

Substitute for HOUSE BILL No. 2686

By Committee on Environment

2-20

AN ACT concerning solid waste; relating to certain industrial waste; amending K.S.A. 2001 Supp. 65-3407, 65-3415b and 65-3415f and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 65-3407 is hereby amended to read as follows: 65-3407. (a) Except as otherwise provided by K.S.A. 2001 Supp. 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) Every person desiring to obtain a permit to construct, alter or operate a solid waste processing facility or disposal area shall make application for such a permit on forms provided for such purpose by the rules and regulations of the secretary and shall provide the secretary with such information as necessary to show that the facility or area will comply with the purpose of this act. Upon receipt of any application and payment of the application fee, the secretary, with advice and counsel from the local health authorities and the county commission, shall make an investigation of the proposed solid waste processing facility or disposal area and determine whether it complies with the provisions of this act and any rules and regulations and standards adopted thereunder. The secretary also may consider the need for the facility or area in conjunction with the county or regional solid waste management plan. If the investigation reveals that the facility or area conforms with the provisions of the act and the rules and regulations and standards adopted thereunder, the secretary shall approve the application and shall issue a permit for the operation of each solid waste processing or disposal facility or area set forth in the application. If the facility or area fails to meet the rules and regulations and standards required by this act the secretary shall issue a report to the applicant stating the deficiencies in the application. The secretary may issue temporary permits conditioned upon corrections of construction methods being completed and implemented.

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

1 consider the financial, technical and management capabilities of the ap-
2 plicant 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, and
8 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 regula-
13 tions issued thereunder, relating to environmental protection or to the
14 protection of public health in this or any other state or the federal gov-
15 ernment 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 corpo-
23 ration could be determined ineligible to receive a permit pursuant to
24 subsection (c)(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 back-
27 ground investigation of the applicant; or in the case of a corporate appli-
28 cant, any principal, shareholder or other person capable of exercising total
29 or partial control of the corporation. The secretary may reject the appli-
30 cation prior to conducting an investigation into the merits of the appli-
31 cation 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 (2)*, the annual permit renewal fee shall not ex-
37 ceed \$2,000. No refund shall be made in case of revocation. In establish-
38 ing fees for a construction and demolition landfill, the secretary shall
39 adopt a differential fee schedule based upon the volume of construction
40 and demolition waste to be disposed of at such landfill. All fees shall be
41 deposited in the state treasury and credited to the solid waste manage-
42 ment fund. A city, county, other political subdivision or state agency shall
43 be exempt from payment of the fee but shall meet all other provisions of

1 this act.

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

8 (f) Plans, designs and relevant data for the construction of solid waste
9 processing facilities and disposal sites shall be prepared by a professional
10 engineer licensed to practice in Kansas and shall be submitted to the
11 department for approval prior to the construction, alteration or operation
12 of such facility or area. In adopting rules and regulations, the secretary
13 may specify sites, areas or facilities where the environmental impact is
14 minimal and may waive such preparation requirements provided that a
15 review of such plans is conducted by a professional engineer licensed to
16 practice in Kansas.

17 (g) Each permit granted by the secretary, as provided in this act, shall
18 be subject to such conditions as the secretary deems necessary to protect
19 human health and the environment and to conserve the sites. Such con-
20 ditions shall include approval by the secretary of the types and quantities
21 of solid waste allowable for processing or disposal at the permitted
22 location.

23 (h) As a condition of granting a permit to operate any processing
24 facility or disposal area for solid waste, the secretary shall require the
25 permittee to: (1) Provide a trust fund, surety bond guaranteeing pay-
26 ment, irrevocable letter of credit or insurance policy, to pay the costs of
27 closure and postclosure care; or (2) pass a financial test or obtain a finan-
28 cial guarantee from a related entity, to guarantee the future availability
29 of funds to pay the costs of closure and postclosure care. The secretary
30 shall prescribe the methods to be used by a permittee to demonstrate
31 sufficient financial strength to become eligible to use a financial test or a
32 financial guarantee procedure in lieu of providing the financial instru-
33 ments listed in (1) above. Solid waste processing facilities or disposal
34 areas, except municipal solid waste landfills, may also demonstrate finan-
35 cial assurance for closure and postclosure care costs by use of ad valorem
36 taxing power. In addition, the secretary shall require the permittee to
37 provide liability insurance coverage during the period that the facility or
38 area is active, and during the term of the facility or area is subject to
39 postclosure care, in such amount as determined by the secretary to insure
40 the financial responsibility of the permittee for accidental occurrences at
41 the site of the facility or area. Any such liability insurance as may be
42 required pursuant to this subsection or pursuant to the rules and regu-
43 lations of the secretary shall be issued by an insurance company author-

