GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2006 REGULAR SESSION

SENATE BILL NO. 75

TUESDAY, JANUARY 31, 2006

The following bill was reported to the House from the Senate and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to the hazardous waste assessment fee.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 Section 1. KRS 224.46-580 is amended to read as follows:

2 (1) The General Assembly declares that it is the purpose of this section to promote the
3 development of statewide programs, under the responsibility of a single agency,
4 which are intended to protect the health of the citizens and the environment of the
5 Commonwealth from present and future threats associated with the management of
6 hazardous wastes and the release of toxic chemicals regulated under Title III,
7 Section 313 of the Superfund Amendments and Reauthorization Act of 1986,
8 including disposal, treatment, recycling, storage, and transportation. The intent of
9 the General Assembly is to add to and coordinate, and not replace, existing efforts
10 and responsibilities in the areas of hazardous waste management, toxic chemical
11 manufacture, processing, or other use, and to leave the primary burden and
12 responsibility for hazardous waste and toxic chemical reduction on private industry;
13 and further to finance assistance and coordination by imposing assessments on the
14 generation of hazardous waste. The assessments are intended to produce a reduction
15 in waste generated; to promote the use of new techniques in recycling, treatment,
16 and alternatives other than land disposal; and to place the burden of financing
17 additional hazardous waste management activities necessarily undertaken by state
18 agencies on the users of those products associated with the generation of hazardous
19 waste. The General Assembly further finds that Kentucky's industries need
20 assistance in developing and implementing pollution prevention goals and that a
21 fund should be established to provide technical and financial assistance to those
22 industries.

23 (2) The Environmental and Public Protection Cabinet is given the authority to
24 administer the provisions and programs of this section and the responsibility to
25 achieve the purposes of this section.

1 (3) In addition to all specific responsibilities contained elsewhere in this chapter, the
2 cabinet shall:
3 (a) Respond effectively and in a timely manner to emergencies created by the
4 release of hazardous substances, as defined in KRS 224.01-400, into the
5 environment. The cabinet shall provide for adequate containment and removal
6 of the hazardous substances in order that the threat of a release or actual
7 release of the substance may be abated and resultant harm to the environment
8 minimized. The provisions of KRS 45A.695 to 45A.725 may be suspended by
9 the cabinet if necessary to respond to an environmental emergency.
10 (b) Provide for post-closure monitoring and maintenance of hazardous waste
11 disposal sites upon termination of post-closure monitoring and maintenance
12 responsibilities by persons permitted to operate the facility pursuant to this
13 chapter.
14 (c) Identify, investigate, classify, contain, or clean up any release, threatened
15 release, or disposal of a hazardous substance where responsible parties are
16 economically or otherwise unavailable to properly address the problem and
17 the problem represents an imminent danger to the health of the citizens and
18 the environment of the Commonwealth.
19 (4) The cabinet shall have the authority to finance the nonfederal share of the cost for
20 clean up of sites under the Comprehensive Environmental Response, Compensation
21 and Liability Act of 1980 (Pub. L. 96-510).
22 (5) The cabinet shall recover, when possible, actual and necessary expenditures
23 incurred in carrying out the duties under this section. Any expenditures recovered
24 shall be placed in the hazardous waste management fund.
25 (6) It is the expressed purpose of this section to accomplish effective hazardous waste
26 and toxic chemical management that results in a reduction of the generation of
27 hazardous wastes and the release of toxic chemicals within the Commonwealth;

1 further, it is a purpose of this chapter to allocate a portion of the cost of
2 administering necessary governmental programs related to hazardous waste and
3 toxic chemical management to those industries whose products are reasonably
4 related to the generation of hazardous waste.
5 (7) There is hereby imposed upon every person engaged within this state in the
6 generation of hazardous waste an annual hazardous waste assessment to be
7 determined pursuant to this section according to the quantity by weight of hazardous
8 waste generated, except that no assessment shall be levied against generators for
9 any quantity of "special wastes," waste oil, or spent material from air pollution
10 control devices controlling emissions from coke manufacturing facilities. The
11 assessment shall not be imposed upon any person for any quantities of hazardous
12 waste generated by others for which that person is a secondary handler that stores,
13 processes, or reclaims the waste. The assessment shall be reported and paid to the
14 Environmental and Public Protection Cabinet for the generation of hazardous waste
15 on an annual basis on January 1 of each year. The payment shall be accompanied by
16 a report or return in a form that the cabinet may prescribe. If a federal law is enacted
17 which accomplishes or purports to accomplish the purposes set forth in this section
18 and which levies an assessment or tax upon any business assessed pursuant to this
19 section, the amount of the assessment to be levied upon the business under this
20 section shall be reduced by the amount of the federal assessment or tax upon the
21 business. The reduction shall only be authorized when funds raised by the federal
22 assessment or tax are made available to the state for any of the activities to be
23 funded under this section. If federal moneys are available to carry out the duties
24 imposed by subsection (3) of this section, the assessment shall cease to be levied
25 and collected until such time as federal moneys are no longer available to the
26 Commonwealth for these purposes. The assessment shall be charged against
27 generators of hazardous waste until June 30, ***2008***[~~2006~~]. After this date, no further

