

SENATE BILL No. 145

By Committee on Natural Resources

1-22

9 AN ACT concerning solid waste; relating to siting restrictions; amending
10 K.S.A. 2006 Supp. 65-3407 and repealing the existing section.

11

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

13 Section 1. K.S.A. 2006 Supp. 65-3407 is hereby amended to read as
14 follows: 65-3407. (a) Except as otherwise provided by K.S.A. 65-3407c,
15 and amendments thereto, no person shall construct, alter or operate a
16 solid waste processing facility or a solid waste disposal area of a solid waste
17 management system, except for clean rubble disposal sites, without first
18 obtaining a permit from the secretary.

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

41 (c) Before reviewing any application for permit, the secretary shall
42 conduct a background investigation of the applicant. The secretary shall
43 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 or 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) Before issuing or renewing a permit to operate a solid waste
23 processing facility or solid waste disposal area, the secretary shall require
24 the permittee to demonstrate that funds are available to ensure payment
25 of the cost of closure and postclosure care and provide liability insurance
26 for accidental occurrences at the permitted facility. (1) If the permittee
27 owns the land where the solid waste processing facility or disposal area
28 is located or the permit for the facility was issued before the date this act
29 is published in the Kansas register, the permittee shall satisfy the financial
30 assurance requirement for closure and postclosure care by providing a
31 trust fund, a surety bond guaranteeing payment, an irrevocable letter of
32 credit or insurance policy, or by passing a financial test or obtaining a
33 financial guarantee from a related entity, to guarantee the future availa-
34 bility of funds. The secretary shall prescribe the methods to be used by
35 a permittee to demonstrate sufficient financial strength to become eligible
36 to use a financial test or a financial guarantee procedure in lieu of pro-
37 viding the other financial instruments. Solid waste processing facilities or
38 disposal areas, except municipal solid waste landfills, may also demon-
39 strate financial assurance costs by use of ad valorem taxing power. (2) If
40 the permittee does not own the land where the solid waste processing
41 facility or disposal area is located and the permit for the facility is issued
42 after the date this act is published in the Kansas register, the permittee
43 shall satisfy the financial assurance requirement for closure and postclo-

1 sure care by providing a trust fund, a surety bond guaranteeing payment,
2 or an irrevocable letter of credit.

3 (3) The secretary shall require each permittee of a solid waste proc-
4 essing facility or disposal area to provide liability insurance coverage dur-
5 ing the period that the facility or area is active, and during the term of
6 the facility or area is subject to postclosure care, in such amount as de-
7 termined by the secretary to insure the financial responsibility of the
8 permittee for accidental occurrences at the site of the facility or area. Any
9 such liability insurance as may be required pursuant to this subsection or
10 pursuant to the rules and regulations of the secretary shall be issued by
11 an insurance company authorized to do business in Kansas or by a li-
12 censed insurance agent operating under authority of K.S.A. 40-246b, and
13 amendments thereto, and shall be subject to the insurer's policy provi-
14 sions filed with and approved by the commissioner of insurance pursuant
15 to K.S.A. 40-216, and amendments thereto, except as authorized by
16 K.S.A. 40-246b, and amendments thereto. Nothing contained in this sub-
17 section shall be deemed to apply to any state agency or department or
18 agency of the federal government.

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

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

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

38 (2) Permits granted by the secretary as provided by this act shall be
39 revocable or subject to suspension whenever the secretary shall determine
40 that the solid waste processing or disposal facility or area is, or has been
41 constructed or operated in violation of this act or the rules and regulations
42 or standards adopted pursuant to the act, or is creating or threatens to
43 create a hazard to persons or property in the area or to the environment,

1 or is creating or threatens to create a public nuisance, or upon the failure
2 to make payment of any fee required under this act.

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

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

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

18 (l) (1) *Except as provided in subsection (1)(3)*, no permit to construct
19 or operate a solid waste disposal area shall be issued on or after ~~the~~
20 ~~effective date of this act July 1, 2007~~, if such area is located within $\frac{1}{2}$
21 ~~mile of a navigable stream used for interstate commerce or within one~~
22 ~~mile of:~~

23 (A) *The sections of land overlying the equus beds, as defined by rules*
24 *and regulations adopted by the secretary;*

25 (B) *the sections of land overlying an alluvial aquifer, as defined by*
26 *rules and regulations adopted by the secretary, if the solid waste disposal*
27 *area will be used as a municipal solid waste landfill and the area is less*
28 *than five miles in the upstream direction from any well that is used for a*
29 *public water supply system in the same alluvial aquifer;*

