

HOUSE BILL No. 2607

By Committee on Environment

1-28

AN ACT concerning solid waste management; amending K.S.A. 65-3407 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-3407 is hereby amended to read as follows: 65-3407. (a) Except as otherwise provided by K.S.A. 65-3407c and amendments thereto, no person shall construct, alter or operate a solid waste processing facility or a solid waste disposal area ~~of a solid waste management system~~, except for clean rubble disposal sites, without first obtaining a permit from the secretary.

(b) (1) *Before submitting a permit application for a solid waste disposal area and before any local zoning action is taken or a solid waste management plan consistency certification is made related to the proposed facility, the applicant shall complete a preliminary site evaluation in accordance with rules and regulations adopted by the secretary. In establishing appropriate standards for preliminary site evaluations, the secretary shall consider factors such as the type or types of waste disposed and the size of the proposed facility. The preliminary site evaluation shall include, but not be limited to: (A) An evaluation of applicable location restrictions, (B) a description of site characteristics in accordance with criteria established in rules and regulations adopted by the secretary and (C) a list of applicable standards prescribed by rules and regulations adopted by the secretary based upon the type of landfill and identified site characteristics.*

(2) *Four copies of each completed preliminary site evaluation report and any follow-up supplemental information shall be submitted by the applicant to the secretary for review and distribution to local government officials.*

(3) *Within 90 days after receipt of a preliminary site evaluation report or within 30 days after receipt of any supplemental information submitted by the applicant in response to comments issued by the secretary, the secretary shall determine if the report satisfies the minimum requirements set forth in rules and regulations adopted by the secretary and shall notify the applicant of the secretary's intent either: (A) To prepare and distribute a written analysis of the preliminary site evaluation report, along with a*

1 copy of the report and supplemental information, to the board of county
2 commissioners of the county where the disposal area is proposed to be
3 located, to the applicable zoning authority for the site where the disposal
4 area is proposed to be located, to the chairperson of the applicable county
5 or regional solid waste management planning committee and to the permit
6 applicant; or (B) to provide written comments to the applicant if the re-
7 port does not satisfy applicable rules and regulations.

8 (4) Acceptance of the preliminary site evaluation report by the sec-
9 retary and the completion of the department's written analysis for dissem-
10 ination to local government officials shall not constitute approval of the
11 proposed solid waste disposal area. The secretary's final decision to issue
12 the permit will be based upon a comprehensive review of the permit ap-
13 plication in accordance with the provisions of subsections (c) through (n)
14 of K.S.A. 65-3407, and amendments thereto, and applicable rules and
15 regulations of the secretary.

16 (5) The secretary shall provide notice to the public after a preliminary
17 site evaluation report has been determined to satisfy the minimum
18 requirements set forth in rules and regulations of the secretary and the
19 report and written analysis have been distributed to local officials as pro-
20 vided in paragraph (3)(A). The secretary shall also direct department staff
21 to be available to participate in public meetings convened and hosted by
22 local government officials to discuss the preliminary site evaluation report
23 and the department's analysis of the report.

24 (6) A preliminary site evaluation report shall be considered a pre-
25 application document and not part of an application for a permit for a
26 solid waste disposal area. The preliminary site characterization work com-
27 pleted by the applicant as part of the preliminary site evaluation shall be
28 updated and supplemented by the applicant as necessary in a complete
29 permit application.

30 ~~(b)~~ (c) Every person desiring to obtain a permit to construct, alter or
31 operate a solid waste processing facility or disposal area shall make ap-
32 plication for such a permit on forms provided for such purpose by the
33 rules and regulations of the secretary and shall provide the secretary with
34 such information as necessary to show that the facility or area will comply
35 with the purpose of this act. Upon receipt of any application and payment
36 of the application fee, the secretary, with advice and counsel from the
37 local health authorities and the county commission, shall make an inves-
38 tigation of the proposed solid waste processing facility or disposal area
39 and determine whether it complies with the provisions of this act and any
40 rules and regulations and standards adopted thereunder. The secretary
41 also may consider the need for the facility or area in conjunction with the
42 county or regional solid waste management plan. If the investigation re-
43 veals that the facility or area conforms with the provisions of the act and

1 the rules and regulations and standards adopted thereunder, the secretary
2 shall approve the application and shall issue a permit for the operation of
3 each solid waste processing or disposal facility or area set forth in the
4 application. If the facility or area fails to meet the rules and regulations
5 and standards required by this act the secretary shall issue a report to the
6 applicant stating the deficiencies in the application. The secretary may
7 issue temporary permits conditioned upon corrections of construction
8 methods being completed and implemented. *The secretary shall complete*
9 *the initial review of any permit application within 180 days after receipt*
10 *of the application and either shall issue a public notice announcing a*
11 *public hearing with intent to issue the permit or shall provide comments*
12 *to the applicant stating the deficiencies in the application. The secretary*
13 *shall respond within 90 days to all subsequent documents submitted by*
14 *the applicant in response to department comments and requests.*

