditions and projected site utilization. The engineering plans must show general dimensions of the proposed structures and identify the overall process.

(A) The site plan must show the facility's property

boundaries; site acreage; distances from adjacent residences, property owners and population centers; off-site utilities such as electric, gas, water, storm and sanitary sewer systems; a north arrow; site topography; the location of screening provided, regulated wetlands, rights-of-way, surface water conditions, floodplains, buildings, appurtenances, fences, gates, roads, staging areas, parking areas, drainage culverts and signs; location of soil borings, if available; transportation systems in the vicinity of the facility including but not limited to airports and railways; the location and identification of special waste handling and storage areas; and a wind rose;

(B) general plan and cross-sectional views of the facility, which must include: The storage area for the solid waste, equipment locations and configurations, air supply ductwork locations, ash residue collection, handling and storage systems; and

(C) plans that contain a process flow diagram or diagrams to illustrate the complete material and process sequence. The plans must depict all major equipment associated with the processing, heating, cooling, transportation and storage of all material flow streams that can be anticipated for the facility and must include air, water, solids and energy balances. The material flow streams must show all inputs and outputs and be characterized by the following process variables: (i) Average flow rates, including temperature and pressure, as measured by weight or volume per unit of time; and (ii) energy balances, which must include the maximum, average and minimum heat content (measured in BTU's per pound) for all input and output material for any equipment that changes the heat content of these streams. Energy converted, transferred or released as heat must be indicated in BTU's per hour. All major sources of heat input and loss must be noted. Electrical energy either generated or used must be shown in kilowatt hours, with average use and peak demands shown.

(3) Performance specifications for all major equipment.

(4) Proposed project construction schedules. Schedules must

incorporate specific information essential for monitoring a project's progress. Time requirements must be shown for design and engineering, construction milestone dates, equipment deliveries and the start and completion dates of construction. Following issuance of a permit, progress reports must be submitted quarterly to the department indicating the percentage of work completed.

(c) A comprehensive recycling analysis as required by, and prepared in accordance with, rules and regulations adopted by the secretary.

(d) Ninety days prior to the anticipated facility start-up date, the applicant must identify each solid waste disposal area that the applicant plans to use for the disposal of the ash residue, downtime waste and bypass waste. Such solid waste disposal areas must, in the aggregate, have capacity sufficient to receive all ash residue, downtime waste and bypass waste from the proposed facility for five years from the anticipated facility start-up date.

(1) Each such solid waste disposal area must be either: (A) Owned by the applicant, be in operation, be authorized by the department or other appropriate regulatory agency to operate and have the capacity to accept ash residue, downtime waste or bypass waste from the solid waste incinerator or refuse-derived fuel processing facility or solid waste pyrolysis unit for five years after the anticipated operation start date; or (B) owned by another person, be in operation, be authorized by the department or other appropriate regulatory agency to operate and have the capacity to accept the ash residue, downtime waste or bypass waste from the solid waste incinerator or refuse-derived fuel processing facility for five years after the anticipated operation start date. A commitment for the use of this landfill must be submitted in the form of a contract for a term of five years from the anticipated operation start date.

(2) The requirements for landfill capacity to accept the downtime waste and/or bypass waste may be waived if contractual

arrangements can be executed with one or more existing solid waste management facilities for the acceptance of such waste, provided such facilities have the capacity to accept such waste from the solid waste incinerator or refuse-derived fuel processing facility or solid waste pyrolysis unit for a period of five years from the anticipated operation start-up date. The committed use of solid waste management facilities must be in the form of a contract for a term of five years.

(3) The landfill identification requirements of this subsection shall apply to: Permits to construct, alter or operate solid waste incinerators, refuse-derived fuel processing facilities or solid waste pyrolysis units that were issued before the effective date of this act; applications for permits to construct and operate such facilities that were pending before the secretary on the effective date of this act; and new applications to construct and operate such facilities that are submitted to the secretary on or after the effective date of this act.

(e) Prior to the issuance of any permit, the applicant must inform the secretary of the market arrangement for the final disposition of the refuse-derived fuel. This arrangement must be in the form of a contract with a facility for a minimum period of two years from the anticipated facility start-up date. Such facility must be authorized by the secretary or other appropriate regulatory agency to operate and must have the capacity to combust the refuse-derived fuel.

(f) An application for a permit must include a draft operation and maintenance manual containing the following:

(1) A facility operation manual establishing operating parameters that will enable the facility to achieve a goal of at least 85% equipment availability and minimize downtime and bypass solid waste. The facility operation manual must include the following: (A) A description of the proposed operation procedures for each major facility component; (B) procedures to be followed during start-up and scheduled and unscheduled shutdown of

operations; (C) identification of the operating variables for the process and any control devices used to detect a malfunction or failure, the normal range of these variables and a description of the method of monitoring; and the sequence of responsible action in the event that the equipment and instruments exceed normal operating ranges; (D) methods and schedules to check operation of control equipment and instrumentation, exclusive of emission monitoring equipment, including a list of all equipment and instruments requiring calibration and a schedule of proposed calibration intervals. All process instruments must be calibrated at least once per year. Process control instruments must be maintained in an operable condition; (E) a description of the proposed measures to control dust, noise, litter, odor, rodents and insects at the facility; (F) a description of the proposed measures to handle incoming solid waste flow during periods of emergencies, equipment breakdown or facility shutdown; (G) an inventory and location of all facility records and as-built drawings; (H) other items, as identified by the secretary, that are specific to the individual facility due to its location, technology or delivered solid waste (such as processing and handling of regulated medical waste or other waste not authorized by the secretary to be received at the facility); and (I) schedules for anticipated repairs; major equipment replacement; and list of equipment dealers to supply standby or emergency equipment.

