

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Agriculture and Natural Resources** recommends **SB 124**, as amended by Senate Committee of the Whole, be amended on page 1, following line 5, by inserting:

"Section 1. K.S.A. 48-1603 is hereby amended to read as follows: 48-1603. As used in this act:

(a) "By-product material" means: (1) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; ~~and~~

(2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;

(3) (A) any discrete source of radium-226 that is produced, extracted or converted after extraction for use for a commercial, medical or research activity; or

(B) any material that:

(i) Has been made radioactive by use of a particle accelerator; and

(ii) is produced, extracted or converted after extraction for use for a commercial, medical or research activity; or

(4) any discrete source of naturally occurring radioactive material, other than source material, that:

(A) The secretary declares by order would pose a threat to the public health and safety or the common defense and security similar to the threat posed by a discrete source of radium-

226 after the United States nuclear regulatory commission, or any successor thereto, determines the same; and

(B) is extracted or converted after extraction for use in a commercial, medical or research activity.

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

(c) "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violations of statutes, regulations, licenses or registration certificates, but does not include criminal penalties.

(d) "Closure" or "site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance and monitoring are necessary at the site following termination of licensed operation.

(e) "Decommissioning" means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material and to carry out any other activities to prepare the site for postoperational care.

(f) "Disposal of low-level radioactive waste" means the isolation of such waste from the biosphere.

(g) "Electronic product" means any manufactured or assembled; (1) Product which, when in operation, contains or acts as part of an electronic circuit and emits, or in the absence of effective shielding or other controls would emit, electronic product radiation; ~~or any manufactured or assembled~~ (2) article which is intended for use as a component part, or accessory of a product described in this subsection and which in operation emits, or in the absence of effective shielding or other controls would emit, such radiation.

(h) "Electronic product radiation" means any ionizing or nonionizing, electromagnetic or

particulate radiation, or any sonic, infrasonic, or ultrasonic wave, which is emitted from an electronic product as the result of the operation of an electronic circuit in such product.

(i) "General license" means a license effective pursuant to rules and regulations promulgated by the secretary of health and environment, without the filing of an application to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(j) "High-level radioactive waste" means: (1) Irradiated reactor fuel; (2) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for uranium processing irradiated reactor fuel; and (3) solids into which such liquid wastes have been converted.

(k) "Low-level radioactive waste" means radioactive waste not classified as:

(1) NORM waste or TENORM waste at concentrations and from sources established in rules and regulations adopted by the secretary on or before July 1, 2016;

(2) high-level radioactive waste;

(3) transuranic waste;

(4) spent nuclear fuel; or

(5) by-product material as defined in subsection (a)(2).

(l) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or any other state or political subdivision or agency thereof, and any legal successor, representative, agency, or agency of the foregoing, other than the United States nuclear regulatory commission, or any successor thereto, and other than federal government agencies licensed by the United States nuclear regulatory commission, or any successor thereto.

(m) "Radiation" means: (1) Ionizing radiation including gamma rays, X-rays, alpha particles, beta particles, and including neutrons; (2) any electromagnetic radiation other than ionizing radiation which is generated during the operation of an electronic product; or (3) any sonic, ultrasonic, or infrasonic wave which is emitted from an electronic product as a result of the operation of an electronic circuit in such product.

(n) "Radioactive material" means any material, solid, liquid or gas, which emits ionizing radiation spontaneously. It includes accelerator produced, by-product, naturally occurring, source and special nuclear materials.

(o) "Secretary" means the secretary of the Kansas department of health and environment.

(p) "Source material" means: (1) Uranium, thorium; or any other material which the secretary declares by order to be source material after the United States nuclear regulatory commission, or any successor thereto, has determined the material to be such; or (2) ores containing one or more of the foregoing materials, in such concentration as the secretary declares by order to be source material after the United States nuclear regulatory commission, or any successor thereto, has determined the material in such concentration to be source material.

(q) "Source material mill tailings" means the tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes but not including underground ore bodies depleted by such solution extraction process.

(r) "Source material milling" means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material mill tailings.

(s) "Sources of radiation" means, collectively, radioactive material and radiation generating

equipment.

(t) "Special nuclear material" means: (1) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the secretary declares by order to be special nuclear material after the United States nuclear regulatory commission, or any successor thereto, has determined the material to be such, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(u) "Specific license" means a license issued after application, to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(v) "Spent nuclear fuel" means irradiated nuclear fuel that has undergone at least one year's decay since being used as a source of energy in a power reactor. Spent nuclear fuel includes the special nuclear material, by-product material, source material and other radioactive material associated with fuel assemblies.

