

## HOUSE BILL No. 2246

By Representative McCreary

2-7

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AN ACT concerning solid waste; relating to permit requirements; 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) 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 consider the financial, technical and management capabilities of the ap-

1 plicant as conditions for issuance of a permit. The secretary may reject  
2 the application prior to conducting an investigation into the merits of the  
3 application if the secretary finds that:

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

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9 permit was revoked by the secretary; or

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

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

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

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

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

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

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

22 (h) *Upon application for a solid waste processing facility or solid*  
23 *waste disposal area permit, the secretary shall contract for a hydrological*  
24 *evaluation of the proposed solid waste processing facility or solid waste*  
25 *disposal area, to be performed by an independent professional geologist*  
26 *licensed to practice in Kansas. The cost of the evaluation shall be paid by*  
27 *the applicant.*

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

1 postclosure care, in such amount as determined by the secretary to insure  
2 the financial responsibility of the permittee for accidental occurrences at  
3 the site of the facility or area. Any such liability insurance as may be  
4 required pursuant to this subsection or pursuant to the rules and regu-  
5 lations of the secretary shall be issued by an insurance company author-  
6 ized to do business in Kansas or by a licensed insurance agent operating  
7 under authority of K.S.A. 40-246b, and amendments thereto, and shall  
8 be subject to the insurer's policy provisions filed with and approved by  
9 the commissioner of insurance pursuant to K.S.A. 40-216, and amend-  
10 ments thereto, except as authorized by K.S.A. 40-246b, and amendments  
11 thereto. Nothing contained in this subsection shall be deemed to apply  
12 to any state agency or department or agency of the federal government.

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

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

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

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

40 (3) The secretary also may revoke, suspend or refuse to issue a permit  
41 when the secretary determines that past or continuing violations of the  
42 provisions of K.S.A. 65-3409, subsection (c)(3) of K.S.A. 65-3407 or  
43 K.S.A. 65-3424b, and amendments thereto, have been committed by a

1 permittee, or any principal, shareholder or other person capable of ex-  
2 exercising partial or total control over a permittee.

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

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

12 ~~(l)~~ (m) (1) No permit to construct or operate a solid waste disposal  
13 area shall be issued on or after the effective date of this act if such area  
14 is located within ~~1/2-mile~~ 10 miles of a ~~navigable~~ stream used for interstate  
15 ~~commerce~~, lake, river, reservoir or other water body that is a public or  
16 private water supply source or within ~~one-mile~~ 10 miles of an intake point  
17 for any public surface water supply system.

18 (2) Any permit, issued before the effective date of this act, to con-  
19 struct or operate a solid waste disposal area is hereby declared void if  
20 such area is not yet in operation and is located within ~~1/2-mile~~ 10 miles  
21 of a ~~navigable~~ stream used for interstate commerce, lake river, reservoir  
22 or other water body that is a public or private water supply source or  
23 within ~~one-mile~~ 10 miles of an intake point for any public surface water  
24 supply system.

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

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

36 (1) Certification by the board of county commissioners or the mayor  
37 of a designated city responsible for the development and adoption of the  
38 solid waste management plan for the location where the processing facility  
39 or disposal area is or will be located that the processing facility or disposal  
40 area is consistent with the plan. This certification shall not apply to a solid  
41 waste disposal area for disposal of only solid waste produced on site from  
42 manufacturing and industrial processes or from on-site construction or  
43 demolition activities.

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

6 (3) For a solid waste disposal area permit issued on or after July 1,  
7 1999, proof that the permittee owns the land where the disposal area will  
8 be located, if the disposal area is: (A) A municipal solid waste landfill; or  
9 (B) a solid waste disposal area that has: (i) A leachate or gas collection or  
10 treatment system; (ii) waste containment systems or appurtenances with  
11 planned maintenance schedules; or (iii) an environmental monitoring sys-  
12 tem with planned maintenance schedules or periodic sampling and anal-  
13 ysis requirements. This requirement shall not apply to a permit for lateral  
14 or vertical expansion contiguous to a permitted solid waste disposal area  
15 in operation on July 1, 1999, if such expansion is on land leased by the  
16 permittee before April 1, 1999.

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

18 Sec. 3. This act shall take effect and be in force from and after its  
19 publication in the Kansas register.

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