

PDR *Kendig*



State of Kansas . . .

DEPARTMENT OF HEALTH AND ENVIRONMENT



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Topeka, Kansas 66620

Kitty

June 13, 1979

John Kendig
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Kendig:

The enclosed Senate Bill No. 170 is, we understand, the combined copy of two separate Senate Bills which among other things included the authorization to establish fees for monitoring hazardous waste storage sites, to pay extraordinary costs of monitoring after the owner and operating interests have terminated, to pay cost of repairing a site and repairing environmental damage caused by a site, or costs of studies, etc., required if early closure is needed. Section 3 of this bill does authorize the Secretary to lease, license, or contract with any person to provide for the operation, closure, monitoring, etc. of any such site. Section 4 does provide that the state may acquire by gift or transfer from any person or other government agency, any and all lands, buildings, and grounds necessary to fulfill the purposes of this section. Any and all lands, buildings, and grounds acquired under this section shall be owned in fee title absolute by the State of Kansas. Any such gift or transfer is subject to approval and acceptance by the legislature.

This law speaks to all types of hazardous wastes, not just radioactive wastes and I think it is clear the acquiring of land if applicable must be with the approval of the legislature. Since it is a very newly passed statute, we still have no real experience with it and can only quote from the statute. Its meaning and eventual use will remain to be discovered.

If we can be of any further assistance, please do not hesitate to contact this office.

Sincerely,
DIVISION OF ENVIRONMENT

Gerald W. Allen
Gerald W. Allen, Director
Bureau of Radiation Control

GWA:p²a
Enclosure

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SENATE BILL No. 170

AN ACT concerning hazardous wastes; providing certain duties and authorities for the secretary of health and environment relating thereto; amending K.S.A. 1978 Supp. 65-3402 and 65-3406 and repealing the existing sections.

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

Section 1. K.S.A. 1978 Supp. 65-3402 is hereby amended to read as follows: 65-3402. The following words and phrases when used in this act shall, for the purpose of this act, have the meanings respectively ascribed to them in this section.

(a) "Solid waste" means garbage, refuse and other discarded materials including, but not limited to solid, semisolid, sludges, liquid and contained gas waste materials resulting from industrial, commercial, agricultural and domestic activities, and hazardous wastes.

(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 or any other location where solid wastes are consolidated, temporarily stored or salvaged prior to being transported to a final disposal site.

(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, institution, political subdivision or state 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) "Hazardous waste" means solid waste or combination of solid wastes which because of its quantity, concentration or physical, chemical or infectious characteristics is determined by the secretary to be dangerous to human health or present a substantial present or potential hazard to the environment when improperly managed. *Said term shall not include oil and gas field drilling muds and produced brines.*

(j) "Hazardous waste disposal area" means any area used for the discharge, deposit, injection, dumping, spilling, leaking or placing of hazardous waste from one or more commercial, industrial, manufacturing or municipal operations.

(k) "Hazardous waste storage area" means any area where hazardous waste is contained, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.

(l) "Hazardous waste processing facility" means any location where any method, technique or process is applied to hazardous waste to change its physical, biological or chemical characteristics and to render such waste nonhazardous, safer for transport, amenable for recovery or storage or reduced in volume.

(m) "Manifest" means the form prescribed by the secretary to be used for identifying the quantity, composition, origin and the routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(n) "Transporter" means any person who conveys or moves hazardous waste from the point of its generation or any other point to a processing, storage or disposal facility or area or any point in between.

(o) "Generator" means any person who produces or brings into existence hazardous waste.

(p) "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

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and analyze data on the quality of the air, ground water, surface water or soils on or in the vicinity of a solid waste disposal facility or area.

New Sec. 2. The secretary is authorized and directed to: (a) Adopt rules and regulations establishing a schedule of fees to be paid to the secretary by (1) permittees operating hazardous waste processing facilities, hazardous waste storage areas, or hazardous waste disposal areas having permits issued under K.S.A. 1978 Supp. 65-3407, or (2) by licensees storing hazardous wastes with a license issued under the authority of K.S.A. 48-1607, and (3) by hazardous waste transporters transporting hazardous wastes generated in Kansas to hazardous waste processing, storage, or disposal sites and facilities located in Kansas, in other states or outside the continental United States. Said fees shall be for the purposes of monitoring such sites and facilities both during and after operation and for the monitoring of the transportation of hazardous wastes generated in Kansas to hazardous waste sites and facilities for storage, processing, and disposal. Said fees shall be sufficient to reimburse the cost to the state to perform these monitoring responsibilities. In setting fees, the secretary may exempt those fees which would be payable on recycling processes which recover substantial amounts of either energy or materials from hazardous wastes. The secretary shall remit any moneys collected from such fees to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state general fund. Nothing in this subsection shall be construed to relieve a permit holder, licensee, or other person responsible for the operation or long-term care of an area or facility of any monitoring duty or requirement in effect on the effective date of this act or any such duty which may be imposed as a condition of any future permit or license issued under authority of K.S.A. 1978 Supp. 65-3407 or K.S.A. 48-1607.