(2) An operation and maintenance manual submission review in compliance with the following: (A) The operation and maintenance manual must be submitted to the secretary for review and approval not less than 90 days before any solid waste is received by the facility; (B) a final operation and maintenance manual must be approved by the secretary before any solid waste is received by the facility; (C) an updated manual must be submitted to the secretary for review and approval with each application for a renewal of the permit under this act; and (D) any substantial changes made to the approved operation and maintenance manual

must be forwarded to the secretary.

(g) A personnel training plan which:

(1) Describes how all facility personnel will complete a program of classroom instruction and/or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this act, and for processing and handling of nonprocessable waste, regulated medical waste, and solid waste not authorized by the secretary to be received at the facility;

(2) identifies the personnel who will be trained in the procedures, equipment, and processes at the facility. The training must include instruction that teaches facility personnel solid waste management procedures (including contingency plan implementation) relevant to the positions in which the personnel are employed; and

(3) is designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing such personnel with emergency and safety equipment, emergency procedures and emergency systems. The plan must include, where applicable:

(A) Procedures for using, inspecting, repairing and replacing facility emergency and monitoring equipment;

(B) key parameters for automatic waste feed cutoff systems;

(C) communication or alarm systems;

(D) response to fires or explosions;

(E) response to groundwater contamination incidents;

(F) start-up and shutdown of operations; and

(G) identifying nonprocessable solid waste or solid waste not authorized by the secretary to be received at the facility.

(4) Facility personnel must successfully complete the personnel training requirements within six months after the date of employment or assignment to a facility. Employees hired after the effective date of this act must not work in unsupervised positions until they have completed the training.

(5) Facility personnel must take part in an annual review of

the training.

(6) The following records must be maintained at the facility: (A) The title for each position related to solid waste management, the name of the employee filling each position and a written job description for each title, which description must include the requisite skill, education, qualifications and duties of employees assigned to each position; (B) a written description of the type and amount of both introductory and continuing training that will be given to each person who fills a position listed under subsection (g)(6)(A); and (C) documentation that the training or job experience has been given to and completed by facility personnel.

(7) Training records on current personnel must be kept until closure of the facility and training records on former employees must be kept for at least three years after the date the employee last worked at the facility. All records must be available for inspection by appropriate department personnel.

(8) The on-site operation of a solid waste incinerator which combusts mixed solid waste subject to the requirements of this act must be directed by a person who is certified pursuant to the American society of mechanical engineers qualification and certification of resource recovery facility operators (ASME-QRO).

(h) A facility maintenance, monitoring and inspection plan which includes:

(1) A description of the monitoring and inspection to be undertaken at the facility to discover and correct equipment malfunctions or deteriorations, operator errors and discharges that may threaten the environment or human health.

(2) A schedule for inspecting all aspects of the facility necessary to ensure maximum facility availability. The frequency of inspection must be based on the projected rate of equipment deterioration or malfunction, and the probability of failure between inspections. Areas of the facility subject to spills and areas in which adverse environmental or health consequences may result if breakdown occurs, must be inspected daily when in use.

(3) A schedule for inspection of: Safety and emergency equipment, security devices, operating process equipment and structural aspects of the facility. The plan must identify the types of problems to be looked for during the inspection, the frequency of inspections and the minimum standards of acceptability where applicable.

(4) A list of chemicals, including quantities to be used at the facility, amounts to be stored, location of storage and safety procedures for handling and storage.

(5) Schedules for anticipated repairs and major equipment replacement and a list of equipment dealers to supply standby or emergency equipment.

(6) At least annually, a general facility inspection must be undertaken to determine the operating condition of the safety, emergency, security, process and control equipment. This annual inspection must be performed under the direction of an individual licensed to practice engineering in the state of Kansas. This individual must prepare a summary report of the inspection which must be submitted to the secretary as part of the annual facility report.

(i) A written plan that will demonstrate adequate staffing of essential positions whenever the facility is operational.

(j) (1) A waste control plan that: (A) Ensures that the facility receives and treats only household waste, nonhazardous commercial waste, nonhazardous industrial waste, and solid waste specifically authorized by the secretary to be treated at the facility; (B) describes the contents of a solicitation letter and questionnaire that must be mailed to all known industries whose solid waste will be sent to the facility, requesting the name of the industries' solid waste haulers, the name of the finished product, the names of chemicals used or wastes generated to produce such products and the wastes to be delivered to the proposed facility. The letter and questionnaire must be mailed at least three months before start-up of the facility and must be remailed no less frequently than every five years thereafter.

