GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2015 REGULAR SESSION

HOUSE BILL NO. 417

WEDNESDAY, FEBRUARY 25, 2015

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

RECEIVED AND FILED
DATE March 30, 2015
3:37pm

ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

1 AN ACT relating to the hazardous waste management fund.

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

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

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

25 (2) The Energy and Environment Cabinet is given the authority to administer the
26 provisions and programs of this section and the responsibility to achieve the
27 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 224.1-400, 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 Energy and Environment Cabinet for the generation of hazardous waste on an
15 annual basis on January 1 of each year. The payment shall be accompanied by a
16 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, ***2024***[~~2016~~]. 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 fifty
3 dollars ($50) for the year. However, a return must be filed by generators to whom a
4 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;
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; and
19 (e) Waste that is delivered from the generator to an on-site or off-site industrial
20 boiler or furnace and burned for energy recovery in accordance with state and
21 federal laws and regulations shall be assessed at one-half (1/2) of the
22 appropriate rate.
23 (9) Except for waste brought into the state by a company to an affiliated manufacturing
24 facility of the company receiving the waste, any person who transports hazardous
25 waste into the state for land disposal or treatment which is generated outside of the
26 state shall pay an assessment to the hazardous waste facility which first receives the
27 waste for storage, treatment, or land disposal. The assessment rate shall be identical

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

1 be responsible for collecting and receiving funds as provided in this section,
2 and all such assessments collected or received by the State Treasury shall be
3 deposited in the hazardous waste management fund. All interest earned on the
4 money deposited in the fund shall be deposited to the fund. When the State
5 Treasurer certifies to the cabinet that the uncommitted balance of the
6 hazardous waste management fund exceeds six million dollars ($6,000,000),
7 assessments shall not be collected until the State Treasurer certifies to the
8 cabinet that the balance in the hazardous waste management fund is less than
9 three million dollars ($3,000,000). The implementation of the cap on the fund
10 shall be suspended from July 13, 1990, until July 1, 1991. In addition, for
11 assessments paid after July 1, 1991, the cabinet shall refund or grant a credit
12 against the next assessment to come due, on a pro-rated basis, any money
13 collected in one (1) year in excess of the cap.
14 (b) In any fiscal year in which the fees assessed under this section total less than
15 one million eight hundred thousand dollars ($1,800,000) in fiscal year 2007-
16 2008 dollars, adjusted annually to reflect any increase in the cost-of-living
17 index, the difference between the fee receipts and the adjusted minimum
18 balance shall be transferred from funds collected pursuant to KRS 224.60-130.
19 (c) The cabinet shall file with the Legislative Research Commission a biennial
20 report, beginning two (2) years after July 15, 2008, on the revenues and
21 expenditures of the fund.
22 (14) There is hereby created within the State Treasury a trust and agency account which
23 shall not lapse to be known as the pollution prevention fund. The fund shall be
24 placed in an interest-bearing account. The fund shall be administered by the Center
25 for Pollution Prevention. The cabinet shall remit to the fund each fiscal year twenty
26 percent (20%) of the funds received by the hazardous waste management fund
27 subject to the enacted budget bill.

1 (15) Upon request of the secretary, moneys accumulated in the hazardous waste
2 management fund shall be released in amounts necessary to accomplish the
3 performance of the duties imposed by subsection (3) of this section. However,
4 moneys from the fund shall not be used when federal moneys are available to carry
5 out these duties, except when immediate action is required to protect public health
6 or the environment, in which case the cabinet shall actively pursue reimbursement
7 of the fund by any available federal moneys.
8 (16) If any person responsible for a release or threatened release of a hazardous
9 substance fails to take response actions or to make reasonable progress in
10 completing response actions ordered by the cabinet, the cabinet may bring an action
11 to compel performance or may take appropriate response actions and order the
12 responsible person to reimburse the cabinet for the actual costs incurred by the
13 cabinet.
14 (17) If disposal activities have occurred at a hazardous waste site, the cabinet shall
15 record in the office of the county clerk in the county in which a waste site is situated
16 a notice containing a legal description of the property that discloses to any potential
17 transferee that the land was used to dispose hazardous waste and that further
18 information on the hazardous waste site may be obtained from the cabinet.
19 (18) No person shall affect the integrity of the final cover, liners, or any other
20 components of any containment system after closure of a hazardous waste site on or
21 in which hazardous waste remains without prior written approval of the cabinet.

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 3/30/15