(b) Adopt rules and regulations establishing a schedule of fees to be paid to the secretary by (1) permittees operating hazardous waste disposal areas for the land disposal of hazardous waste, and (2) by licensees operating hazardous waste storage areas under a license issued under the authority of K.S.A. 48-1607. The secretary shall remit any moneys collected from such fees to the state treasurer to be deposited in the state treasury and credited to the perpetual care trust fund, which fund is hereby established, to be limited to the following three (3) uses: (1) Payment of extraordinary costs of monitoring a site occurring after the responsibility of owner and operating interests has terminated; (2) payment of costs of repairing a site and costs of repairing environmental damage caused by a site, as a result of a post-closure occurrence not anticipated in the plan of operation which poses a substantial hazard to public health and safety or the environment. If an expenditure made under this paragraph would not have been necessary had the person responsible for the operation or long-term care of the site complied with the requirements of the approved plan of operation, a cause of action in favor of the fund shall be accrued to the state of Kansas against such persons and the department shall take such action as is appropriate to enforce this cause of action by recovering any amounts so expended. The net proceeds of any such recovery shall be paid into the perpetual care trust fund; (3) on an emergency basis up to twenty percent (20%) of the balance in the perpetual care trust fund may be allocated for investigation, engineering, equipment, and construction related to the removal, treatment, and disposal of hazardous wastes stored or disposed of on any facility or site closed prior to the effective date of this act when such hazardous waste is found to pose an imminent and substantial risk to the public health and safety or the environment. Said fees shall be in an amount not to exceed twenty-five cents (25¢) per cubic foot of hazardous waste or material for each licensee or permittee who (1) operates a hazardous waste storage area under a license issued under the authority of K.S.A. 48-1607 or (2) operates a land disposal site for solid wastes classified as

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hazardous wastes. Each said licensee or permittee shall, as an advance payment of the fees authorized under this subsection, remit to the secretary an amount not to exceed twenty-five thousand dollars (\$25,000) along with its initial application for a permit or license or initial renewal thereof after the effective date of this act. The advance payment shall constitute a credit against any fee which may be assessed pursuant to this subsection. In establishing fees, the secretary shall give consideration for contamination, cost of disposal, estimated future receipts and estimated future expenses of maintenance, monitoring, and supervision. No educational institution shall be required to pay any such fee.

New Sec. 3. The secretary may by lease, license, or contract with any person provide for the operation, closure, monitoring, or maintenance of any site subject to section 2 for the purposes of carrying out this act.

New Sec. 4. In order to provide for the proper care and surveillance of sites subject to this section, the state of Kansas may acquire by gift or transfer from any person or another government agency, any and all lands, buildings, and grounds necessary to fulfill the purposes of this section. Any and all lands, buildings, and grounds acquired under this section shall be owned in fee title absolute by the state of Kansas. Any such gift or transfer is subject to approval and acceptance by the legislature.

Sec. 5. K.S.A. 1978 Supp. 65-3406 is hereby amended to read as follows: 65-3406. The secretary is authorized and directed to: (a) Adopt such rules and regulations, standards and procedures relative to solid and hazardous waste management as shall be necessary to protect the public health and environment, prevent public nuisances, and enable the secretary to carry out the purposes and provisions of this act.

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

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

(d) Cooperate with appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out his or her duties under this act.

(e) Develop a statewide solid and hazardous waste management plan.

(f) Provide technical assistance, including the training of personnel to cities, counties and other political subdivisions.

(g) Initiate, conduct and support research, demonstration projects, and investigations and coordinate all state agency research programs with applicable federal programs pertaining to solid and hazardous waste management systems.

(h) Establish policies for effective solid and hazardous waste management systems.