15 ~~(c)~~ (d) Before reviewing any application for permit, the secretary shall
16 conduct a background investigation of the applicant. The secretary shall
17 consider the financial, technical and management capabilities of the ap-
18 plicant as conditions for issuance of a permit. The secretary may reject
19 the application prior to conducting an investigation into the merits of the
20 application if the secretary finds that:

21 (1) The applicant currently holds, or in the past has held, a permit
22 under this section and while the applicant held a permit under this section
23 the applicant violated a provision of subsection (a) of K.S.A. 65-3409, and
24 amendments thereto; or

25 (2) the applicant previously held a permit under this section and that
26 permit was revoked by the secretary; or

27 (3) the applicant failed or continues to fail to comply with any of the
28 provisions of the air, water or waste statutes, including rules and regula-
29 tions issued thereunder, relating to environmental protection or to the
30 protection of public health in this or any other state or the federal gov-
31 ernment of the United States, or any condition of any permit or license
32 issued by the secretary; or if the secretary finds that the applicant has
33 shown a lack of ability or intention to comply with any provision of any
34 law referred to in this subsection or any rule and regulation or order or
35 permit issued pursuant to any such law as indicated by past or continuing
36 violations; or

37 (4) the applicant is a corporation and any principal, shareholder, or
38 other person capable of exercising total or partial control of such corpo-
39 ration could be determined ineligible to receive a permit pursuant to
40 subsection (c)(1), (2) or (3) above.

41 ~~(d)~~ (e) Before reviewing any application for a permit, the secretary
42 may request that the attorney general perform a comprehensive criminal
43 background investigation of the applicant; or in the case of a corporate

1 applicant, any principal, shareholder or other person capable of exercising
2 total or partial control of the corporation. The secretary may reject the
3 application prior to conducting an investigation into the merits of the
4 application if the secretary finds that serious criminal violations have been
5 committed by the applicant or a principal of the corporation.

6 ~~(e)~~ (f) (1) The fees for a solid waste processing or disposal permit
7 shall be established by rules and regulations adopted by the secretary,
8 *subject to the following:*

9 (A) *Except as provided by paragraph (B), the fee for the application*
10 *and original permit shall not exceed \$5,000.*

11 (B) *The fee for the original application and permit for a municipal*
12 *solid waste landfill receiving more than 20 tons of solid waste per day*
13 *shall be \$10,000. The secretary shall monitor and document expenses re-*
14 *lated to the processing of permit applications for such landfills and shall*
15 *refund to the applicant any unused portion of the fee in excess of the*
16 *minimum fee of \$5,000. If the secretary expends all of the initial permit*
17 *fee of \$10,000 before the permit review process is complete, the secretary*
18 *shall require additional permit fee payments in \$5,000 increments, subject*
19 *to the same accounting and reimbursement procedures as for the initial*
20 *fee. The applicant shall submit additional fees within 14 days after receipt*
21 *of notice from the secretary that such fees are due. Failure to comply with*
22 *this requirement shall result in the cessation of the department's work*
23 *related to processing of the permit application. The secretary, upon re-*
24 *quest, shall provide to the applicant records of expenditures related to the*
25 *processing of a permit application.*

26 (C) *Except as provided by paragraph ~~(2)~~ (D), the annual permit re-*
27 *newal fee shall not exceed \$2,000. ~~No refund shall be made in case of~~*
28 *revocation. In establishing permit fees for a construction and demolition*
29 *landfill, the secretary shall adopt a differential fee schedule based upon*
30 *the volume of construction and demolition waste to be disposed of at*
31 *such landfill. ~~All fees shall be deposited in the state treasury and credited~~*
32 *to the solid waste management fund. A city, county, other political sub-*
33 *division or state agency shall be exempt from payment of the fee but shall*
34 *meet all other provisions of this act. No refund of any permit fee shall be*
35 *made in case of revocation of the permit.*

36 ~~(2)~~ (D) The annual permit renewal fee for a solid waste disposal area
37 which is permitted by the secretary, owned and operated by the facility
38 generating the waste and used only for industrial waste generated by such
39 facility shall be not less than \$1,000 nor more than \$4,000. In establishing
40 fees for such disposal areas, the secretary shall adopt a differential fee
41 schedule based upon the characteristics of the disposal area sites.