30 (C) *the sections of land overlying an alluvial aquifer, as defined by*
31 *rules and regulations adopted by the secretary, if the solid waste disposal*
32 *area will be used to dispose of any solid waste other than municipal solid*
33 *waste and the area is less than two miles in the upstream direction from*
34 *any well that is used for a public water supply system in the same alluvial*
35 *aquifer;*

36 (D) *one mile of the following protected water resources or wildlife*
37 *refuges if the solid waste disposal area will be used as a municipal solid*
38 *waste landfill or $\frac{1}{2}$ mile if the solid waste disposal area will be used for*
39 *the disposal of any solid waste other than municipal solid waste:*

40 (i) an intake point for any public surface water supply system;

41 (ii) a lake with a surface area greater than 100 acres unless the lake
42 was created by the owner of an industrial facility to provide the water
43 needs for the operations of that facility and the waste disposed of in the

1 *solid waste disposal area consists of only coal combustion wastes, foundry*
2 *sand, or other inert industrial wastes as defined in rules and regulations*
3 *adopted by the secretary;*
4 *(iii) a well used for a public water supply system;*
5 *(iv) a stream segment with an estimated median flow at the down-*
6 *stream end of greater than 10 cubic feet per second, using the most-recent*
7 *10 years of records as published by the U.S. Geologic Survey;*
8 *(v) a wildlife refuge, as defined in K.S.A. 65-171d, the Tallgrass Prai-*
9 *rie National Preserve, the Cimarron National Grassland, the Konza Prai-*
10 *rie Biological Station, the Pratt Sandhills Wildlife Area or the Smoky*
11 *Valley Ranch; or*
12 *(vi) the Arkansas River.*
13 ~~(2) Any permit, issued before the effective date of this act, to con-~~
14 ~~struct or operate a solid waste disposal area is hereby declared void if~~
15 ~~such area is not yet in operation and is located within ½ mile of a navi-~~
16 ~~gable stream used for interstate commerce or within one mile of an intake~~
17 ~~point for any public surface water supply system. For the purposes of~~
18 ~~subsection (l)(3), except as specified in (l)(3)(I), the expansion of a per-~~
19 ~~mitted solid waste disposal area shall mean an increase in the land area~~
20 ~~authorized for waste disposal pursuant to a permit issued by the secretary~~
21 ~~prior to July 1, 2007 by extending disposal operations onto contiguous~~
22 ~~property.~~
23 (3) The provisions of this subsection (l)(3) shall not be construed to
24 prohibit: (A) Issuance of a permit for ~~lateral the expansion onto land~~
25 ~~contiguous to~~ of a permitted solid waste disposal area ~~in operation on the~~
26 ~~effective date of this act,~~ (B) issuance of a permit for a solid waste disposal
27 ~~area for disposal of a solid waste by-product produced on-site,~~ (C) ~~located~~
28 ~~within one of the protected water resource areas listed in subsection~~
29 ~~(l)(1)(A) through (C) provided:~~
30 (i) *the expansion moves the disposal area no closer to the nearest well*
31 *in the aquifer; or*
32 (ii) *the applicant demonstrates, using site-specific hydrogeological*
33 *data, that the movement of groundwater from the expanded solid waste*
34 *disposal area takes five years or longer to reach the nearest public water*
35 *supply well within the aquifer; or*
36 (iii) *the expansion is designed and constructed in accordance with*
37 *enhanced standards necessary to protect human health and the environ-*
38 *ment as specified in rules and regulations adopted by the secretary;*
39 (B) *Issuance of a permit for a new solid waste disposal area located*
40 *within one of the protected water resource areas listed in subsection*
41 *(l)(1)(A) through (C) provided the disposal area is designed, constructed,*
42 *and operated in accordance with enhanced standards specified in rules*
43 *and regulations adopted by the secretary;*