This letter and questionnaire must also be mailed to commercial establishments and institutions that are reasonably expected to produce solid waste not authorized by the secretary to be treated at the facility; (C) provides a program to identify, control, separate out, record and prevent nonprocessable waste and solid waste not authorized by the secretary from being accepted and/or treated at the facility. The plan must include a description of how these wastes will be handled and disposed of if received at the facility and provisions to notify the secretary within the quarterly monitoring report of receipt and disposal of such wastes. The waste control plan must also identify the personnel trained for this purpose. No facility will be allowed to start-up unless a waste control plan has been submitted to the secretary; (D) ensures a program, acceptable to the secretary, is developed and implemented to identify, control, separate and dispose of nonprocessable waste, which program must: (i) Include a location at the facility for the separation and storage of nonprocessable waste; (ii) include contractual requirements or other appropriate notification and inspection procedures to minimize the quantity of nonprocessable waste received at the facility; and (iii) provide that a sign must be conspicuously posted at the entrance to the facility which states that nonprocessable waste must be separated from solid waste and placed at a designated storage area; and (E) ensures a program, acceptable to the department, is developed and implemented for detecting and preventing the disposal of regulated hazardous wastes at the facility. This program must include, but not be limited to: (i) Random inspections of incoming loads; (ii) inspections of suspicious loads; (iii) records of inspections; (iv) training of facility personnel to recognize regulated hazardous waste; (v) procedures for notifying the proper authorities if a regulated hazardous waste is discovered at the facility; and (vi) a minimum of one random inspection of a solid waste delivery vehicle per day.

(2) Other nonhazardous solid waste (which may include regulated medical waste, industrial waste and sewage sludges) may

be accepted at a solid waste incinerator, refuse-derived fuel processing facility or solid waste pyrolysis unit. Such waste may be accepted if: The permit specifically authorizes; the waste is transported to the facility in a manner acceptable to the secretary; and appropriate personnel protection and solid waste handling procedures are employed. These procedures may include: (A) Separate handling of untreated regulated medical waste from other solid waste received, and special handling of treated regulated medical waste at the facility; (B) securely wrapping or containerizing such waste to prevent exposing personnel or the environment to the contents; (C) direct unloading of untreated regulated medical waste into the incinerator; (D) producing an ash residue that will comply with the provisions of subsection (c)(3) of section 6. A solid waste incinerator not producing ash residue meeting these requirements is prohibited from further combusting such waste until the operator can demonstrate to the secretary's satisfaction that such waste can be combusted producing an ash residue that will comply with the provisions of subsection (c)(2)(A)(iii) of section 5; (E) identification of safety procedures for employees that are required to work with such waste; and (F) regulated medical waste treatment, storage, transfer, destruction and disposal must be in accordance with all other requirements of law.

(k) A contingency plan in compliance, at a minimum, with the following:

(1) The contingency plan must minimize hazards to human health and the environment resulting from fires, explosions or releases into the air, onto the soil or into groundwater or surface water.

(2) The contingency plan must describe the actions facility personnel must take in response to a fire, explosion or releases which could threaten human health or the environment, and actions to be taken if the facility is shutdown for more than 24 hours.

(3) A copy of the contingency plan and all revisions to the plan must be maintained at the facility and copies must be

submitted to all local law enforcement departments, fire departments, hospitals and state and local emergency response teams that may be called upon to provide emergency services. The operator must assure that the provisions of this plan are carried out in the event of an incident covered by the plan.

(4) Any amendments to the contingency plan must be submitted to the secretary. The plan must be immediately amended whenever:

✓ (A) ~~It~~ ^{She} fails to provide information ^{as} to respond to an emergency
✓ situation; (B) the facility changes in its design, construction, operation, maintenance or other circumstance in a way that materially increases the potential for fires, explosions, or releases of pollutants or changes the response necessary in an emergency; (C) the list of emergency coordinators changes; or (D) the list of emergency equipment changes.

(1) A closure plan which identifies the steps necessary to close the facility. The plan may be amended at any time during the active life of the facility with the approval of the secretary. The plan must be amended whenever changes in operating plans or facility design affect the closure plan, or whenever there is a change in the expected year of closure.

(1) The owner or operator must notify the department in writing at least 180 days before the date the facility is expected to begin closure. No solid waste may be received after the date of closure.

(2) Within 30 days after receiving the final quantity of solid waste, the owner or operator must remove from the site, or properly dispose of on-site, all solid waste and ash residue in accordance with the approved closure plan.

(3) The owner or operator must complete closure in accordance with the approved closure plan within 180 days after receiving the final quantity of solid waste.

(4) When closure is completed, the owner or operator must submit to the secretary certification, by an individual licensed to practice engineering in the state of Kansas and retained by the operator or owner, that the facility has been closed in

accordance with the approved closure plan.

(m) In addition to the requirements of this section, an application for a permit to construct, alter or operate a solid waste incinerator must comply with the ash residue requirements of section 6.

(n) An operation and maintenance manual submission review:

(1) A draft operation and maintenance manual must be submitted to the secretary for review and approval with an application for a permit to construct and operate the facility.

(2) A final operation and maintenance manual must be submitted to, and approved by, the secretary before any solid waste is received by the facility.

(3) An updated operation and maintenance manual must be submitted to the secretary for review and approval with each application for renewal of the permit under this act.

