

CHAPTER 482**(HB 579)**

AN ACT relating to chemical munitions.

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

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

- (1) The General Assembly of Kentucky finds that:
 - (a) The compounds listed in subsection (2) of this section were designed and configured to be utilized for warfare, with the purpose of incapacitating or inducing lethality in persons who come in contact with the compounds, and that the compounds have no legitimate civilian use;
 - (b) The Commonwealth of Kentucky owes to its residents a duty of utmost care to assure that no person will be exposed to these compounds or the degradation by-products of these compounds through purposeful or accidental release of the compounds into the air, land, or water of the Commonwealth, and also owes a duty to utilize the police powers of the Commonwealth to guarantee the safe demilitarization, decommissioning, dismantling, and disposal of weapons containing these compounds and to eliminate potential risks of exposure from the treatment and disposal of the compounds;
 - (c) Section 6929 of Title 42 of the United States Code, specifically recognizes and reserves to the Commonwealth the authority to impose reasonable restrictions directly relating to public health and safety with respect to the management of hazardous wastes beyond the minimum standards established under federal law; and
 - (d) There exist substantial gaps in information concerning the acute and chronic health effects and environmental consequences of exposure to the compounds and the degradation by-products of the compounds listed in subsection (2) of this section, which, given the high acute toxicity of the compounds relative to other regulated hazardous wastes, justify the imposition of standards correlative to the uncertainties and severity of risks potentially posed by the treatment or disposal of the compounds.
- (2) Notwithstanding any other provision of this chapter, within thirty (30) days after July 15, 1988, the cabinet shall list the following **compounds**~~[substances]~~ as hazardous wastes for the purposes of regulation of the treatment, storage, and disposal of the wastes under the delegated authority of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.: GB (isopropyl methyl phosphonoflouridate); VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate); and H (bis(2-chloroethyl) sulfide) and related compounds.
- (3) In addition to the requirements of KRS 224.46-520(1), the cabinet shall consider the criteria set forth in this subsection in making a determination to issue, deny, or condition a permit for any person desiring a permit to construct or operate a hazardous-waste site or facility for treatment~~[, storage,]~~ or disposal of any of the **compounds**~~[substances]~~ identified in subsection (2) of this section. The applicant shall affirmatively demonstrate, and the cabinet shall find prior to issuance, conditional issuance, or denial of the permit, **or draft permit** that:
 - (a) The proposed treatment or destruction technology has been fully proven in an operational facility of scale, configuration, and throughput comparable to the proposed facility, **or has been demonstrated as effective, within the chemical weapons disposal**

*programs as directed in Pub. L. 104-208 and other applicable federal laws, ~~for a period of time~~ sufficient to provide ~~consistent~~ assurance of destruction or neutralization at an efficiency of ninety-nine and nine thousand, nine hundred, and ninety-nine ten thousandths percent (99.9999%) for each **compound listed in subsection (2) of this section that is** ~~substance~~ proposed to be treated or destroyed, with the efficiency to be demonstrated as achievable ~~during the design life of the facility~~ under all operating conditions. ~~including~~ During the occurrence of malfunctions, upsets, or unplanned shutdowns, **all quantities of any compound listed in subsection (2) of this section shall be contained, reprocessed or otherwise controlled so as to ensure that the required efficiency is attained prior to any release to the environment;***