42 (E) *The fee to significantly modify a permit for a municipal solid*
43 *waste landfill receiving more than 20 tons of solid waste per day shall be*

1 \$10,000. For the purposes of determining the applicability of this fee,
2 “significantly modify” shall mean an increase in the permitted capacity
3 of the facility by 10% or more. The secretary shall monitor and document
4 expenses related to the processing of the application for such permit mod-
5 ifications and shall refund to the applicant any unused portion of the fee
6 in excess of a minimum fee of \$2,000. If the secretary expends all of the
7 initial permit modification fee of \$10,000 before the permit modification
8 review process is complete, the secretary shall require additional permit
9 modification fee payments in \$5,000 increments, subject to the same ac-
10 counting and reimbursement procedures as for the initial fee. The appli-
11 cant shall submit additional fees within 14 days after receipt of notice
12 from the secretary that such fees are due. Failure to comply with this
13 requirement shall result in the cessation of the department’s work related
14 to processing of the application to modify the permit. The secretary, upon
15 request, shall provide to the applicant records of expenditures related to
16 the processing of the application to modify the permit.

17 (2) A city, county, other political subdivision or state agency shall be
18 exempt from payment of the fees provided by this subsection but shall be
19 required to comply with all other provisions of this act.

20 (3) All fees imposed pursuant to this section shall be deposited in the
21 state treasury and credited to the solid waste management fund.

22 ~~(f)~~ (g) Plans, designs and relevant data for the construction of solid
23 waste processing facilities and disposal sites shall be prepared by a pro-
24 fessional engineer licensed to practice in Kansas and shall be submitted
25 to the department for approval prior to the construction, alteration or
26 operation of such facility or area. In adopting rules and regulations, the
27 secretary may specify sites, areas or facilities where the environmental
28 impact is minimal and may waive such preparation requirements provided
29 that a review of such plans is conducted by a professional engineer li-
30 censed to practice in Kansas.

31 ~~(g)~~ (h) Each permit granted by the secretary, as provided in this act,
32 shall be subject to such conditions as the secretary deems necessary to
33 protect human health and the environment and to conserve the sites.
34 Such conditions shall include approval by the secretary of the types and
35 quantities of solid waste allowable for processing or disposal at the per-
36 mitted location.

37 ~~(h)~~ (i) As a condition of granting a permit to operate any processing
38 facility or disposal area for solid waste, the secretary shall require the
39 permittee to: (1) Provide a trust fund, surety bond guaranteeing pay-
40 ment, irrevocable letter of credit or insurance policy, to pay the costs of
41 closure and postclosure care; or (2) pass a financial test or obtain a finan-
42 cial guarantee from a related entity, to guarantee the future availability
43 of funds to pay the costs of closure and postclosure care. The secretary

1 shall prescribe the methods to be used by a permittee to demonstrate
2 sufficient financial strength to become eligible to use a financial test or a
3 financial guarantee procedure in lieu of providing the financial instru-
4 ments listed in (1) above. Solid waste processing facilities or disposal
5 areas, except municipal solid waste landfills, may also demonstrate finan-
6 cial assurance for closure and postclosure care costs by use of ad valorem
7 taxing power. In addition, the secretary shall require the permittee to
8 provide liability insurance coverage during the period that the facility or
9 area is active, and during the term of the facility or area is subject to
10 postclosure care, in such amount as determined by the secretary to insure
11 the financial responsibility of the permittee for accidental occurrences at
12 the site of the facility or area. Any such liability insurance as may be
13 required pursuant to this subsection or pursuant to the rules and regu-
14 lations of the secretary shall be issued by an insurance company author-
15 ized to do business in Kansas or by a licensed insurance agent operating
16 under authority of K.S.A. 40-246b, and amendments thereto, and shall
17 be subject to the insurer's policy provisions filed with and approved by
18 the commissioner of insurance pursuant to K.S.A. 40-216, and amend-
19 ments thereto, except as authorized by K.S.A. 40-246b, and amendments
20 thereto. Nothing contained in this subsection shall be deemed to apply
21 to any state agency or department or agency of the federal government.

22 ~~(j)~~ (j) (1) Permits granted by the secretary as provided by this act
23 shall not be transferable except as follows:

24 (A) A permit for a solid waste disposal area may be transferred if the
25 area is permitted for only solid waste produced on site from manufactur-
26 ing and industrial processes or on-site construction or demolition activi-
27 ties and the only change in the permit is a name change resulting from a
28 merger, acquisition, sale, corporate restructuring or other business
29 transaction.