New Sec. 5. All solid waste incinerators, refuse-derived fuel processing facilities or solid waste pyrolysis units subject to this act must operate in compliance with the following:

(a) All activities at the facility must be performed in accordance with an operation and maintenance manual, which has been approved by the secretary and includes all plans and programs required by this act. The operation and maintenance manual and all plans and programs required by this act must be maintained and be available for reference and inspection at the facility. The operation and maintenance manual must be updated no less frequently than the duration of the permit.

(b) (1) The facility shall not knowingly accept types of solid waste that are not authorized by the secretary. All solid waste received at the facility, and residues, ash residues, bypass waste, nonprocessible waste, and waste not authorized by the secretary, leaving the facility, must be weighed and recorded and the results must be incorporated into the quarterly report.

(2) All solid waste delivered to the facility must be processed and contained within a completely enclosed area to minimize the effects of weather, wind and precipitation. Unless

specifically authorized by the secretary, solid waste stored on-site must be confined to the storage area designed in accordance with subsection (a)(7) of section 4. In no case shall the solid waste stored on-site exceed seven times the approved daily design capacity.

(3) External storage of putrescible solid waste is prohibited. Solid waste identified as nonputrescible recyclables or oversized, bulky, or nonprocessable solid waste may be temporarily stored outside the facility for a period not to exceed one week unless an extension is authorized by the secretary.

(4) All rejected, oversized, bulky, nonprocessable and bypass waste that is not recyclable must be disposed of at a facility approved by the secretary if located within the state, or an authorized facility if located outside the state.

(c) The site and facility must have adequate drainage and be free of standing water.

(d) The secretary must be notified of all process changes before they are implemented.

(e) The operator must restrict entry into the facility and minimize the possibility for any unauthorized entry. A description of the security measures must be provided and must include, but not be limited to, a means to control entry at all times through the gates or other entrances to the facility (as by a 24-hour surveillance system which continuously monitors and controls entry, or an artificial or natural barrier). Signs, legible from a distance of at least 25 feet, that read "VISITORS AND UNAUTHORIZED PERSONNEL MUST REPORT TO THE OFFICE" also must be posted at each entrance to the facility, and at other locations, in sufficient numbers to be seen from any approach to the facility.

(f) All facilities must:

(1) Immediately notify the secretary if an unscheduled total facility shutdown exceeds 24 hours. A written confirmation letter describing the incident that resulted in the unscheduled

shutdown, and an assessment of any impacts of the shutdown, including the disposition of any solid waste that was diverted from the facility due to the shutdown, must be sent to the regional solid waste engineer within 15 days of the incident.

(2) Prepare and file with the secretary, within 60 days after the end of each quarter, a quarterly report, compiled for each month, in a form provided by or acceptable to the secretary.

(3) Prepare and file with the secretary, within 60 days after the end of the calendar year, an annual report in a form provided by or acceptable to the secretary.

(g) All facilities subject to this act must, at a minimum:

(1) Be equipped with the following: (A) An internal communications system capable of providing immediate emergency instruction to facility personnel, and an alarm system to notify facility personnel of an emergency condition; (B) a device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local law enforcement departments, fire departments and state or local emergency response teams; (C) portable fire extinguishers, fire-control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals) and spill-control equipment; and (D) water available at adequate volume and pressure to supply water hose streams, foam-producing equipment, automatic sprinklers or water-spray systems; and

(2) Test and maintain as necessary to assure its proper operation, all facility emergency equipment including but not limited to communications or alarm systems and fire protection, spill control and personal safety equipment.

(3) Provide all personnel involved in the facility operation with immediate access to an internal alarm or emergency communication device.

(4) Provide for an emergency coordinator in accordance with the following:

(A) At all times during facility operation, there must be at

least one employee with the responsibility for coordinating all emergency response measures who is either on the facility premises or available to respond to an emergency by reaching the facility within a short period of time. This emergency coordinator must be thoroughly familiar with all aspects of the contingency plan, all operations and activities, the location and characteristics of the solid waste, the location of all records and the facility layout. In addition, this employee must have the authority to commit the personnel, equipment and financial resources need to implement the contingency plan.

(B) Whenever there is an emergency situation, the emergency coordinator must immediately ensure that internal facility alarms or communication systems are activated to notify all facility personnel and, if their help is needed, all appropriate state or local agencies with designated response roles.

(C) If the emergency coordinator determines that the facility has had a fire or explosion which could threaten human health or the environment beyond the facility, this must be reported by the emergency coordinator to the appropriate officials outlined in the contingency plan.

(D) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires and explosions do not occur, recur or spread into other areas of the facility. These measures must include, where applicable stopping equipment and operations, collecting and containing solid waste and removing or isolating containers.

(E) If facility operations cease in response to a fire or explosion, the emergency coordinator must monitor for leaks, pressure buildup, gas generation or ruptures in valves, pipes or other equipment, wherever this is appropriate.

(F) Immediately after an emergency, the emergency coordinator must provide or arrange for treatment, storage or disposal of solid waste, contaminated soil or water and any other material at the facility.

(G) The emergency coordinator must ensure that cleanup

procedures are completed and emergency equipment, listed in the contingency plan, is cleaned and prepared for its intended use, if required. The owner or operator must notify the secretary and appropriate state and local officials when the facility is to resume operations in the affected areas.

