

SENATE BILL No. 417

By Committee on Agriculture and Natural Resources

1-27

1 AN ACT concerning health and environment; relating to solid waste;
2 establishing minimum and maximum permit renewal fees for certain
3 disposal areas and processing facilities; amending K.S.A. 65-3407 and
4 repealing the existing section.
5

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

7 Section 1. K.S.A. 65-3407 is hereby amended to read as follows: 65-
8 3407. (a) Except as otherwise provided by K.S.A. 65-3407c, and
9 amendments thereto, no person shall construct, alter or operate a solid
10 waste processing facility or a solid waste disposal area of a solid waste
11 management system, except for clean rubble disposal sites, without first
12 obtaining a permit from the secretary.

13 (b) Every person desiring to obtain a permit to construct, alter or
14 operate a solid waste processing facility or disposal area shall make
15 application for such a permit on forms provided for such purpose by the
16 rules and regulations of the secretary and shall provide the secretary with
17 such information as necessary to show that the facility or area will comply
18 with the purpose of this act. Upon receipt of any application and payment
19 of the application fee, the secretary, with advice and counsel from the local
20 health authorities and the county commission, shall make an investigation
21 of the proposed solid waste processing facility or disposal area and
22 determine whether it complies with the provisions of this act and any rules
23 and regulations and standards adopted thereunder. The secretary also may
24 consider the need for the facility or area in conjunction with the county or
25 regional solid waste management plan. If the investigation reveals that the
26 facility or area conforms with the provisions of the act and the rules and
27 regulations and standards adopted thereunder, the secretary shall approve
28 the application and shall issue a permit for the operation of each solid
29 waste processing or disposal facility or area set forth in the application. If
30 the facility or area fails to meet the rules and regulations and standards
31 required by this act the secretary shall issue a report to the applicant stating
32 the deficiencies in the application. The secretary may issue temporary
33 permits conditioned upon corrections of construction methods being
34 completed and implemented.

35 (c) Before reviewing any application for permit, the secretary shall
36 conduct a background investigation of the applicant. The secretary shall

1 consider the financial, technical and management capabilities of the
2 applicant as conditions for issuance of a permit. The secretary may reject
3 the application prior to conducting an investigation into the merits of the
4 application if the secretary finds that:

5 (1) The applicant currently holds, or in the past has held, a permit
6 under this section and while the applicant held a permit under this section
7 the applicant violated a provision of ~~subsection (a)~~ of K.S.A. 65-3409(a),
8 and amendments thereto; ~~or~~

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

11 (3) the applicant failed or continues to fail to comply with any of the
12 provisions of the air, water or waste statutes, including rules and
13 regulations issued thereunder, relating to environmental protection or to
14 the protection of public health in this or any other state or the federal
15 government of the United States, or any condition of any permit or license
16 issued by the secretary; or if the secretary finds that the applicant has
17 shown a lack of ability or intention to comply with any provision of any
18 law referred to in this subsection or any rule and regulation or order or
19 permit issued pursuant to any such law as indicated by past or continuing
20 violations; or

21 (4) the applicant is a corporation and any principal, shareholder, or
22 other person capable of exercising total or partial control of such
23 corporation could be determined ineligible to receive a permit pursuant to
24 ~~subsection (e) paragraph (1), (2) or (3) above.~~

25 (d) Before reviewing any application for a permit, the secretary may
26 request that the attorney general perform a comprehensive criminal
27 background investigation of the applicant; or in the case of a corporate
28 applicant, any principal, shareholder or other person capable of exercising
29 total or partial control of the corporation. The secretary may reject the
30 application prior to conducting an investigation into the merits of the
31 application if the secretary finds that serious criminal violations have been
32 committed by the applicant or a principal of the corporation.