(i) Authorize issuance of such permits and orders and conduct such inspections as may be necessary to implement the provisions of this act and the rules, regulations and standards adopted pursuant to this act.

(j) Conduct and contract for research and investigations in the overall area of solid and hazardous waste storage, collection, transportation, processing, treatment, recovery and disposal including, but not limited to, new and novel procedures.

(k) Adopt rules and regulations establishing criteria for (1) identifying hazardous waste including toxicity, persistence and degradability in nature, potential for accumulation in tissue, flammability, corrosiveness and generation of pressure through decomposition, heat or other means and for (2) the location, of processing facilities and disposal areas for such wastes.

(l) Adopt rules and regulations establishing appropriate measures for monitoring hazardous waste processing facilities and disposal areas, both during and after operation of such facilities and areas, to safeguard against failure to comply with the rules and regulations established, to suspend operation of said facili-

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ties and areas as safety to persons, property or the environment may require and to insure that subsequent use of closed hazardous waste disposal sites shall not endanger human health or the environment.

(m) Adopt rules and regulations establishing standards for hazardous waste generators including notification of the secretary, reporting, record keeping, labeling, containerization, source separation, storage, manifests, monitoring, sampling and analysis and manner of filing manifests and reports.

(n) Adopt rules and regulations establishing a schedule of fees, to be paid to the secretary by permittees operating hazardous waste processing facilities or areas, sufficient, but not exceeding the amount necessary; to reimburse the state for the costs of monitoring such facilities and areas during and after operation of such facilities or areas. The secretary shall remit any moneys collected from fees to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state general fund.

(o) (i) Adopt rules and regulations prescribing the form of the manifest and requiring such manifest to accompany any hazardous waste stored, collected, transported, processed, treated, recovered or disposed of, and prescribing the contents of the manifest which shall include the quantity and composition of the hazardous waste, transporter and destination and the manner of signing and filing of the manifest by generators, transporters and operators of treatment, disposal, storage or recovery facilities or areas, and for the maintenance of records of all hazardous waste stored, collected, transported, processed, treated or disposed of in the state.

(o) (o) Adopt rules and regulations establishing standards for routes and equipment used for transporting hazardous waste within the state and requiring the secretary's approval of such routes, with the concurrence of the Kansas department of transportation, and equipment. Such standards shall be consistent with those of the United States and Kansas departments of transportation, with respect to transportation of hazardous materials.

(p) (p) Adopt rules and regulations establishing standards for transporters of hazardous waste including registration, record keeping and the filing of reports, and requiring any person transporting hazardous waste in the state to submit to the secretary satisfactory evidence of liability insurance coverage in such amount as the secretary shall specify to insure the financial responsibility of such person for any liability incurred in transporting such waste.

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

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

(s) (s) Adopt suitable measures, including rules and regulations if appropriate, to encourage recovery and recycling of solid waste for reuse whenever feasible.

(t) (t) Adopt rules and regulations establishing a permit system for the construction, alteration, or operation of a hazardous waste storage or disposal area or treatment facility including, but not limited to, content of applications, evidence of financial responsibility, training of personnel, maintenance of operations, qualifications of ownership, continuity of operation and compliance with standards.

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(u) Adopt rules and regulations establishing minimum standards for closing, termination, and long-term care of sites for the treatment, storage, or land disposal of hazardous waste or the land disposal of solid waste. In this subsection, "site" refers to a site for the storage, treatment, or land disposal of hazardous waste or the land disposal of solid waste which has a permit issued under K.S.A. 1978 Supp. 65-3407. The owner of a site shall be responsible for the long-term care of the site for ten (10) years after the closing of the site, except the secretary may extend the long-term care responsibility of a particular site or sites as the secretary may deem necessary to protect the public health and safety or the environment. Any person acquiring rights of ownership, possession, or operation in a permitted site or facility for the land disposal of solid waste or the treatment, storage, or land disposal of hazardous waste at any time after the site has begun to accept waste and prior to closure shall be subject to all requirements of the permit or license for the site or facility, including the requirements relating to long-term care of the site or facility.

New Sec. 6. The provisions of sections 2 to 4, inclusive, shall be deemed supplemental to article 34 of chapter 65 of the Kansas Statutes Annotated.

Sec. 7. K.S.A. 1978 Supp. 65-3402 and 65-3406 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body.

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Senate adopted Conference Committee report

President of the Senate.

Secretary of the Senate.

Passed the HOUSE as amended _____

House adopted Conference Committee report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.