

SENATE BILL No. 362

An Act concerning solid waste; relating to solid waste disposal areas; amending K.S.A. 65-3407 and 65-3415b and K.S.A. 2005 Supp. 65-3402 and repealing the existing sections.

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

Section 1. K.S.A. 2005 Supp. 65-3402 is hereby amended to read as follows: 65-3402. As used in this act, unless the context otherwise requires:

(a) "Solid waste" means garbage, refuse, waste tires as defined by K.S.A. 65-3424, and amendments thereto, and other discarded materials, including, but not limited to, solid, semisolid, sludges, liquid and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. Solid waste does not include hazardous wastes as defined by subsection (f) of K.S.A. 65-3430, and amendments thereto, recyclables or the waste of domestic animals as described by subsection (a)(1) of K.S.A. 65-3409, and amendments thereto.

(b) "Solid waste management system" means the entire process of storage, collection, transportation, processing, and disposal of solid wastes by any person engaging in such process as a business, or by any state agency, city, authority, county or any combination thereof.

(c) "Solid waste processing facility" means incinerator, composting facility, household hazardous waste facility, waste-to-energy facility, transfer station, reclamation facility or any other location where solid wastes are consolidated, temporarily stored, salvaged or otherwise processed prior to being transported to a final disposal site. This term does not include a scrap material recycling and processing facility.

(d) "Solid waste disposal area" means any area used for the disposal of solid waste from more than one residential premises, or one or more commercial, industrial, manufacturing or municipal operations. "Solid waste disposal area" includes all property described or included within any permit issued pursuant to K.S.A. 65-3407, and amendments thereto.

(e) "Person" means individual, partnership, firm, trust, company, association, corporation, individual or individuals having controlling or majority interest in a corporation, institution, political subdivision, state agency or federal department or agency.

(f) "Waters of the state" means all streams and springs, and all bodies of surface or groundwater, whether natural or artificial, within the boundaries of the state.

(g) "Secretary" means the secretary of health and environment.

(h) "Department" means the Kansas department of health and environment.

(i) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water.

(j) "Open dumping" means the disposal of solid waste at any solid waste disposal area or facility which is not permitted by the secretary under the authority of K.S.A. 65-3407, and amendments thereto, or the disposal of solid waste contrary to rules and regulations adopted pursuant to K.S.A. 65-3406, and amendments thereto.

(k) "Generator" means any person who produces or brings into existence solid waste.

(l) "Monitoring" means all procedures used to (1) systematically inspect and collect data on the operational parameters of a facility, an area or a transporter, or (2) to systematically collect and analyze data on the quality of the air, groundwater, surface water or soils on or in the vicinity of a solid waste processing facility or solid waste disposal area.

(m) "Closure" means the permanent cessation of active disposal operations, abandonment of the disposal area, revocation of the permit or filling with waste of all areas and volume specified in the permit and preparing the area for the long-term care.

(n) "Postclosure" means that period of time subsequent to closure of a solid waste disposal area when actions at the site must be performed.

(o) "Reclamation facility" means any location at which material containing a component defined as a hazardous substance pursuant to K.S.A. 65-3452a and amendments thereto or as an industrial waste pursuant to this section is processed.

(p) "Designated city" means a city or group of cities which, through interlocal agreement with the county in which they are located, is dele-

gated the responsibility for preparation, adoption or implementation of the county solid waste plan.

(q) “Nonhazardous special waste” means any solid waste designated by the secretary as requiring extraordinary handling in a solid waste disposal area.

(r) “Recyclables” means any materials that will be used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as an effective substitute for a commercial product. “Recyclables” includes, but is not limited to, paper, glass, plastic, municipal water treatment residues, as defined by K.S.A. 65-163 and amendments thereto, and metal, but does not include yard waste.

(s) “Scrap material processing industry” means any person who accepts, processes and markets recyclables.

