GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2016 REGULAR SESSION

HOUSE BILL NO. 106

WEDNESDAY, FEBRUARY 10, 2016

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

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

1 AN ACT relating to chemical munitions disposal and declaring an emergency.

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

3 ➔Section 1. KRS 224.50-130 is amended to read as follows:

4 (1) The General Assembly of Kentucky finds that:

5 (a) The compounds listed in subsection (2) of this section were designed and
6 configured to be utilized for warfare, with the purpose of incapacitating or
7 inducing lethality in persons who come in contact with the compounds, and
8 that the compounds have no legitimate civilian use;

9 (b) The Commonwealth of Kentucky owes to its residents a duty of utmost care to
10 assure that no person will be exposed to these compounds or the degradation
11 by-products of these compounds through purposeful or accidental release of
12 the compounds into the air, land, or water of the Commonwealth, and also
13 owes a duty to utilize the police powers of the Commonwealth to guarantee
14 the safe demilitarization, decommissioning, dismantling, and disposal of
15 weapons containing these compounds and to eliminate potential risks of
16 exposure from the treatment and disposal of the compounds;

17 (c) Section 6929 of Title 42 of the United States Code, specifically recognizes
18 and reserves to the Commonwealth the authority to impose reasonable
19 restrictions directly relating to public health and safety with respect to the
20 management of hazardous wastes beyond the minimum standards established
21 under federal law; and

22 (d) ~~[There exist substantial gaps in information concerning]~~The acute and
23 chronic health effects and environmental consequences of exposure to the
24 compounds and the degradation by-products of the compounds listed in
25 subsection (2) of this section, ~~[which,]~~given the high acute toxicity of the
26 compounds relative to other regulated hazardous wastes, justify the imposition
27 of standards correlative to the uncertainties and severity of risks potentially

1 posed by the treatment or disposal of the compounds.

2 (2) Notwithstanding any other provision of this chapter, within thirty (30) days after
3 July 15, 1988, the cabinet shall list the following compounds as hazardous wastes
4 for the purposes of regulation of the treatment, storage, and disposal of the wastes
5 under the delegated authority of the Resource Conservation and Recovery Act, 42
6 U.S.C. 6901 et seq.: GB (isopropyl methyl phosphonoflouridate); VX (O-ethyl-S-
7 (2-diisopropylaminoethyl) methyl phosphonothiolate); and H (bis(2-chloroethyl)
8 sulfide) and related compounds.

9 (3) In addition to the requirements of KRS 224.46-520(1), the cabinet shall consider the
10 criteria set forth in this subsection in making a determination to issue, deny, or
11 condition a permit for any person desiring a permit to construct or operate a
12 hazardous-waste site or facility for treatment or disposal of any of the compounds
13 identified in subsection (2) of this section. The applicant shall affirmatively
14 demonstrate, and the cabinet shall find prior to issuance, conditional issuance, or
15 denial of the permit or draft permit, that:

16 (a) The proposed treatment or destruction technology has been fully proven in an
17 operational facility of scale, configuration, and throughput comparable to the
18 proposed facility, or has been demonstrated as effective, within the chemical
19 weapons disposal programs as directed in Pub. L. 104-208 and other
20 applicable federal laws, sufficient to provide assurance of destruction or
21 neutralization ***and removal***[~~at an~~] efficiency of ninety-nine and nine thousand,
22 nine hundred, and ninety-nine ten thousandths percent (99.9999%) for each
23 compound listed in subsection (2) of this section that is proposed to be treated
24 or destroyed, with the efficiency to be demonstrated as achievable under all
25 operating conditions. During the occurrence of malfunctions, upsets, or
26 unplanned shutdowns, all quantities of any compound listed in subsection (2)
27 of this section shall be contained, reprocessed or otherwise controlled so as to

1 ensure that the required efficiency is attained prior to any release to the
2 environment;
3 (b) Monitoring data from an operational facility or alternative disposal program as
4 described in paragraph (a) of this subsection reflects that the emissions from
5 treatment and destruction facilities or fugitive sources, including, but not
6 limited to, the emissions of the compounds identified in subsection (2) of this
7 section and products of combustion, incomplete combustion, and other
8 processes alone or in combination present no more than a minimal risk of
9 acute or chronic human health effect, as demonstrated by sufficient and
10 applicable toxicological data, or adverse environmental effect; and
11 (c) An emergency response plan has been submitted to the cabinet and approved,
12 after public notice and an opportunity to be heard, providing for sufficient
13 training, coordination, and equipment for state and local emergency response
14 personnel, including health, police, fire, and other responders, to assure the
15 ability of the community to respond to releases from such a facility. The plan
16 shall demonstrate the capability of evacuating prior to exposure, or otherwise
17 mitigating exposure for all individuals that might be exposed to releases from
18 the facility during a credible worst-case release. In determining the population
19 and area of potential exposure during a worst-case release, all possible
20 climatic conditions and population distributions shall be assumed for the
21 largest area where any exposure to the release could induce acute or chronic
22 health consequences or environmental impact. If such a plan has not been
23 fully implemented at the time of permit approval, the Division of Emergency
24 Management shall advise the cabinet of critical shortcomings. Any permit
25 issued shall include, as conditions, the resolution of critical shortcomings in
26 the implementation of the plan, and shall not allow actual destruction of any
27 of the compounds identified in subsection (2) of this section to begin until