(H) The owner or operator must note in the operating record and the quarterly report, the time, date and details of any incident that requires implementing the contingency plan and must submit a written report to the secretary within 15 days of the incident. The report must include: (i) The name, address and telephone number of the operator and the facility; (ii) the date, time and type of incident (e.g., fire, explosion, etc); (iii) the type and quantity of materials involved; (iv) the extent of injuries, if any; (v) an assessment of actual or potential hazards to human health or the environment, where this is applicable; (vi) the estimated quantity and disposition of solid waste, liquids or material recovered that resulted from the incident; and (vii) the procedures or equipment available to prevent a recurrence of the reported event.

New Sec. 6. (a) The following types of ash residue are subject to the requirements of this section:

(1) Ash residue generated by solid waste incinerators providing energy recovery from mass burning of solid waste and burning of refuse-derived fuel, are regulated by this act provided that: (A) The facility receives and combusts only: Household waste; solid waste from commercial or industrial sources that does not contain hazardous waste; and other nonhazardous solid waste (including regulated medical waste) and does not accept hazardous waste; and (B) the permittee has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous waste is not received at or combusted in such facility.

(2) Ash residue generated from the incineration of household waste only, without energy recovery.

(b) Ash residue generated by solid waste incinerators that

receive and combust solid waste, other than household waste, and do not recover energy are subject to procedures for identifying the ash residue generated at the facility as hazardous waste. If this ash residue is not identified as hazardous waste, the ash residue must be managed in accordance with provisions of this section.

(c) (1) The permittee must separately test the bottom ash and the fly ash unless the fly ash and bottom ash are combined, in which case, the combined ash must be tested in accordance with procedures established by the secretary.

(2) The permittee must conduct testing of the ash residues as follows:

(A) A representative sample of ash residue must be tested for volatile matter on a weekly basis or other such period authorized by the department: (i) Testing for volatile matter must begin within seven days after commencement of operation; (ii) testing must be performed in accordance with the test procedures for total fixed and volatile solids in solid and semisolid samples as published in Methods for Chemical Analysis of Water and Wastes, USEPA-600/4-79-020, March 1979, revised March 1983; (iii) ash residue must contain less than 10% volatile matter by weight; (iv) if the ash residue contains more than 10% volatile matter, the permittee must prepare a plan identifying a schedule of actions to be undertaken to achieve less than 10% volatile matter in the ash residue, which plan must be submitted to the secretary within 30 days after receipt of the sample test results; and (v) the test results of all such tests must be incorporated into the quarterly report and records must be maintained in accordance with law.

(B) Ash residue must be tested for leaching potential upon exposure to acid and nonacid conditions, and for compositional analysis. Testing must begin within one month following the commencement of operation, and must continue semiannually thereafter.

(d) (1) Semiannual testing must be performed in accordance

with a sampling and analysis plan approved by the secretary. This plan shall identify both the sample collection and analytical protocols that must be used to obtain a representative sample of ash residue. This plan must reflect the appropriate scientific criteria for sampling and analysis; considering the heterogeneous characteristics of solid waste to be combusted and ash residue, including seasonal variations, in the constituents of such solid waste and ash residue.

(2) The sampling and analysis plan must include procedures and techniques for: (A) Sample collection; (B) sample preservation and shipment; (C) analytical procedures for determining leaching potential of arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver upon exposure to both acid and nonacid liquids; (D) analytical procedures for analysis of the total content of the following: Arsenic, beryllium, barium, cadmium, chromium (total and hexavalent), copper, lead, mercury, nickel, silver, zinc, calcium, iron, silicon, tin, aluminum, chloride, sulfate and any other parameters determined by the secretary to be necessary; (E) chain of custody control; (F) means of assuring consistency and quality in laboratory procedures and results; and (G) results of the semiannual testing must be submitted to the department central office and departmental region within which the facility is located no later than 60 days after the last date of sample collection.

(e) The ash residue covered by this section is limited to bottom ash that is managed separately, fly ash which is managed separately, combined fly ash and bottom ash, fly ash treated in accordance with subsection (g)(4) and ash residue disposed of with mixed solid waste.

(f) (1) All applications for permits to construct and operate solid waste incinerators must include an ash residue management plan.

(2) This plan must describe the methods, equipment and structures necessary to prevent the uncontrolled dispersion of

ash residue, considering potential pathways of human or environmental exposure, including but not limited to inhalation, direct contact and potential for groundwater and surface water contamination.

(3) The ash residue management plan must address the generation, handling, storage, transportation, treatment and disposal or use of ash residue as described in this act.

(4) The plan must estimate the quantity of bottom ash, fly ash or combined ash generated from the facility on a daily basis. This estimate must identify and quantify those components of ash residue that can potentially be segregated for recycling before disposal.

(5) The permittee must design, construct, operate, and maintain ash handling systems that ensure ash residue (whether bottom ash, fly ash or combined ash) is properly wetted or contained to ensure that dust emissions are controlled during on-site and off-site storage, loading, transport and unloading. The ash residue must be wet enough so that the surface of the ash remains damp after unloading at a landfill.

