

**SENATE BILL No. 417**

By Committee on Agriculture and Natural Resources

1-27

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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.  
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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) *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. The minimum fee shall apply until a fee*  
16 *schedule is established by the secretary in rules and regulations. If a*  
17 *single permit encompasses more than one solid waste disposal area or*  
18 *solid waste processing facility, the fee shall be an amount equal to the sum*  
19 *of the fees for each solid waste disposal area and each solid waste*  
20 *processing facility encompassed in the permit. The first annual permit fee*  
21 *is due on September 1, 2022.*

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

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

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

42 (2) If the permittee owns the land where the solid waste processing  
43 facility or disposal area is located or the permit for the facility was issued

1 before the date this act is published in the Kansas register, the permittee  
2 shall satisfy the financial assurance requirement for closure and  
3 postclosure care by providing a trust fund, a surety bond guaranteeing  
4 payment, an irrevocable letter of credit or insurance policy, or by passing a  
5 financial test or obtaining a financial guarantee from a related entity, to  
6 guarantee the future availability of funds. The secretary shall prescribe the  
7 methods to be used by a permittee to demonstrate sufficient financial  
8 strength to become eligible to use a financial test or a financial guarantee  
9 procedure in lieu of providing the other financial instruments. Solid waste  
10 processing facilities or disposal areas, except municipal solid waste  
11 landfills, may also demonstrate financial assurance costs by use of ad  
12 valorem taxing power.

13 ~~(2)~~(3) If the permittee does not own the land where the solid waste  
14 processing facility or disposal area is located and the permit for the facility  
15 is issued after the date this act is published in the Kansas register, the  
16 permittee shall satisfy the financial assurance requirement for closure and  
17 postclosure care by providing a trust fund, a surety bond guaranteeing  
18 payment, or an irrevocable letter of credit.

19 ~~(3)~~(4) The secretary shall require each permittee of a solid waste  
20 processing facility or disposal area to provide liability insurance coverage  
21 during the period that the facility or area is active, and during the term of  
22 the facility or area is subject to postclosure care, in such amount as  
23 determined by the secretary to insure the financial responsibility of the  
24 permittee for accidental occurrences at the site of the facility or area. Any  
25 such liability insurance as may be required pursuant to this subsection or  
26 pursuant to the rules and regulations of the secretary shall be issued by an  
27 insurance company authorized to do business in Kansas or by a licensed  
28 insurance agent operating under authority of K.S.A. 40-246b, and  
29 amendments thereto, and shall be subject to the insurer's policy provisions  
30 filed with and approved by the commissioner of insurance pursuant to  
31 K.S.A. 40-216, and amendments thereto, except as authorized by K.S.A.  
32 40-246b, and amendments thereto. Nothing contained in this subsection  
33 shall be deemed to apply to any state agency or department or agency of  
34 the federal government.

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

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

42 (B) A permit for a solid waste disposal area or a solid waste  
43 processing facility may be transferred if the secretary approves of the

1 transfer based upon information submitted to the secretary sufficient to  
2 conduct a background investigation of the new owner as specified in  
3 subsections (c) and (d) of ~~K.S.A. 65-3407, and amendments thereto~~, and a  
4 financial assurance evaluation as specified in subsection (h) of ~~K.S.A. 65-~~  
5 ~~3407, and amendments thereto~~. Such information shall be submitted to the  
6 secretary not more than one year nor less than 60 days before the transfer.  
7 If the secretary does not approve or disapprove the transfer within 30 days  
8 after all required information is submitted to the secretary, the transfer  
9 shall be deemed to have been approved.

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

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

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

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

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

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

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

1 prohibit:

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

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

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

9 (D) activities~~which are~~ regulated under K.S.A. 65-163 through 65-  
10 165 or 65-171d, and amendments thereto.

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

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

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

27 (3) For a solid waste disposal area permit issued on or after July 1,  
28 1999, proof that the applicant either owns the land where the disposal area  
29 will be located or operates the solid waste disposal area for an adjacent or  
30 on-site industrial facility, if the disposal area is:

31 (A) A municipal solid waste landfill; or

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

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

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

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

38 (4) If the applicant does not own the land, the applicant shall also  
39 provide proof that the applicant has acquired and duly recorded an  
40 easement to the landfill property. The easement shall authorize the  
41 applicant to carry out landfill operations, closure, post-closure care,  
42 monitoring, and all related construction activities on the landfill property  
43 as required by applicable solid waste laws and regulations, as established

1 in permit conditions, or as ordered or directed by the secretary. Such  
2 easement shall run with the land if the landfill property is transferred and  
3 the easement may only be vacated with the consent of the secretary. These  
4 requirements shall not apply to a permit for lateral or vertical expansion  
5 contiguous to a permitted solid waste disposal area in operation on July 1,  
6 1999, if such expansion is on land leased by the permittee before April 1,  
7 1999.

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

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