(t) “Scrap material recycling and processing facility” means a fixed location that utilizes machinery and equipment for processing only recyclables.

(u) “Construction and demolition waste” means solid waste resulting from the construction, remodeling, repair and demolition of structures, roads, sidewalks and utilities; untreated wood and untreated sawdust from any source; treated wood from construction or demolition projects; small amounts of municipal solid waste generated by the consumption of food and drinks at construction or demolition sites, including, but not limited to, cups, bags and bottles; furniture and appliances from which ozone depleting chlorofluorocarbons have been removed in accordance with the provisions of the federal clean air act; solid waste consisting of motor vehicle window glass; and solid waste consisting of vegetation from land clearing and grubbing, utility maintenance, and seasonal or storm-related cleanup. Such wastes include, but are not limited to, bricks, concrete and other masonry materials, roofing materials, soil, rock, wood, wood products, wall or floor coverings, plaster, drywall, plumbing fixtures, electrical wiring, electrical components containing no hazardous materials, nonasbestos insulation and construction related packaging. “Construction and demolition waste” shall not include waste material containing friable asbestos, garbage, furniture and appliances from which ozone depleting chlorofluorocarbons have not been removed in accordance with the provisions of the federal clean air act, electrical equipment containing hazardous materials, tires, drums and containers even though such wastes resulted from construction and demolition activities. Clean rubble that is mixed with other construction and demolition waste during demolition or transportation shall be considered to be construction and demolition waste.

(v) “Construction and demolition landfill” means a permitted solid waste disposal area used exclusively for the disposal on land of construction and demolition wastes. This term shall not include a site that is used exclusively for the disposal of clean rubble.

(w) “Clean rubble” means the following types of construction and demolition waste: Concrete and concrete products including reinforcing steel, asphalt pavement, brick, rock and uncontaminated soil as defined in rules and regulations adopted by the secretary.

(x) “Industrial waste” means all solid waste resulting from manufacturing, commercial and industrial processes which is not suitable for discharge to a sanitary sewer or treatment in a community sewage treatment plant or is not beneficially used in a manner that meets the definition of recyclables. Industrial waste includes, but is not limited to: Mining wastes from extraction, beneficiation and processing of ores and minerals unless those minerals are returned to the mine site; fly ash, bottom ash, slag and flue gas emission wastes generated primarily from the combustion of coal or other fossil fuels; cement kiln dust; waste oil and sludges; waste oil filters; and fluorescent lamps.

(y) “Composting facility” means any facility that composts wastes and has a composting area larger than one-half acre.

(z) “Household hazardous waste facility” means a facility established for the purpose of collecting, accumulating and managing household hazardous waste and may also include small quantity generator waste or agricultural pesticide waste, or both. Household hazardous wastes are consumer products that when discarded exhibit hazardous characteristics.

(aa) “Waste-to-energy facility” means a facility that processes solid waste to produce energy or fuel.

(bb) “Transfer station” means any facility where solid wastes are transferred from one vehicle to another or where solid wastes are stored and consolidated before being transported elsewhere, but shall not include a collection box provided for public use as a part of a county-operated solid waste management system if the box is not equipped with compaction mechanisms or has a volume smaller than 20 cubic yards.

(cc) “Municipal solid waste landfill” means a solid waste disposal area where residential waste is placed for disposal. A municipal solid waste landfill also may receive other nonhazardous wastes, including commercial solid waste, sludge and industrial solid waste.

(dd) “Construction related packaging” means small quantities of packaging wastes that are generated in the construction, remodeling or repair of structures and related appurtenances. “Construction related packaging” does not include packaging wastes that are generated at retail establishments selling construction materials, chemical containers generated from any source or packaging wastes generated during maintenance of existing structures.

(ee) “Industrial facility” includes all operations, processes and structures involved in the manufacture or production of goods, materials, commodities or other products located on, or adjacent to, an industrial site and is not limited to a single owner or to a single industrial process. For purposes of this act, it includes all industrial processes and applications that may generate industrial waste which may be disposed at a solid waste disposal area which is permitted by the secretary and operated for the industrial facility generating the waste and used only for industrial waste.