(6) The permittee must provide sufficient on-site ash residue storage capacity to ensure that facility operations continue during short-term interruptions of ash residue transportation and/or disposal. The quantity of residue stored on-site must be limited to not more than seven times the daily design output. Residue stored on-site may be either:

(A) Stored in watertight, leak resistant containers located inside a building or enclosed structure. All containers must allow free liquid to drain from the ash residue during the loading process. Liquid drained during this process must be collected and, if discharged, must meet appropriate discharge limits. Loaded containers may be stored outside of a building or enclosed structure if all free liquid has been drained and the container is sealed and covered to prevent rainwater infiltration or airborne emissions; or

(B) stored on-site in a waste pile which is located in an

enclosed structure. The residue must be placed on an impermeable base. A run-off management system must be provided to collect and control the free liquid that is allowed to drain from the ash residue.

(7) Ash residue must be drained of free liquid before transport. Ash residue transportation containers or vehicles must be watertight and leak resistant, and must be designed and constructed such that any closures at or near the bottom are sealed to prevent leakage under normal transportation conditions. Closures must be fitted with gaskets or materials that will not be deteriorated by the ash. The transport vehicle must be enclosed or covered to prevent the top surface of the load from becoming dried, resulting in fugitive emissions during transport.

(g) (1) The residue management plan submitted pursuant to subsection (f) must identify each solid waste disposal area that will receive ash residue from the facility.

(2) Fly ash must be disposed of in a monofill having a double composite liner system constructed in accordance with rules and regulations adopted by the secretary.

(3) Except as provided in subsection (g)(5), ash residue other than fly ash must be disposed of in a solid waste disposal area having a double composite liner system constructed in accordance with rules and regulations adopted by the secretary.

(4) Treatment of fly ash may be provided if the permittee can demonstrate to the secretary's satisfaction that the proposed treatment process can physically or chemically alter the fly ash, such that the extract generated upon exposure to acidic and nonacidic conditions does not contain inorganic constituents at concentrations greater than 100 times the respective groundwater quality standard provided by law. The inorganic constituents to be analyzed will include but not be limited to arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, chloride, copper, iron, sulfate and zinc. The permittee must establish performance standards and operational criteria for the treatment process and provide documentation, in the form of certified

laboratory analyses, that the treatment process, as proposed, can be reliably operated to comply with the performance standard.

(5) If a solid waste disposal area in this state was under construction or in operation on June 30, 1994, combined ash, bottom ash and fly ash treated in accordance with subsection (g)(4) may be disposed of in the disposal area, even if the disposal area does not comply with the requirements of subsection (g)(3), if the disposal area has adequate leachate management and surface water run-off control, as determined by the secretary.

(h) This subsection (h) applies to the use of ash on solid waste disposal areas for applications including but not limited to landfill cover, temporary or permanent roads, part of the final cover or cap, final site grading or building or construction material within the boundaries of the solid waste disposal area.

(1) Bottom ash may be used as described in this subsection on existing solid waste disposal areas which meet the requirements of subsection (g)(5) if:

(A) The ash to be used in any such application must, at a minimum, comply with the ash residue requirements of subsection (a).

(B) The ash, or blend of ash with other aggregate materials or reagents (ash product), can be shown to meet the specifications of the specific landfill application or be shown to exhibit performance characteristics required for its intended application.

(C) The ash or ash product has been tested pursuant to a sampling and analysis protocol acceptable to the secretary and yields an extract containing less than 100 times the groundwater quality standard for arsenic, barium, cadmium, chromium, lead, mercury, selenium and silver.

(D) The permittee must submit the results of the tests for at least six representative samples to the secretary prior to the initiation of the utilization activity and at least each calendar quarter thereafter to demonstrate that the material meets the

leaching requirements presented in subsection (h)(1)(C). The permittee shall be required to statistically exhibit 90% confidence that the referenced leaching requirements are not exceeded. (Test results generated pursuant to the semiannual testing requirements of subsection (c)(2)(B) can be considered to meet the requirements of this subsection).

(E) The permittee submits an operation plan to ensure that potential fugitive dust emissions and run-off during on-site loading, transport, unloading and processing of the ash will be adequately controlled.

(F) Any part of the ash stream not utilized shall be managed in accordance with subsection (g).

(2) Combined ash may be beneficially used on existing solid waste disposal area in compliance with all applicable laws and rules and regulations if the permittee complies with the requirements of subsections (h)(1)(A) through (F) for the combined ash or combined ash product.

(i) This subsection (i) applies to ash residue in the form of bottom ash only, fly ash only or combined ash that is proposed to be beneficially used as an ingredient or as a substitute for a raw material.

(1) The permittee must demonstrate to the secretary's satisfaction that the resulting material is not a waste, has a known market or disposition and is not accumulated on speculation, and that contractual arrangements have been made with a second person for use as an ingredient in a production process and that this person has the necessary equipment to do so.

(2) The permittee must: (A) Chemically and physically characterize the ash residue and each finished product or products and identify the quantity and quality to be marketed; (B) describe the proposed method of application or use, potential markets and potential marketing agreements; (C) demonstrate that the intended use will not adversely affect the public health, safety, welfare or the environment; and (D) if the use of the ash

residue includes mixing with different types of materials, a description of each mixture must be provided.

(3) The beneficial use of ash residue does not relieve the permittee from compliance with subsection (d) of section 4 dealing with the identification of the ash residue and bypass waste or solid waste disposal areas.