30 (B) A permit for a solid waste disposal area or a solid waste processing
31 facility may be transferred if the secretary approves of the transfer based
32 upon information submitted to the secretary sufficient to conduct a back-
33 ground investigation of the new owner as specified in subsections (c) and
34 (d) of K.S.A. 65-3407, and amendments thereto, and a financial assurance
35 evaluation as specified in subsection (h) of K.S.A. 65-3407, and amend-
36 ments thereto. Such information shall be submitted to the secretary not
37 more than one year nor less than 60 days before the transfer. If the
38 secretary does not approve or disapprove the transfer within 30 days after
39 all required information is submitted to the secretary, the transfer shall
40 be deemed to have been approved.

41 (2) Permits granted by the secretary as provided by this act shall be
42 revocable or subject to suspension whenever the secretary shall determine
43 that the solid waste processing or disposal facility or area is, or has been

1 constructed or operated in violation of this act or the rules and regulations
2 or standards adopted pursuant to the act, or is creating or threatens to
3 create a hazard to persons or property in the area or to the environment,
4 or is creating or threatens to create a public nuisance, or upon the failure
5 to make payment of any fee required under this act.

6 (3) The secretary also may revoke, suspend or refuse to issue a permit
7 when the secretary determines that past or continuing violations of the
8 provisions of K.S.A. 65-3409, subsection (c)(3) of K.S.A. 65-3407 or
9 K.S.A. 65-3424b, and amendments thereto, have been committed by a
10 permittee, or any principal, shareholder or other person capable of ex-
11 ercising partial or total control over a permittee.

12 ~~(j)~~ (k) Except as otherwise provided by subsection (i)(1), the secretary
13 may require a new permit application to be submitted for a solid waste
14 processing facility or a solid waste disposal area in response to any change,
15 either directly or indirectly, in ownership or control of the permitted real
16 property or the existing permittee.

17 ~~(k)~~ (l) In case any permit is denied, suspended or revoked the person,
18 city, county or other political subdivision or state agency may request a
19 hearing before the secretary in accordance with K.S.A. 65-3412, and
20 amendments thereto.

21 ~~(l)~~ (m) (1) No permit to construct or operate a solid waste disposal
22 area shall be issued on or after the effective date of this act if such area
23 is located within ½ mile of a navigable stream used for interstate com-
24 merce or within one mile of an intake point for any public surface water
25 supply system.

26 (2) Any permit, issued before the effective date of this act, to con-
27 struct or operate a solid waste disposal area is hereby declared void if
28 such area is not yet in operation and is located within ½ mile of a navi-
29 gable stream used for interstate commerce or within one mile of an intake
30 point for any public surface water supply system.

31 (3) The provisions of this subsection shall not be construed to pro-
32 hibit: (A) Issuance of a permit for lateral expansion onto land contiguous
33 to a permitted solid waste disposal area in operation on the effective date
34 of this act; (B) issuance of a permit for a solid waste disposal area for
35 disposal of a solid waste by-product produced on-site; (C) renewal of an
36 existing permit for a solid waste area in operation on the effective date
37 of this act; or (D) activities which are regulated under K.S.A. 65-163
38 through 65-165 or 65-171d, and amendments thereto.

39 ~~(m)~~ (n) Before reviewing any application for a solid waste processing
40 facility or solid waste disposal area, the secretary shall require the follow-
41 ing information as part of the application:

42 (1) Certification by the board of county commissioners or the mayor
43 of a designated city responsible for the development and adoption of the

1 solid waste management plan for the location where the processing facility
2 or disposal area is or will be located that the processing facility or disposal
3 area is consistent with the plan. This certification shall not apply to a solid
4 waste disposal area for disposal of only solid waste produced on site from
5 manufacturing and industrial processes or from on-site construction or
6 demolition activities.

7 (2) If the location is zoned, certification by the local planning and
8 zoning authority that the processing facility or disposal area is consistent
9 with local land use restrictions or, if the location is not zoned, certification
10 from the board of county commissioners that the processing facility or
11 disposal area is compatible with surrounding land use.

12 (3) For a solid waste disposal area permit issued on or after July 1,
13 1999, proof that the permittee owns the land where the disposal area will
14 be located, if the disposal area is: (A) A municipal solid waste landfill; or
15 (B) a solid waste disposal area that has: (i) A leachate or gas collection or
16 treatment system; (ii) waste containment systems or appurtenances with
17 planned maintenance schedules; or (iii) an environmental monitoring sys-
18 tem with planned maintenance schedules or periodic sampling and anal-
19 ysis requirements. This requirement shall not apply to a permit for lateral
20 or vertical expansion contiguous to a permitted solid waste disposal area
21 in operation on July 1, 1999, if such expansion is on land leased by the
22 permittee before April 1, 1999.

23 Sec. 2. K.S.A. 65-3407 is hereby repealed.

24 Sec. 3. This act shall take effect and be in force from and after its
25 publication in the statute book.

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