1 those permit conditions have been met to the satisfaction of the Division of
2 Emergency Management. No later than January 1, 2001, the Division of
3 Emergency Management shall complete an assessment of a draft plan
4 previously submitted by the applicant and the respective counties and, after
5 public notice and an opportunity to be heard, shall approve or reject the draft
6 plan. The cabinet shall conduct no technical review of a permit application for
7 treatment or disposal of these compounds until notified in writing by the
8 Division of Emergency Management that the draft plan has been approved.
9 (4) In considering any application for a permit subject to this section, and supporting
10 information which shall be provided by the applicant on request by the cabinet, the
11 cabinet shall not issue a permit unless, as part of the alternatives analysis of KRS
12 224.46-520(1), the cabinet makes an affirmative finding after public notice and an
13 opportunity to be heard, that no alternative method of treatment or disposal exists in
14 an operational facility or alternative disposal program as described in subsection
15 (3)(a) of this section that create less risk of release, or acute or chronic health effect,
16 or adverse environmental effect.
17 (5) In addition to the definition of the term as defined in this chapter, the term
18 "treatment", as used in this section, shall include the manual or mechanical handling
19 of the chemical compounds listed in subsection (2) of this section and of any
20 munitions containing the compounds during the processing of munitions to remove
21 the compounds, to separate munitions components, and to otherwise prepare the
22 components and compounds for destruction, neutralization, dismantling, or
23 decommissioning. The term "treatment" shall not include the handling, movement,
24 or overpacking of containers or munitions containing a compound listed in
25 subsection (2) of this section within the fenced boundaries of an area used for the
26 storage of those munitions if:
27 (a) A plan for the handling, movement, or overpacking is submitted and approved

1 by the cabinet, after public notice and opportunity to be heard, before the
2 handling, movement, or overpacking occurs; or
3 (b) An emergency has occurred and the handling, movement, or overpacking is
4 necessary to protect human health, safety, or the environment, if a report
5 describing the handling, movement, or overpacking is submitted to the cabinet
6 as soon as possible after the emergency is abated.
7 (6) No site or facility for treatment or disposal of any of the substances identified in
8 subsection (2) of this section shall be issued a permit to treat or destroy a live
9 chemical agent as a research, development, or demonstration permit except for a
10 pilot scale operation.
11 (7) ***After the compounds listed in subsection (2) of this section have been treated to***
12 ***the treatment or destruction values identified in subsection (3)(a) of this section,***
13 ***or to comparable destruction or treatment values established by the cabinet where***
14 ***those values identified in subsection (3)(a) are inapplicable, the cabinet shall***
15 ***reclassify any residues of the demilitarization process (secondary wastes) to***
16 ***ensure proper management and disposal consistent with the toxicity and hazard***
17 ***potential of those residual waste streams.***
18 ***(8)*** In addition to other requirements of KRS 224.46-520(1) and subsections (1) to (6)
19 of this section, the cabinet shall not issue a permit or authorization to construct or
20 operate a hazardous waste site or facility for treatment or disposal of any of the
21 compounds identified in subsection (2) of this section unless the applicant provides
22 written documentation from the host county certifying that:
23 (a) All infrastructure improvements identified in the final emergency response
24 plan required in subsection (3)(c) of this section as being reasonably necessary
25 to assure the ability of the community to effectively respond to releases from
26 the facility in order to protect public health and the environment under the
27 emergency response plan, have been or will be completed by the applicant

1 prior to operation of the facility; and

2 (b) The applicant has provided to the host county sufficient funding for
3 reasonable direct and indirect costs of the creation and maintenance of the
4 position of host community liaison. The host community liaison will be
5 determined by the host county and will act as the single point of contact for
6 community relations, emergency planning, and community oversight of the
7 construction, operation, closure, and emergency response of the facility.

8 ➔Section 2. Whereas operations to dispose of chemical weapons are scheduled to
9 commence in 2017, an emergency is declared to exist, and this Act shall take effect upon
10 its passage and approval by the Governor or upon its otherwise becoming a law.

Speaker-House of Representatives

President of Senate

Attest: Sean E. Burgin
Chief Clerk of House of Representatives

Approved
Governor

Date 6 APRIL 2016