New Sec. 7. (a) Any permit or registration required pursuant to this act may be revoked by the secretary if the secretary determines, after notice and an opportunity for hearing in accordance with the Kansas administrative procedure act, that the incinerator, facility or unit:

(1) Is being or has been constructed, altered or operated in violation of law;

(2) is creating or threatens to create a hazard to persons or property in the area or to the environment; or

(3) is creating or threatens to create a public nuisance. The secretary may also revoke a permit or registration for failure to pay any fee required pursuant to this act or if the secretary determines that past or continuing violations of this act have been committed by the permittee or registrant, or any principal, shareholder or other person capable of exercising partial or total control over a permittee or registrant.

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

New Sec. 8. (a) The fees for a permit or registration required by this act shall be established by rules and regulations adopted by the secretary in the amounts necessary to implement, administer and enforce the provisions of this act. Such fees shall not exceed:

(1) For the application and original permit, \$5,000.

(2) For annual permit renewal, \$2,000.

(3) For registration, \$2,000.

(4) For annual registration renewal, \$500.

(b) No refund of a fee shall be made in the case of

revocation of a permit or denial of an application.

(c) All fees collected pursuant to this act shall be deposited in the state treasury and credited to the solid waste management fund. A city, county, other political subdivision or state agency shall be exempt from payment of the fee but shall meet all other provisions of this act.

New Sec. 9. The secretary shall adopt such rules and regulations as reasonably necessary to implement, administer and enforce the provisions of this act.

New Sec. 10. Violation of this act is a class A nonperson misdemeanor.

New Sec. 11. (a) Any person who violates any provision of this act shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed \$5,000 for every such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of this act 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. Any such person may, within 15 days after service of the order, make written request to the secretary for a hearing thereon. 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) Notwithstanding any other provision of this act, the secretary, upon receipt of information that there is a threatened or actual violation of this act may present a 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 such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard. Such action may include permanent or temporary cessation of operation of an incinerator, facility or unit subject to this act.

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

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

(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. 12. K.S.A. 1993 Supp. 65-3402 is hereby amended to read as follows: 65-3402. As used in this act, unless the context otherwise requires:

(a) "Solid waste" means garbage, refuse and other discarded materials including, but not limited to, solid, semisolid, sludges, liquid and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. Solid waste does not include hazardous wastes as defined by subsection (f) of K.S.A. 65-3430, and amendments thereto, recyclables or the waste of domestic animals as described by subsection (a)(1) of K.S.A. 65-3409, and amendments thereto.

(b) "Solid waste management system" means the entire process of storage, collection, transportation, processing, and disposal of solid wastes by any person engaging in such process as a business, or by any state agency, city, authority, county or any combination thereof.

(c) "Solid waste processing facility" means ~~incinerator~~, compost plant, transfer station, reclamation facility or any other location where solid wastes are consolidated, temporarily stored, salvaged or otherwise processed prior to being transported to a final disposal site. This term does not include a scrap material recycling and processing facility.

(d) "Solid waste disposal area" means any area used for the disposal of solid waste from more than one residential premise, or one or more commercial, industrial, manufacturing or municipal operations.

(e) "Person" means individual, partnership, firm, trust, company, association, corporation, individual or individuals having controlling or majority interest in a corporation, institution, political subdivision, state agency or federal

department or agency.

(f) "Waters of the state" means all streams and springs, and all bodies of surface or groundwater, whether natural or artificial, within the boundaries of the state.

(g) "Secretary" means the secretary of health and environment.

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

(i) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water.

(j) "Open dumping" means the disposal of solid waste at any solid waste disposal area or facility which is not permitted by the secretary under the authority of K.S.A. 65-3407, and amendments thereto, or the disposal of solid waste contrary to rules and regulations adopted pursuant to K.S.A. 65-3406, and amendments thereto.

(k) "Generator" means any person who produces or brings into existence solid waste.

(l) "Monitoring" means all procedures used to (1) systematically inspect and collect data on the operational parameters of a facility, an area or a transporter, or (2) to systematically collect and analyze data on the quality of the air, groundwater, surface water or soils on or in the vicinity of a solid waste disposal facility or area.

(m) "Closure" means the permanent cessation of active disposal operations, abandonment of the disposal area, revocation of the permit or filling with waste of all areas and volume specified in the permit and preparing the area for the long-term care.

(n) "Postclosure" means that period of time subsequent to closure of a solid waste disposal area when actions at the site must be performed.

(o) "Reclamation facility" means any location at which material containing a component defined as a hazardous substance pursuant to K.S.A. 65-3452a and amendments thereto is processed.

(p) "Designated city" means a city or group of cities which, through interlocal agreement with the county in which they are located, is delegated the responsibility for preparation, adoption or implementation of the county solid waste plan.

(q) "Nonhazardous special waste" means any solid waste designated by the secretary as requiring extraordinary handling in a solid waste disposal area.

(r) "Recyclables" means any scrap materials that can be used as a replacement for virgin material in manufacturing, including but not limited to ferrous metals, scrap paper products, scrap plastics and nonferrous metals. Nonferrous metals shall be defined by rule and regulation.

(s) "Scrap material processing industry" means any person who accepts, processes and markets recyclables.