Sec. 2. 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 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 subsection (a) of K.S.A. 65-3409, and amendments thereto; or

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

(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 regula-

tions 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 subsection (c)(1), (2) or (3) above.

(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 paragraph (2), 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. 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) The annual permit renewal fee for a solid waste disposal area which is permitted by the secretary, owned ~~and~~ 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 nor 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.

(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) ~~As a condition of granting~~ *Before issuing or renewing a permit to operate any a solid waste processing facility or solid waste disposal area for solid waste,* 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.* (1) ~~Provide~~ *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, to pay the costs of closure and postclosure care, or (2) pass by passing a financial test or obtain obtaining a financial guarantee from a related entity, to guarantee the future availability of funds to pay the costs of closure and postclosure care.* 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 ~~listed in (1) above~~. Solid waste processing facilities or disposal areas, except municipal solid waste landfills, may also demonstrate financial assurance ~~for closure and postclosure care costs by use of ad valorem taxing power. In addition,~~ *(2) 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.*

(3) The secretary shall require ~~the~~ 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) of K.S.A. 65-3407, and amendments thereto, and a financial assurance evaluation as specified in subsection (h) of K.S.A. 65-3407, and amendments thereto. 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 K.S.A. 65-3409, subsection (c)(3) of K.S.A. 65-3407 or K.S.A. 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.

(1) (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 ½ 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 ½ 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 which are 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 ~~permittee~~ *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. ~~This requirement~~ *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.*

Sec. 3. K.S.A. 65-3415b is hereby amended to read as follows: 65-3415b. (a) There is hereby imposed a state solid waste tonnage fee of \$1.00 for each ton or equivalent volume of solid waste disposed of at any solid waste disposal area in this state other than solid waste enumerated in subsection (c) or solid waste disposal authorized by the secretary pursuant to subsection (a) of K.S.A. 65-3407c, and amendments thereto.

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

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

- (1) Any waste tire, as defined by K.S.A. 65-3424, and amendments thereto, disposed in or at a permitted solid waste disposal area;
 - (2) sludges from public drinking water supply treatment plants, when disposed of at a monofill permitted by the secretary;
 - (3) clean rubble;
 - (4) solid waste solely consisting of vegetation from land clearing and grubbing, utility maintenance and seasonal or storm-related cleanup but such exception shall not apply to yard waste;
 - (5) construction and demolition waste disposed of by the federal government, by the state of Kansas, or by any city, county or other unit of local government in the state of Kansas, or by any person on behalf thereof; and
 - (6) industrial waste disposed of at a solid waste disposal area which is permitted by the secretary, *and is owned and operated by the or operated by or for the industrial facility generating the waste and which is used only for industrial waste generated by such industrial facility.*
- (d) The operator of a solid waste disposal area or transfer station shall pay the fee imposed by this section.
- (e) The secretary of health and environment shall administer, enforce and collect the fee imposed by this section. The secretary shall have the authority to waive such fee when large quantities of waste are generated due to major natural disasters such as floods, tornados and fires unless persons paying such fees are able to recover such fees from the federal government. Except as otherwise provided by subsections (a) and (b), all laws and rules and regulations of the secretary of revenue relating to the administration, enforcement and collection of the retailers' sales tax shall apply to such fee insofar as they can be made applicable. The secretary of health and environment shall adopt any other rules and regulations as necessary for the efficient and effective administration, enforcement and collection thereof.
- (f) The secretary of health and environment shall remit all moneys collected from fees imposed pursuant to subsections (a) and (b) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the solid waste management fund created by K.S.A. 65-3415a, and amendments thereto.

Sec. 4. K.S.A. 65-3407 and 65-3415b and K.S.A. 2005 Supp. 65-3402 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.