33 (e) (1) The fees for a solid waste processing or disposal permit shall
34 be established by rules and regulations adopted by the secretary. The fee
35 for the application and original permit shall not exceed \$5,000. Except as
36 provided by ~~paragraph~~ paragraphs (2) and (3), the annual permit renewal
37 fee shall not exceed \$2,000. No refund shall be made in case of revocation.
38 In establishing fees for a construction and demolition landfill, the secretary
39 shall adopt a differential fee schedule based upon the volume of
40 construction and demolition waste to be disposed of at such landfill. All
41 fees shall be deposited in the state treasury and credited to the solid waste
42 management fund. *Except for the annual permit renewal fees provided in*
43 *paragraph (3), a city, county, other political subdivision or state agency*

1 shall be exempt from payment of the fee but shall meet all other provisions
2 of this act.

3 (2) *Except as provided in paragraph (3), the annual permit renewal*
4 *fee for a solid waste disposal area*~~which~~ *that is permitted by the secretary,*
5 *owned or operated by the facility generating the waste and used only for*
6 *industrial waste generated by such facility shall be not less than \$1,000*~~nor~~
7 *and not more than \$4,000. In establishing fees for such disposal areas, the*
8 *secretary shall adopt a differential fee schedule based upon the*
9 *characteristics of the disposal area sites.*

10 (3) (A) *For each solid waste disposal area and each solid waste*
11 *processing facility that is permitted by the secretary and subject to the*
12 *requirements of 40 C.F.R. 257 subpart D, as in effect on July 1, 2017, or*
13 *any later version adopted by reference by the secretary in rules and*
14 *regulations, the annual permit renewal fee shall be not less than \$12,000*
15 *and not more than \$16,000.*

16 (B) *The minimum fee shall apply until a fee schedule is established*
17 *by the secretary in rules and regulations.*

18 (C) *If a single permit encompasses more than one solid waste*
19 *disposal area or solid waste processing facility, the total fee for the permit*
20 *shall be an amount equal to the sum of the fees for each solid waste*
21 *disposal area and each solid waste processing facility subject to 40 C.F.R.*
22 *257 subpart D encompassed in the permit.*

23 (D) *The first annual permit fee is due on September 1, 2022.*

24 (E) *If such solid waste disposal area or solid waste processing*
25 *facility is operating under a federally issued coal combustion residuals*
26 *(CCR) permit that includes all applicable requirements of 40 C.F.R. 257*
27 *subpart D, then the fees provided in this paragraph shall no longer apply*
28 *and such disposal area or facility shall be subject to the fees provided in*
29 *paragraph (2).*

30 (F) *Upon a determination by the department of health and*
31 *environment that such solid waste disposal area or solid waste*
32 *processing facility has met all applicable post-closure care requirements*
33 *of 40 C.F.R. 257 subpart D, and article 29 of the Kansas administrative*
34 *regulations, then such disposal area or facility shall no longer be subject*
35 *to permitting under this paragraph.*

36 (f) Plans, designs and relevant data for the construction of solid waste
37 processing facilities and disposal sites shall be prepared by a professional
38 engineer licensed to practice in Kansas and shall be submitted to the
39 department for approval prior to the construction, alteration or operation of
40 such facility or area. In adopting rules and regulations, the secretary may
41 specify sites, areas or facilities where the environmental impact is minimal
42 and may waive such preparation requirements provided that a review of
43 such plans is conducted by a professional engineer licensed to practice in

1 Kansas.

2 (g) Each permit granted by the secretary, as provided in this act, shall
3 be subject to such conditions as the secretary deems necessary to protect
4 human health and the environment and to conserve the sites. Such
5 conditions shall include approval by the secretary of the types and
6 quantities of solid waste allowable for processing or disposal at the
7 permitted location.

8 (h) (1) Before issuing or renewing a permit to operate a solid waste
9 processing facility or solid waste disposal area, the secretary shall require
10 the permittee to demonstrate that funds are available to ensure payment of
11 the cost of closure and postclosure care and provide liability insurance for
12 accidental occurrences at the permitted facility.