1 ized to do business in Kansas or by a licensed insurance agent operating
2 under authority of K.S.A. 40-246b, and amendments thereto, and shall
3 be subject to the insurer's policy provisions filed with and approved by
4 the commissioner of insurance pursuant to K.S.A. 40-216, and amend-
5 ments thereto, except as authorized by K.S.A. 40-246b, and amendments
6 thereto. Nothing contained in this subsection shall be deemed to apply
7 to any state agency or department or agency of the federal government.

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

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

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

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

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

41 (j) Except as otherwise provided by subsection (i)(1), the secretary
42 may require a new permit application to be submitted for a solid waste
43 processing facility or a solid waste disposal area in response to any change,

1 either directly or indirectly, in ownership or control of the permitted real
2 property or the existing permittee.

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

7 (l) (1) No permit to construct or operate a solid waste disposal area
8 shall be issued on or after the effective date of this act if such area is
9 located within ½ mile of a navigable stream used for interstate commerce
10 or within one mile of an intake point for any public surface water supply
11 system.

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

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

25 (m) Before reviewing any application for a solid waste processing fa-
26 cility or solid waste disposal area, the secretary shall require the following
27 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 permittee owns the land where the disposal area will
43 be located, if the disposal area is: (A) A municipal solid waste landfill; or

1 (B) a solid waste disposal area that has: (i) A leachate or gas collection or
2 treatment system; (ii) waste containment systems or appurtenances with
3 planned maintenance schedules; or (iii) an environmental monitoring sys-
4 tem with planned maintenance schedules or periodic sampling and anal-
5 ysis requirements. This requirement shall not apply to a permit for lateral
6 or vertical expansion contiguous to a permitted solid waste disposal area
7 in operation on July 1, 1999, if such expansion is on land leased by the
8 permittee before April 1, 1999.

9 Sec. 2. K.S.A. 2001 Supp. 65-3415b is hereby amended to read as
10 follows: 65-3415b. (a) There is hereby imposed a state solid waste tonnage
11 fee of \$1.00 for each ton or equivalent volume of solid waste disposed of
12 at any solid waste disposal area in this state other than solid waste enu-
13 merated in subsection (c) or solid waste disposal authorized by the sec-
14 retary pursuant to subsection (a) of K.S.A. 65-3407c, and amendments
15 thereto.

16 (b) There is hereby imposed a state solid waste tonnage fee of \$1.00
17 for each ton or equivalent volume of solid waste transferred out of Kansas
18 through a transfer station, other than waste enumerated in subsection (c).

19 (c) The fees imposed by this section shall not apply to:

20 (1) Any waste tire, as defined by K.S.A. 65-3424, and amendments
21 thereto, disposed in or at a permitted solid waste disposal area;

22 (2) ~~any of the following wastes~~ *sludges from public drinking water*
23 *supply treatment plants*, when disposed of at a monofill permitted by the
24 ~~department;~~

25 ~~—(A) sludges from public drinking water supply treatment plants;~~

26 ~~—(B) cement kiln dust from the manufacture of portland and masonry~~
27 ~~cement;~~

28 ~~—(C) flue gas desulfurization sludge, fly ash and bottom ash from coal-~~
29 ~~fired electric generating facilities; and~~

30 ~~—(D) foundry sand~~ *secretary;*

31 (3) clean rubble;

32 (4) solid waste solely consisting of vegetation from land clearing and
33 grubbing, utility maintenance and seasonal or storm-related cleanup but
34 such exception shall not apply to yard waste; ~~and~~

35 (5) construction and demolition waste disposed of by the federal gov-
36 ernment, by the state of Kansas, or by any city, county or other unit of
37 local government in the state of Kansas, or by any person on behalf
38 thereof; *and*

39 (6) *industrial waste disposed of at a solid waste disposal area which*
40 *is permitted by the secretary, owned and operated by the facility gener-*
41 *ating the waste and used only for industrial waste generated by such*
42 *facility.*

43 (d) The operator of a solid waste disposal area or transfer station shall

1 pay the fee imposed by this section.