(t) "Scrap material recycling and processing facility" means a fixed location that utilizes machinery and equipment for processing only recyclables.

(u) "Construction and demolition waste" means solid waste resulting from the construction, remodeling, repair and demolition of structures, roads, sidewalks and utilities; and solid waste consisting of vegetation from land clearing and grubbing, utility maintenance, and seasonal or storm-related cleanup. Such wastes include, but are not limited to, bricks, concrete and other masonry materials, roofing materials, soil, rock, wood, wood products, wall covering, plaster, drywall, plumbing fixtures, electrical wiring, electrical components containing no hazardous materials and nonasbestos insulation. It shall not include asbestos waste, garbage, cardboard, furniture, appliances, electrical equipment containing hazardous materials, tires, drums and containers even though such wastes resulted from construction and demolition activities. Clean rubble that is mixed with other construction and demolition waste during

demolition or transportation shall be considered to be construction and demolition waste.

(v) "Construction and demolition landfill" means a permitted solid waste disposal area used exclusively for the disposal on land of construction and demolition wastes. This term shall not include a site that is used exclusively for the disposal of clean rubble.

(w) "Clean rubble" means inert uncontaminated construction and demolition waste which includes concrete and concrete products, reinforcing steel, asphalt pavement, brick, soil or rock.

Sec. 13. K.S.A. 1993 Supp. 65-3402 is hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL NO. 2561

By Committee on Energy and Natural Resources

AN ACT concerning solid waste; authorizing certain fees on disposal and providing for disposition thereof.

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

Section 1. (a) As used in this section, terms have the meanings provided by K.S.A. 65-3402 and amendments thereto.

(b) In addition to any other fee provided by law, the board of county commissioners of any county may impose, by resolution adopted pursuant to this section, a solid waste tonnage fee for each ton or equivalent volume of solid waste disposed of at any solid waste disposal area operated by such county. Such fees shall not apply to:

(1) Any waste tire, as defined by K.S.A. 65-3424 and amendments thereto, disposed in or at a permitted solid waste disposal area;

(2) any of the following wastes when disposed of at a monofill permitted by the department: (A) Sludges from public drinking water supply treatment plants; (B) cement kiln dust from the manufacture of portland and masonry cement; (C) flue gas desulfurization sludge, fly ash and bottom ash from coal-fired electric generating facilities; and (D) foundry sand;

(3) clean rubble;

(4) solid waste solely consisting of vegetation from land clearing and grubbing, utility maintenance and seasonal or storm-related cleanup but such exception shall not apply to yard waste;

(5) construction and demolition waste generated before January 1, 1996, from federal facilities as provided for under contract with the U.S. army corps of engineers before the effective date of this act; and

(6) construction and demolition waste disposed of by the

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state or any city or county, or by any person on behalf of the state or any city or county.

(c) Fees imposed pursuant to this section shall be collected by the county and deposited in a special fund in the county treasury. All interest earned on moneys in the fund shall also be deposited in the fund. If there is more than one solid waste disposal area in the county where fees are imposed pursuant to this section, a separate fund for each such disposal area shall be maintained from the fees collected from such disposal area. Money in the fund shall be used only for payment of costs of closure, postclosure actions and contamination remediation associated with the solid waste disposal area until the secretary determines that all requirements for closure, postclosure actions and contamination remediation associated with the disposal area have been met.

(d) The board of county commissioners, by resolution, may modify, discontinue or reinstate the fee authorized by this section.

(e) Transfer or expenditure of moneys in a special fund provided for by this section for any purpose other than authorized by this section is a class A nonperson misdemeanor and constitutes grounds for forfeiture of public office.

(f) If two or more counties jointly operate a solid waste disposal area, the fee provided for by this section on solid waste disposed of at such disposal area may be imposed, modified, discontinued or reinstated only if a majority of the board of county commissioners of each county jointly operating the disposal area votes to impose, modify, discontinue or reinstate the fee.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

(d) adopt rules and regulations necessary for effectuation of the provisions of this act.

Sec. 5. After providing for public comment and review each

(2) exclude from the priority list any project related to the diversion or transportation of water acquired through a water transfer, as defined by K.S.A. 82a-1501 and amendments thereto;

(4)

(4)

HOUSE BILL No. 2563

By Committee on Energy and Natural Resources

12-14

AN ACT concerning sources of payment of principal and interest on bonds issued to acquire certain conservation water supply storage capacity.

or loans made by the pooled money investment board

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

Section 1. (a) The principal of and interest on any bonds issued by the Kansas development finance authority to acquire conservation water supply storage capacity in federal reservoirs shall be payable in accordance with appropriations acts from the following sources:

or any loans made by the pooled money investment board

(1) Amounts received under contracts entered into pursuant to the state water plan storage act or the water assurance program act, if the water supply storage capacity purchased with the bond proceeds is to be used to service such contracts;

(2) the state economic development initiatives fund created by K.S.A. 79-4804 and amendments thereto;

(3) the state general fund; and

(4) state water plan fund created by K.S.A. 82a-951 and amendments thereto.

(b) The sources of payment listed in subsection (a) are listed in order of the priority which each shall be given as a source of payment. No payment shall be made from any such source unless the legislature determines that there are insufficient moneys for payment from the sources listed preceding such source.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

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