13 ~~(1)~~(2) If the permittee owns the land where the solid waste processing
14 facility or disposal area is located or the permit for the facility was issued
15 before the date this act is published in the Kansas register, the permittee
16 shall satisfy the financial assurance requirement for closure and
17 postclosure care by providing a trust fund, a surety bond guaranteeing
18 payment, an irrevocable letter of credit or insurance policy, or by passing a
19 financial test or obtaining a financial guarantee from a related entity, to
20 guarantee the future availability of funds. The secretary shall prescribe the
21 methods to be used by a permittee to demonstrate sufficient financial
22 strength to become eligible to use a financial test or a financial guarantee
23 procedure in lieu of providing the other financial instruments. Solid waste
24 processing facilities or disposal areas, except municipal solid waste
25 landfills, may also demonstrate financial assurance costs by use of ad
26 valorem taxing power.

27 ~~(2)~~(3) If the permittee does not own the land where the solid waste
28 processing facility or disposal area is located and the permit for the facility
29 is issued after the date this act is published in the Kansas register, the
30 permittee shall satisfy the financial assurance requirement for closure and
31 postclosure care by providing a trust fund, a surety bond guaranteeing
32 payment, or an irrevocable letter of credit.

33 ~~(3)~~(4) The secretary shall require each permittee of a solid waste
34 processing facility or disposal area to provide liability insurance coverage
35 during the period that the facility or area is active, and during the term of
36 the facility or area is subject to postclosure care, in such amount as
37 determined by the secretary to insure the financial responsibility of the
38 permittee for accidental occurrences at the site of the facility or area. Any
39 such liability insurance as may be required pursuant to this subsection or
40 pursuant to the rules and regulations of the secretary shall be issued by an
41 insurance company authorized to do business in Kansas or by a licensed
42 insurance agent operating under authority of K.S.A. 40-246b, and
43 amendments thereto, and shall be subject to the insurer's policy provisions

1 filed with and approved by the commissioner of insurance pursuant to
2 K.S.A. 40-216, and amendments thereto, except as authorized by K.S.A.
3 40-246b, and amendments thereto. Nothing contained in this subsection
4 shall be deemed to apply to any state agency or department or agency of
5 the federal government.

6 (i) (1) Permits granted by the secretary as provided by this act shall
7 not be transferable except as follows:

8 (A) A permit for a solid waste disposal area may be transferred if the
9 area is permitted for only solid waste produced on site from manufacturing
10 and industrial processes or on-site construction or demolition activities and
11 the only change in the permit is a name change resulting from a merger,
12 acquisition, sale, corporate restructuring or other business transaction.

13 (B) A permit for a solid waste disposal area or a solid waste
14 processing facility may be transferred if the secretary approves of the
15 transfer based upon information submitted to the secretary sufficient to
16 conduct a background investigation of the new owner as specified in
17 subsections (c) and (d) of K.S.A. 65-3407, and amendments thereto, and a
18 financial assurance evaluation as specified in subsection (h) of K.S.A. 65-
19 3407, and amendments thereto. Such information shall be submitted to the
20 secretary not more than one year nor less than 60 days before the transfer.
21 If the secretary does not approve or disapprove the transfer within 30 days
22 after all required information is submitted to the secretary, the transfer
23 shall be deemed to have been approved.

24 (2) Permits granted by the secretary as provided by this act shall be
25 revocable or subject to suspension whenever the secretary shall determine
26 that the solid waste processing or disposal facility or area is, or has been
27 constructed or operated in violation of this act or the rules and regulations
28 or standards adopted pursuant to the act, or is creating or threatens to
29 create a hazard to persons or property in the area or to the environment, or
30 is creating or threatens to create a public nuisance, or upon the failure to
31 make payment of any fee required under this act.

32 (3) The secretary also may revoke, suspend or refuse to issue a permit
33 when the secretary determines that past or continuing violations of the
34 provisions of *subsection (c)(3) or* K.S.A. 65-3409, ~~subsection (e)(3) of~~
35 ~~K.S.A. 65-3407 or K.S.A. 65-3424b~~, and amendments thereto, have been
36 committed by a permittee, or any principal, shareholder or other person
37 capable of exercising partial or total control over a permittee.