- 1 (C) Issuance of a permit for the expansion of a permitted municipal
2 solid waste landfill located within one mile of a protected water resource
3 or wildlife refuge listed in subsection (l)(1)(D) provided:
- 4 (i) The expansion moves the disposal area no closer to the protected
5 water resource or wildlife refuge, or
6 (ii) the applicant demonstrates that the expansion will not adversely
7 impact the water resource or wildlife refuge and no part of the expansion
8 is closer than 1000 feet from the protected water resource or wildlife area;
- 9 (D) Issuance of a permit for the expansion of a permitted solid waste
10 disposal area other than a municipal solid waste landfill located within
11 $\frac{1}{2}$ mile of a protected water resource or wildlife refuge listed in subsection
12 (l)(1)(D) provided:
- 13 (i) The expansion moves the disposal area no closer to the protected
14 water resource or wildlife refuge, or
15 (ii) the applicant demonstrates that the expansion will not adversely
16 impact the water resource or wildlife refuge and no part of the expansion
17 is closer than 1000 feet from the protected water resource or wildlife area;
- 18 (E) Issuance of a permit for a new municipal solid waste landfill
19 within one mile of, but no closer than 1000 feet from, a protected water
20 resource or wildlife refuge specified in subsection (l)(1)(D) provided the
21 applicant demonstrates that the proposed solid waste disposal area will
22 not adversely impact the water resource or wildlife refuge;
- 23 (F) Issuance of a permit for any new solid waste disposal area other
24 than a municipal solid waste landfill within $\frac{1}{2}$ mile of, but no closer than
25 1000 feet from, a protected water resource or wildlife refuge specified in
26 subsection (l)(1)(D) provided the applicant demonstrates that the pro-
27 posed solid waste disposal area will not adversely impact the water re-
28 source or wildlife refuge;
- 29 (G) Issuance of a permit for a new or expanded solid waste disposal
30 area within $\frac{1}{2}$ mile of a public water supply well if the area is used only
31 for the disposal of coal combustion waste and if the well only supplies
32 water to the facility generating the waste;
- 33 (H) Issuance of a permit for the expansion of a permitted solid waste
34 disposal area that moves the disposal area closer to a public water supply
35 well than the separation distances provided in this subsection, if the owner
36 of the public water supply well agrees to waive the separation distances
37 in writing;
- 38 (I) Issuance of a permit to expand the capacity of a permitted solid
39 waste disposal area provided all disposal will occur within the permitted
40 footprint established in a permit that had been issued prior to July 1,
41 2007;
- 42 (J) renewal of an existing permit for a solid waste area in operation
43 on the effective date of this act; or

- 1 ~~(D)~~ (K) activities related to the management of residuals generated in
2 the treatment of water which are regulated under K.S.A. 65-163 through
3 65-165 or 65-171d, and amendments thereto.
- 4 (4) The secretary shall develop and adopt rules and regulations to
5 implement the provisions of this act, including rules and regulations that
6 specify the demonstration methods and criteria to be used by applicants
7 proposing to construct and operate landfills within the restricted areas
8 listed in subsection (l)(1). Demonstrations shall evaluate the potential for
9 impacts to the protected water resources and wildlife refuges considering,
10 but not limited to, waste characteristics, site characteristics and engi-
11 neering controls.
- 12 (m) Before reviewing any application for a solid waste processing fa-
13 cility or solid waste disposal area, the secretary shall require the following
14 information as part of the application:
- 15 (1) Certification by the board of county commissioners or the mayor
16 of a designated city responsible for the development and adoption of the
17 solid waste management plan for the location where the processing facility
18 or disposal area is or will be located that the processing facility or disposal
19 area is consistent with the plan. This certification shall not apply to a solid
20 waste disposal area for disposal of only solid waste produced on site from
21 manufacturing and industrial processes or from on-site construction or
22 demolition activities.
- 23 (2) If the location is zoned, certification by the local planning and
24 zoning authority that the processing facility or disposal area is consistent
25 with local land use restrictions or, if the location is not zoned, certification
26 from the board of county commissioners that the processing facility or
27 disposal area is compatible with surrounding land use.
- 28 (3) For a solid waste disposal area permit issued on or after July 1,
29 1999, proof that the applicant either owns the land where the disposal
30 area will be located or operates the solid waste disposal area for an ad-
31 jacent or on-site industrial facility, if the disposal area is: (A) A municipal
32 solid waste landfill; or (B) a solid waste disposal area that has: (i) A leach-
33 ate or gas collection or treatment system; (ii) waste containment systems
34 or appurtenances with planned maintenance schedules; or (iii) an envi-
35 ronmental monitoring system with planned maintenance schedules or pe-
36 riodic sampling and analysis requirements. If the applicant does not own
37 the land, the applicant shall also provide proof that the applicant has
38 acquired and duly recorded an easement to the landfill property. The
39 easement shall authorize the applicant to carry out landfill operations,
40 closure, post-closure care, monitoring, and all related construction activ-
41 ities on the landfill property as required by applicable solid waste laws
42 and regulations, as established in permit conditions, or as ordered or
43 directed by the secretary. Such easement shall run with the land if the

1 landfill property is transferred and the easement may only be vacated
2 with the consent of the secretary. These requirements shall not apply to
3 a permit for lateral or vertical expansion contiguous to a permitted solid
4 waste disposal area in operation on July 1, 1999, if such expansion is on
5 land leased by the permittee before April 1, 1999.

6 Sec. 2. K.S.A. 2006 Supp. 65-3407 is hereby repealed.

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