1 hazardous waste management assessment shall be charged against generators. ***The***
2 ***hazardous waste assessment shall be waived for any generator owing less than***
3 ***fifty dollars ($50) for the year. However, a return must be filed by generators to***
4 ***whom a payment waiver applies.***
5 (8) The assessment on generators shall be one and two-tenths cents ($0.012) per pound
6 if the waste is liquid, or two-tenths of a cent ($0.002) per pound if the waste is
7 solid.
8 (a) Hazardous waste that is injected into a permitted underground injection well
9 shall be assessed on a dry weight basis;
10 (b) Hazardous waste treated, detoxified, solidified, neutralized, recycled,
11 incinerated, or disposed of on-site shall be assessed at one-half (1/2) of the
12 appropriate rate, except for recycled waste used in the steel manufacturing
13 process which shall be exempt;
14 (c) Waste that is subject to regulation under Section 402 or 307B of the Federal
15 Clean Water Act shall be exempt; and
16 (d) Emission control dust and sludge from the primary production of steel that is
17 recycled by high temperature metals recovery or managed by stabilization of
18 metals shall be exempt.
19 (9) Except for waste brought into the state by a company to an affiliated manufacturing
20 facility of the company receiving the waste, any person who transports hazardous
21 waste into the state for land disposal or treatment which is generated outside of the
22 state shall pay an assessment to the hazardous waste facility which first receives the
23 waste for storage, treatment, or land disposal. The assessment rate shall be identical
24 to the rate described in subsection (8) of this section. The facility shall remit the
25 assessment to the cabinet on an annual basis on January 1 of each year. The
26 payment shall be accompanied by a return the cabinet shall prescribe.
27 (10) If any generator or hazardous waste facility subject to the provisions of subsection

1 (8) or (9) of this section fails or refuses to file a return or furnish any information
2 requested in writing by the cabinet, the cabinet may, from any information in its
3 possession, make an estimate and issue an assessment against the generator or
4 hazardous waste facility and add a penalty of ten percent (10%) of the amount of the
5 assessment so determined. This penalty shall be in addition to all other applicable
6 penalties in this chapter.
7 (11) If any generator or hazardous waste facility subject to the provisions of subsection
8 (8) or (9) of this section fails to make and file a return required by this chapter on or
9 before the due date of the return or the due date as extended by the cabinet, unless it
10 is shown to the satisfaction of the cabinet, that the failure is due to reasonable cause,
11 five percent (5%) of the assessment found to be due by the cabinet shall be added to
12 the assessment for each thirty (30) days or fraction thereof elapsing between the due
13 date of the return and the date on which it is filed, but the total penalty shall not
14 exceed twenty-five percent (25%) of the assessment.
15 (12) If the assessment imposed by this chapter, whether assessed by the cabinet, or the
16 generator, or any installment or portion of the assessment is not paid on or before
17 the date prescribed for its payment, there shall be collected, as a part of the
18 assessment, interest upon the unpaid amount at the rate of eight percent (8%) per
19 annum from the date prescribed for its payment until payment is actually made to
20 the cabinet.
21 (13) There is hereby created within the State Treasury a trust and agency fund which
22 shall not lapse to be known as the hazardous waste management fund. The fund
23 shall be deposited in an interest-bearing account. The cabinet shall be responsible
24 for collecting and receiving funds as provided in this section, and all such
25 assessments collected or received by the State Treasury shall be deposited in the
26 hazardous waste management fund. All interest earned on the money deposited in
27 the fund shall be deposited to the fund. When the State Treasurer certifies to the

1 cabinet that the uncommitted balance of the hazardous waste management fund
2 exceeds six million dollars ($6,000,000), assessments shall not be collected until the
3 State Treasurer certifies to the cabinet that the balance in the hazardous waste
4 management fund is less than three million dollars ($3,000,000). The
5 implementation of the cap on the fund shall be suspended from July 13, 1990, until
6 July 1, 1991. In addition, for assessments paid after July 1, 1991, the cabinet shall
7 refund or grant a credit against the next assessment to come due, on a pro-rated
8 basis, any money collected in one (1) year in excess of the cap.
9 (14) There is hereby created within the State Treasury a trust and agency account which
10 shall not lapse to be known as the pollution prevention fund. The fund shall be
11 placed in an interest-bearing account. The fund shall be administered by the Center
12 for Pollution Prevention. The cabinet shall remit to the fund each fiscal year twenty
13 percent (20%) of the funds received by the hazardous waste management fund
14 subject to the enacted budget bill. The cabinet shall provide to the center estimates
15 of the amount of the hazardous waste assessment expected to be collected during
16 each upcoming fiscal year.
17 (15) Upon request of the secretary, moneys accumulated in the hazardous waste
18 management fund shall be released in amounts necessary to accomplish the
19 performance of the duties imposed by subsection (3) of this section. However,
20 moneys from the fund shall not be used when federal moneys are available to carry
21 out these duties, except when immediate action is required to protect public health
22 or the environment, in which case the cabinet shall actively pursue reimbursement
23 of the fund by any available federal moneys.
24 (16) If any person responsible for a release or threatened release of a hazardous
25 substance fails to take response actions or to make reasonable progress in
26 completing response actions ordered by the cabinet, the cabinet may bring an action
27 to compel performance or may take appropriate response actions and order the

1 responsible person to reimburse the cabinet for the actual costs incurred by the
2 cabinet.
3 (17) If disposal activities have occurred at a hazardous waste site, the cabinet shall
4 record in the office of the county clerk in the county in which a waste site is situated
5 a notice containing a legal description of the property that discloses to any potential
6 transferee that the land was used to dispose hazardous waste and that further
7 information on the hazardous waste site may be obtained from the cabinet.
8 (18) No person shall affect the integrity of the final cover, liners, or any other
9 components of any containment system after closure of a hazardous waste site on or
10 in which hazardous waste remains without prior written approval of the cabinet.

President of the Senate

Speaker-House of Representatives

Attest: Chief Clerk of Senate

Approved Governor

Date 3/23/06