- (b) Monitoring data from an operational facility *or alternative disposal program* as described in paragraph (a) of this subsection reflects **that** the ~~absence of~~ emissions from treatment and destruction facilities or fugitive sources, including but not limited to the **emissions of the compounds** ~~substances~~ identified in subsection (2) of this section and products of combustion, ~~and~~ incomplete combustion, **and other processes** ~~which~~ alone or in combination present **no more than a minimal** ~~any~~ risk of acute or chronic human health effect, as demonstrated by sufficient and applicable toxicological data, or adverse environmental effect; and
- (c) **An emergency response** ~~[A]~~ plan has been submitted to the cabinet and approved, **after public notice and an opportunity to be heard**, providing for ~~development and funding of~~ sufficient training, coordination, and equipment for state and local emergency response personnel, including ~~the~~ health, police, fire, and **other responders** ~~emergency response fields~~, to assure the ability of the community to respond to releases from such a facility. **The plan shall demonstrate** ~~, including development and funding of an emergency response plan by the applicant which demonstrates~~ the capability of evacuating prior to exposure, **or otherwise mitigating exposure for** all individuals that might be exposed to releases from the facility during a credible worst-case release. In determining the population and area of potential exposure during a worst-case release, all possible climatic conditions and population distributions shall be assumed for the largest area where any exposure to the release could induce acute or chronic health consequences or environmental impact. **If such a plan has not been fully implemented at the time of permit approval, the Division of Emergency Management shall advise the cabinet of critical shortcomings. Any permit issued shall include, as conditions, the resolution of critical shortcomings in the implementation of the plan, and shall not allow actual destruction of any of the compounds identified in subsection (2) of this section to begin until those permit conditions have been met to the satisfaction of the Division of Emergency Management. No later than January 1, 2001, the Division of Emergency Management shall complete an assessment of a draft plan previously submitted by the applicant and the respective counties and, after public notice and an opportunity to be heard, shall approve or reject the draft plan. The cabinet shall conduct no technical review of a permit application for treatment or disposal of these compounds until notified in writing by the Division of Emergency Management that the draft plan has been approved** ~~[The plan shall be developed and submitted for approval by the applicant, and no technical review of a permit subject to this section shall proceed unless the plan has first been approved, after public notice and an opportunity to be heard concerning the plan].~~

- (4) In considering any application for a permit subject to this section, and supporting information which shall be provided by the applicant on request by the cabinet, the cabinet shall not issue a permit unless, as part of the alternatives analysis of KRS 224.46-520(1), the cabinet makes an affirmative finding after public notice and an opportunity to be heard, that ***no alternative method of treatment or disposal exists in an operational facility or alternative disposal program as described in subsection (3)(a) of this section that create less risk of release, or acute or chronic health effect, or adverse environmental effect.***~~‡~~
- ~~(a) No alternative method of treatment or disposal, including, but not limited to, neutralization and transportation to a less populated disposal site, exists that creates less risk of release or harm to the public or the environment in the event of release;~~
- ~~(b) No alternative method of treatment or destruction, including, but not limited to, neutralization and transportation to a less populated disposal site, is likely to exist or could be developed which would pose less risk of release or harm to the public or environment in the event of release, before the time that the decomposition of the compounds or the containers or munitions housing the compounds, necessitates destruction of the compounds due to serious risk of imminent and substantial release of the compounds due to instability or container degradation. In considering alternatives to the proposed activity, the cabinet shall affirmatively consider all reasonable alternatives, including alternatives that could be developed, and shall issue a permit only where it finds by clear and convincing evidence that no alternative treatment or disposal option, including transportation, exists or could be developed that would provide greater protection against exposure or harm to the public or environment.]~~
- (5) In addition to the definition of the term as defined in this chapter, the term "treatment", as used in this section, shall include the manual or mechanical handling of the chemical compounds listed in subsection (2) of this section and of any munitions containing the compounds ~~during‡; and‡~~ the processing of munitions to remove the compounds, to separate ~~munitions‡compound‡~~ components, and to otherwise prepare the components and compounds for destruction, neutralization,~~‡ transportation,‡~~ dismantling, or decommissioning. ***The term "treatment" shall not include the handling, movement, or overpacking of containers or munitions containing a compound listed in subsection (2) of this section within the fenced boundaries of an area used for the storage of those munitions if:***
- (a) A plan for the handling, movement, or overpacking is submitted and approved by the cabinet, after public notice and opportunity to be heard, before the handling, movement, or overpacking occurs; or***
- (b) An emergency has occurred and the handling, movement, or overpacking is necessary to protect human health, safety, or the environment, if a report describing the handling, movement, or overpacking is submitted to the cabinet as soon as possible after the emergency is abated.***

Approved April 21, 2000