38 (j) Except as otherwise provided by subsection (i)(1), the secretary
39 may require a new permit application to be submitted for a solid waste
40 processing facility or a solid waste disposal area in response to any
41 change, either directly or indirectly, in ownership or control of the
42 permitted real property or the existing permittee.

43 (k) In case any permit is denied, suspended or revoked the person,

1 city, county or other political subdivision or state agency may request a
2 hearing before the secretary in accordance with K.S.A. 65-3412, and
3 amendments thereto.

4 (1) (1) No permit to construct or operate a solid waste disposal area
5 shall be issued on or after the effective date of this act if such area is
6 located within $\frac{1}{2}$ mile of a navigable stream used for interstate commerce
7 or within one mile of an intake point for any public surface water supply
8 system.

9 (2) Any permit, issued before the effective date of this act, to
10 construct or operate a solid waste disposal area is hereby declared void if
11 such area is not yet in operation and is located within $\frac{1}{2}$ mile of a
12 navigable stream used for interstate commerce or within one mile of an
13 intake point for any public surface water supply system.

14 (3) The provisions of this subsection shall not be construed to
15 prohibit:

16 (A) Issuance of a permit for lateral expansion onto land contiguous to
17 a permitted solid waste disposal area in operation on the effective date of
18 this act;

19 (B) issuance of a permit for a solid waste disposal area for disposal of
20 a solid waste by-product produced on-site;

21 (C) renewal of an existing permit for a solid waste area in operation
22 on the effective date of this act; or

23 (D) activities ~~which are~~ regulated under K.S.A. 65-163 through 65-
24 165 or 65-171d, and amendments thereto.

25 (m) Before reviewing any application for a solid waste processing
26 facility or solid waste disposal area, the secretary shall require the
27 following information as part of the application:

28 (1) Certification by the board of county commissioners or the mayor
29 of a designated city responsible for the development and adoption of the
30 solid waste management plan for the location where the processing facility
31 or disposal area is or will be located that the processing facility or disposal
32 area is consistent with the plan. This certification shall not apply to a solid
33 waste disposal area for disposal of only solid waste produced on site from
34 manufacturing and industrial processes or from on-site construction or
35 demolition activities.

36 (2) If the location is zoned, certification by the local planning and
37 zoning authority that the processing facility or disposal area is consistent
38 with local land use restrictions or, if the location is not zoned, certification
39 from the board of county commissioners that the processing facility or
40 disposal area is compatible with surrounding land use.

41 (3) For a solid waste disposal area permit issued on or after July 1,
42 1999, proof that the applicant either owns the land where the disposal area
43 will be located or operates the solid waste disposal area for an adjacent or

1 on-site industrial facility, if the disposal area is:

2 (A) A municipal solid waste landfill; or

3 (B) a solid waste disposal area that has:

4 (i) A leachate or gas collection or treatment system;

5 (ii) waste containment systems or appurtenances with planned
6 maintenance schedules; or

7 (iii) an environmental monitoring system with planned maintenance
8 schedules or periodic sampling and analysis requirements.

9 (4) If the applicant does not own the land, the applicant shall also
10 provide proof that the applicant has acquired and duly recorded an
11 easement to the landfill property. The easement shall authorize the
12 applicant to carry out landfill operations, closure, post-closure care,
13 monitoring, and all related construction activities on the landfill property
14 as required by applicable solid waste laws and regulations, as established
15 in permit conditions, or as ordered or directed by the secretary. Such
16 easement shall run with the land if the landfill property is transferred and
17 the easement may only be vacated with the consent of the secretary. These
18 requirements shall not apply to a permit for lateral or vertical expansion
19 contiguous to a permitted solid waste disposal area in operation on July 1,
20 1999, if such expansion is on land leased by the permittee before April 1,
21 1999.

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

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