2 (e) The secretary of health and environment shall administer, enforce
3 and collect the fee imposed by this section. The secretary shall have the
4 authority to waive such fee when large quantities of waste are generated
5 due to major natural disasters such as floods, tornados and fires unless
6 persons paying such fees are able to recover such fees from the federal
7 government. Except as otherwise provided by subsections (a) and (b), all
8 laws and rules and regulations of the secretary of revenue relating to the
9 administration, enforcement and collection of the retailers' sales tax shall
10 apply to such fee insofar as they can be made applicable. The secretary
11 of health and environment shall adopt any other rules and regulations as
12 necessary for the efficient and effective administration, enforcement and
13 collection thereof.

14 (f) The secretary of health and environment shall remit all moneys
15 collected from fees imposed pursuant to subsections (a) and (b) to the
16 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
17 amendments thereto. Upon receipt of each such remittance, the state
18 treasurer shall deposit the entire amount in the state treasury to the credit
19 of the solid waste management fund created by K.S.A. 65-3415a, and
20 amendments thereto.

21 Sec. 3. K.S.A. 2001 Supp. 65-3415f is hereby amended to read as
22 follows: 65-3415f. (a) As used in this section, terms have the meanings
23 provided by K.S.A. 65-3402 and amendments thereto.

24 (b) In addition to any other fee provided by law, the board of county
25 commissioners of any county may impose, by resolution adopted pursuant
26 to this section, a solid waste tonnage fee for each ton or equivalent volume
27 of solid waste disposed of at any solid waste disposal area operated by
28 such county. Such fees shall not apply to:

29 ~~—(1) Any waste tire, as defined by K.S.A. 65-3424 and amendments~~
30 ~~thereto, disposed in or at a permitted solid waste disposal area;~~

31 ~~—(2) any of the following wastes when disposed of at a monofill per-~~
32 ~~mitted by the department: (A) Sludges from public drinking water supply~~
33 ~~treatment plants; (B) cement kiln dust from the manufacture of portland~~
34 ~~and masonry cement; (C) flue gas desulfurization sludge, fly ash and bot-~~
35 ~~tom ash from coal-fired electric generating facilities; and (D) foundry~~
36 ~~sand;~~

37 ~~—(3) clean rubble;~~

38 ~~—(4) solid waste solely consisting of vegetation from land clearing and~~
39 ~~grubbing, utility maintenance and seasonal or storm-related cleanup but~~
40 ~~such exception shall not apply to yard waste; and~~

41 ~~—(5) construction and demolition waste disposed of by the state of Kan-~~
42 ~~sas or by any city or county in the state of Kansas, or by any person on~~
43 ~~behalf thereof any solid waste exempted from the state solid waste tonnage~~

1 *fee imposed by K.S.A. 65-3415b, and amendments thereto.*

2 (c) Fees imposed pursuant to this section shall be collected by the
3 county and deposited in a special fund in the county treasury. All interest
4 earned on moneys in the fund shall also be deposited in the fund. If there
5 is more than one solid waste disposal area in the county where fees are
6 imposed pursuant to this section, a separate fund for each such disposal
7 area shall be maintained from the fees collected from such disposal area.
8 Money in the fund shall be used only for payment of costs of closure,
9 postclosure actions and contamination remediation associated with the
10 solid waste disposal area until the secretary determines that all require-
11 ments for closure, postclosure actions and contamination remediation as-
12 sociated with the disposal area have been met.

13 (d) The board of county commissioners, by resolution, may modify,
14 discontinue or reinstate the fee authorized by this section.

15 (e) Transfer or expenditure of moneys in a special fund provided for
16 by this section for any purpose other than authorized by this section is a
17 class A nonperson misdemeanor and constitutes grounds for forfeiture of
18 public office.

19 (f) If two or more counties jointly operate a solid waste disposal area,
20 the fee provided for by this section on solid waste disposed of at such
21 disposal area may be imposed, modified, discontinued or reinstated only
22 if a majority of the board of county commissioners of each county jointly
23 operating the disposal area votes to impose, modify, discontinue or re-
24 instate the fee.

25 Sec. 4. K.S.A. 2001 Supp. 65-3407, 65-3415b and 65-3415f are
26 hereby repealed.

27 Sec. 5. This act shall take effect and be in force from and after its
28 publication in the Kansas register.

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