(w) "Transuranic waste" means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than five years, in excess of 10 nanocuries per gram.

(x) "Naturally occurring radioactive material" or "NORM" means any nuclide that is radioactive in the nuclide's natural physical state. "NORM" does not include accelerator produced, by-product, source or special nuclear material.

(y) "NORM waste" means solid waste as defined in K.S.A. 65-3402, and amendments thereto, that is contaminated with NORM.

(z) "Technologically enhanced NORM" or "TENORM" means NORM whose radionuclide concentrations are increased by or as a result of past or present human practices. "TENORM" does not

include accelerator produced, by-product, source or special nuclear material.

(aa) "TENORM waste" means solid waste as defined in K.S.A. 65-3402, and amendments thereto, that is contaminated with TENORM.

Sec. 2. K.S.A. 48-1620 is hereby amended to read as follows: 48-1620. ~~The hazardous waste disposal facility approval board secretary~~ shall review and grant or deny final approval for each low-level radioactive waste disposal facility license in the same manner as provided in K.S.A. 65-3433 et seq., and amendments thereto. ~~The board~~ secretary shall not approve any such license which would permit the disposal of low-level radioactive waste below the natural level of the disposal site unless the ~~board~~ secretary, subject to legislative approval, has determined that below grade disposal provides greater protection than above grade disposal for the environment and public health for the period of time for which such low-level radioactive waste may continue to pose a hazard to the environment and public health.";

On page 3, in line 32, after "occurred" by inserting "within the previous three years"; in line 34, after "property" by inserting "prior to closing";

On page 4, in line 9, after "commission" by inserting ", in coordination with the Kansas department of health and environment,"; by striking all in line 16; following line 29, by inserting:

"Sec. 4. K.S.A. 2014 Supp. 65-171d is hereby amended to read as follows: 65-171d. (a) For the purpose of preventing 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 designated 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 such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgment be necessary to: (1) Protect the soil and waters of the state from pollution resulting from underground storage of

liquid petroleum gas and hydrocarbons, other than underground porosity storage of natural gas; (2) 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 (3) establish water quality standards for the waters of the state to protect their designated uses, including establishment of water quality standards variances that may apply to specified pollutants, permittees, or waterbody segments that reflect the highest attainable condition during the specified time period for the variance. In no event shall the secretary's authority be interpreted to include authority over the beneficial use of water, water quantity allocations, protection against water use impairment of a beneficial use, or any other function or authority under the jurisdiction of the Kansas water appropriation act, K.S.A. 82a-701, and amendments thereto.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act, and amendments thereto, as in effect on January 1, 1989, 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 K.S.A. 65-1,178 through 65-1,198, and amendments thereto, and rules and regulations adopted pursuant thereto:

(1) "Pollution" means: (A) 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 uses; or (B) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(2) "Confined feeding facility" means any lot, pen, pool or pond: (A) Which is used for the

confined feeding of animals or fowl for food, fur or pleasure purposes; (B) which is not normally used for raising crops; and (C) in which no vegetation intended for animal food is growing.

(3) "Animal unit" means a unit of measurement calculated by adding the following numbers: The number of beef cattle weighing more than 700 pounds multiplied by 1.0; plus the number of cattle weighing less than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle multiplied by 1.4; plus the number of swine weighing more than 55 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or less multiplied by 0.1; plus the number of sheep or lambs multiplied by 0.1; plus the number of horses multiplied by 2.0; plus the number of turkeys multiplied by 0.018; plus the number of laying hens or broilers, if the facility has continuous overflow watering, multiplied by 0.01; plus the number of laying hens or broilers, if the facility has a liquid manure system, multiplied by 0.033; plus the number of ducks multiplied by 0.2. However, each head of cattle will be counted as one full animal unit for the purpose of determining the need for a federal permit. "Animal unit" also includes the number of swine weighing 55 pounds or less multiplied by 0.1 for the purpose of determining applicable requirements for new construction of a confined feeding facility for which a permit or registration has not been issued before January 1, 1998, and for which an application for a permit or registration and plans have not been filed with the secretary of health and environment before January 1, 1998, or for the purpose of determining applicable requirements for expansion of such facility. Except as otherwise provided, animal units for public livestock markets shall be determined by using the average annual animal units sold by the market during the past five calendar years divided by 365. Such animal unit determination may be adjusted by the department if the public livestock market submits documentation that demonstrates that such adjustment is appropriate based on the amount of time in 24-hour increments or partials thereof that animals are at the market.

