

2023 Kansas Statutes

65-3407. Permits to construct, alter or operate solid waste processing facilities and solid waste disposal areas; fees; requirements for closure and post-closure care; limitations on issuance of permits.

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

- (1) The applicant currently holds, or in the past has held, a permit under this section and while the applicant held a permit under this section the applicant violated a provision of K.S.A. 65-3409(a), and amendments thereto;
- (2) the applicant previously held a permit under this section and that permit was revoked by the secretary;
- (3) the applicant failed or continues to fail to comply with any of the provisions of the air, water or waste statutes, including rules and regulations issued thereunder, relating to environmental protection or to the protection of public health in this or any other state or the federal government of the United States, or any condition of any permit or license issued by the secretary; or if the secretary finds that the applicant has shown a lack of ability or intention to comply with any provision of any law referred to in this subsection or any rule and regulation or order or permit issued pursuant to any such law as indicated by past or continuing violations; or
- (4) the applicant is a corporation and any principal, shareholder, or other person capable of exercising total or partial control of such corporation could be determined ineligible to receive a permit pursuant to paragraph (1), (2) or (3).

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

(e) (1) The fees for a solid waste processing or disposal permit shall be established by rules and regulations adopted by the secretary. The fee for the application and original permit shall not exceed \$5,000. Except as provided by paragraphs (2) and (3),

the annual permit renewal fee shall not exceed \$2,000. No refund shall be made in case of revocation. In establishing fees for a construction and demolition landfill, the secretary shall adopt a differential fee schedule based upon the volume of construction and demolition waste to be disposed of at such landfill. All fees shall be deposited in the state treasury and credited to the solid waste management fund. Except for the annual permit renewal fees provided in paragraph (3), a city, county, other political subdivision or state agency shall be exempt from payment of the fee but shall meet all other provisions of this act.

(2) Except as provided in paragraph (3), the annual permit renewal fee for a solid waste disposal area that is permitted by the secretary, owned or operated by the facility generating the waste and used only for industrial waste generated by such facility shall be not less than \$1,000 and not more than \$4,000. In establishing fees for such disposal areas, the secretary shall adopt a differential fee schedule based upon the characteristics of the disposal area sites.

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

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

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

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

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

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

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

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

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

(2) If the permittee owns the land where the solid waste processing facility or disposal area is located or the permit for the facility was issued before the date this act is published in the Kansas register, the permittee shall satisfy the financial assurance requirement for closure and postclosure care by providing a trust fund, a surety bond guaranteeing payment, an irrevocable letter of credit or insurance policy, or by passing a financial test or obtaining a financial guarantee from a related entity,

to guarantee the future availability of funds. The secretary shall prescribe the methods to be used by a permittee to demonstrate sufficient financial strength to become eligible to use a financial test or a financial guarantee procedure in lieu of providing the other financial instruments. Solid waste processing facilities or disposal areas, except municipal solid waste landfills, may also demonstrate financial assurance costs by use of ad valorem taxing power.

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

(4) The secretary shall require each permittee of a solid waste processing facility or disposal area to provide liability insurance coverage during the period that the facility or area is active, and during the term of the facility or area is subject to postclosure care, in such amount as determined by the secretary to insure the financial responsibility of the permittee for accidental occurrences at the site of the facility or area. Any such liability insurance as may be required pursuant to this subsection or pursuant to the rules and regulations of the secretary shall be issued by an insurance company authorized to do business in Kansas or by a licensed insurance agent operating under authority of K.S.A. 40-246b, and amendments thereto, and shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance pursuant to K.S.A. 40-216, and amendments thereto, except as authorized by K.S.A. 40-246b, and amendments thereto. Nothing contained in this subsection shall be deemed to apply to any state agency or department or agency of the federal government.

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

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

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

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

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

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

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

(l) (1) No permit to construct or operate a solid waste disposal area shall be issued

on or after the effective date of this act if such area is located within 1/2 mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

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

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

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

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

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

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

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

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

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

(3) For a solid waste disposal area permit issued on or after July 1, 1999, proof that the applicant either owns the land where the disposal area will be located or operates the solid waste disposal area for an adjacent or on-site industrial facility, if the disposal area is:

(A) A municipal solid waste landfill; or

(B) a solid waste disposal area that has:

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

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

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

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

History: L. 1970, ch. 264, § 7; L. 1974, ch. 352, § 160; L. 1977, ch. 221, § 3; L. 1981, ch. 251, § 23; L. 1991, ch. 196, § 1; L. 1992, ch. 316, § 5; L. 1993, ch. 274, § 4; L. 1994, ch. 283, § 3; L. 1997, ch. 140, § 4; L. 1999, ch. 112, § 1; L. 2001, ch. 127, § 2; L. 2002, ch. 101, § 1; L. 2006, ch. 53, § 2; L. 2022, ch. 18, § 1; July 1.