(4) "Animal unit capacity" means the maximum number of animal units which a confined

feeding facility is designed to accommodate at any one time.

(5) "Habitable structure" means any of the following structures which is occupied or maintained in a condition which may be occupied and which, in the case of a confined feeding facility for swine, is owned by a person other than the operator of such facility: A dwelling, church, school, adult care home, medical care facility, child care facility, library, community center, public building, office building or licensed food service or lodging establishment.

(6) "Wildlife refuge" means Cheyenne Bottoms wildlife management area, Cheyenne Bottoms preserve and Flint Hills, Quivera, Marais des Cygnes and Kirwin national wildlife refuges.

(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 place of disposal, discharge or escape, may provide for varying the control measures required in each case 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 or pond 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 or pond 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 waters therefrom.

(e) (1) Whenever the secretary of health and environment or the secretary's duly authorized agents find that storage or disposal of salt water not regulated by the state corporation commission or refuse in any surface pond not regulated by the state corporation commission 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 storage or disposal of salt water or refuse. 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 Kansas judicial review act.

(f) The secretary may adopt rules and regulations establishing fees for 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.

(g) (1) Prior to any new construction of a confined feeding facility with an animal unit capacity of 300 or more, such facility shall register with the secretary of health and environment. Such registration shall be accompanied by a \$25 fee. The secretary shall acknowledge the receipt of the registration in a form as designated by the secretary and publish a notice of such receipt.

(2) Such registration shall indicate that the proposed construction will occur within the prescribed tract of land and that the separation distances from the tract boundaries or proposed facility footprint comply with the requirements described in subsections (j), (l) and (m) or exceptions described in (k).

(3) Within 30 days of receipt of such registration, the department of health and environment shall identify any significant water pollution potential or separation distance violations pursuant to subsection (j).

(A) (i) If the proposed facility has an animal unit capacity of 1,000 or more, or if there is identified a significant water pollution potential for a facility of less than 1,000 but more than 300, such facility shall be required to obtain a permit from the secretary.

(ii) If there is no identified water pollution potential posed by a facility with an animal unit capacity of 300 or more but less than 1,000, the secretary shall certify that no permit is required.

(B) If the secretary certifies that no permit is necessary pursuant to subsection (g)(3)(A)(ii), the secretary shall take the following action in regard to separation distances of such facility:

(i) If the separation distances comply with the requirements for separation distances, the secretary shall certify the registration; or

(ii) if the separation distances do not comply with the requirements for separation distances, the secretary:

(a) May reduce the separation distance requirements pursuant to subsection (k) and certify the registration based on such reduction of separation distances; or

(b) shall report the conditions necessary to receive certification to the registrant.

(h) (1) Facilities with a capacity of less than 300 animal units may register with the secretary of health and environment. Such registration shall be accompanied by a \$25 fee.

(2) Within 30 days of receipt of such registration, the department of health and environment shall identify any significant water pollution potential. If there is identified a significant water pollution potential, such facility shall be required to obtain a permit from the secretary. If there is no water pollution potential posed by such facility, the secretary may certify that no permit is required.

(i) (1) If a facility requires a permit pursuant to subsection (g)(3) or (h)(2), the registrant shall submit an application for such permit not later than 18 months after the date of receipt of registration or the registration shall expire.

(2) Upon petition by the registrant, the secretary may extend the application period, by no more than an additional 18 months, if the secretary believes such an extension is reasonable under the circumstances.

(3) Within 30 days of receipt of an application, the secretary shall notify the registrant of whether the application is complete or incomplete. If the application is incomplete, such notice shall

state the reasons why such application is incomplete. Once such registrant submits an application properly addressing each reason listed as a basis for the determination that the application is incomplete, the secretary shall issue an acknowledgment of receipt of the completed application within 30 days of properly addressing such reasons.

(4) Upon expiration of the application period or any extension thereof, the secretary shall not accept any further registrations pertaining to the same location for a period of not less than 180 days.

(j) (1) Any new construction or new expansion of a confined feeding facility, other than a confined feeding facility for swine, shall meet or exceed the following requirements in separation distances from any habitable structure in existence when the registration is received:

- (A) 1,320 feet for facilities with an animal unit capacity of 300 to 999; and
- (B) 4,000 feet for facilities with an animal unit capacity of 1,000 or more.

(2) A confined feeding facility for swine shall meet or exceed the following requirements in separation distances from any habitable structure or city, county, state or federal park in existence when the registration is received:

- (A) 1,320 feet for facilities with an animal unit capacity of 300 to 999;
- (B) 4,000 feet for facilities with an animal unit capacity of 1,000 to 3,724;
- (C) 4,000 feet for expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion is within the perimeter from which separation distances are determined pursuant to subsection (m) for the existing facility; and
- (D) 5,000 feet for: (i) Construction of new facilities with an animal unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion extends outside the perimeter from which separation distances are determined pursuant to subsection (m) for the existing facility.

(3) Any construction of new confined feeding facilities for swine shall meet or exceed the following requirements in separation distances from any wildlife refuge:

(A) 10,000 feet for facilities with an animal unit capacity of 1,000 to 3,724; and

(B) 16,000 feet for facilities with an animal unit capacity of 3,725 or more.

(k) (1) The separation distance requirements of subsections (j)(1) and (2) shall not apply if the registrant obtains a written agreement from all owners of habitable structures which are within the separation distance stating such owners are aware of the construction or expansion and have no objections to such construction or expansion. The written agreement shall be filed in the register of deeds office of the county in which the habitable structure is located.

(2) (A) The secretary may reduce the separation distance requirements of subsection (j)(1) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to public notice; or (ii) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances.

(B) The secretary may reduce the separation distance requirements of subsection (j)(2)(A) or (B) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection (n); (ii) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances; or (iii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

(C) The secretary may reduce the separation distance requirements of subsection (j)(2)(C) or (D) if: (i) No substantial objection from owners of habitable structures within the separation distance is

received in response to notice given in accordance with subsection (l); or (ii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

(l) (1) The separation distances required pursuant to subsection (j)(1) shall not apply to:

(A) Confined feeding facilities which were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities which existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility, including any expansion for which an application was pending on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(2) The separation distances required pursuant to subsections (j)(2)(A) and (B) shall not apply to:

(A) Confined feeding facilities for swine which were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities for swine which existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility which existed on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is

located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(3) The separation distances required pursuant to subsections (j)(2)(C) and (D) and (h)(3) shall not apply to the following, as determined in accordance with subsections ~~(a), (e) and (f)~~ of K.S.A. 65-1,178 (a), (e) and (f), and amendments thereto:

(A) Expansion of an existing confined feeding facility for swine if an application for such expansion has been received by the department before March 1, 1998; and

(B) construction of a new confined feeding facility for swine if an application for such facility has been received by the department before March 1, 1998.

(m) The separation distances required by this section for confined feeding facilities for swine shall be determined from the exterior perimeter of any buildings utilized for housing swine, any lots containing swine, any swine waste retention lagoons or ponds or other manure or wastewater storage structures and any additional areas designated by the registrant for future expansion. Such separation distances shall not apply to offices, dwellings and feed production facilities of a confined feeding facility for swine.

(n) The registrant shall give the notice required by subsections (k)(2)(B) and (C) by certified mail, return receipt requested, to all owners of habitable structures within the separation distance. The registrant shall submit to the department evidence, satisfactory to the department, that such notice has been given.

(o) All plans and specifications submitted to the department for new construction or new

expansion of confined feeding facilities may be, but are not required to be, prepared by a professional engineer or a consultant, as approved by the department. Before approval by the department, any consultant preparing such plans and specifications shall submit to the department evidence, satisfactory to the department, of adequate general commercial liability insurance coverage.";

Also on page 4, in line 30, before "K.S.A." by inserting "K.S.A. 48-1603 and 48-1620 and"; also in line 30, after "Supp." by inserting "65-171d and"; also in line 30, by striking "is" and inserting "are";

And by renumbering sections accordingly;

On page 1, in line 1, after "concerning" by inserting "the department of health and environment; relating to radioactive materials; by-product material; low-level radioactive waste; naturally occurring radioactive material; water and soil pollution;"; also in line 1, by striking "relating to"; in line 2, after "amending" by inserting "K.S.A. 48-1603 and 48-1620 and"; also in line 2, after "Supp." by inserting "65-171d and"; in line 3, by striking "section" and inserting "sections"; and the bill be passed as amended.

Chairperson