

SENATE BILL No. 467

By Committee on Natural Resources

1-27

9 AN ACT concerning solid waste; relating to siting restrictions; amending
10 K.S.A. 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. 65-3407 is hereby amended to read as follows: 65-
14 3407. (a) Except as otherwise provided by K.S.A. 65-3407c and amend-
15 ments thereto, no person shall construct, alter or operate a solid waste
16 processing facility or a solid waste disposal area of a solid waste manage-
17 ment system, except for clean rubble disposal sites, without first obtaining
18 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 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) As a condition of granting a permit to operate any processing
23 facility or disposal area for solid waste, the secretary shall require the
24 permittee to: (1) Provide a trust fund, surety bond guaranteeing pay-
25 ment, irrevocable letter of credit or insurance policy, to pay the costs of
26 closure and postclosure care; or (2) pass a financial test or obtain a finan-
27 cial guarantee from a related entity, to guarantee the future availability
28 of funds to pay the costs of closure and postclosure care. The secretary
29 shall prescribe the methods to be used by a permittee to demonstrate
30 sufficient financial strength to become eligible to use a financial test or a
31 financial guarantee procedure in lieu of providing the financial instru-
32 ments listed in (1) above. Solid waste processing facilities or disposal
33 areas, except municipal solid waste landfills, may also demonstrate finan-
34 cial assurance for closure and postclosure care costs by use of ad valorem
35 taxing power. In addition, the secretary shall require the permittee to
36 provide liability insurance coverage during the period that the facility or
37 area is active, and during the term of the facility or area is subject to
38 postclosure care, in such amount as determined by the secretary to insure
39 the financial responsibility of the permittee for accidental occurrences at
40 the site of the facility or area. Any such liability insurance as may be
41 required pursuant to this subsection or pursuant to the rules and regu-
42 lations of the secretary shall be issued by an insurance company author-
43 ized to do business in Kansas or by a licensed insurance agent operating

1 under authority of K.S.A. 40-246b, and amendments thereto, and shall
2 be subject to the insurer's policy provisions filed with and approved by
3 the commissioner of insurance pursuant to K.S.A. 40-216, and amend-
4 ments thereto, except as authorized by K.S.A. 40-246b, and amendments
5 thereto. Nothing contained in this subsection shall be deemed to apply
6 to any state agency or department or agency of the federal government.

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

9 (A) A permit for a solid waste disposal area may be transferred if the
10 area is permitted for only solid waste produced on site from manufactur-
11 ing and industrial processes or on-site construction or demolition activi-
12 ties and the only change in the permit is a name change resulting from a
13 merger, acquisition, sale, corporate restructuring or other business
14 transaction.

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

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

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

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

1 property or the existing permittee.

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

6 (l) (1) *Except as provided in subsection (l)(3), no permit to construct*
7 *or operate a solid waste disposal area shall be issued on or after the*
8 ~~*effective date of this act July 1, 2006, if such area is located within ½*~~
9 ~~*mile of a navigable stream used for interstate commerce or within one*~~
10 ~~*mile of an intake point for any public surface water supply system.*~~

11 (A) *The sections of land overlying the Equus Beds, as defined by rules*
12 *and regulations adopted by the secretary;*

13 (B) *an alluvial aquifer, as defined by rules and regulations adopted*
14 *by the secretary, if the solid waste disposal area is less than five miles in*
15 *the upstream direction from any well in the same alluvial aquifer that is*
16 *used for a public water supply system;*

17 (C) *one mile of the following protected water resources or wildlife*
18 *refuges:*

19 (i) *An intake point for any public surface water supply system;*

20 (ii) *a lake with a surface area greater than 100 acres;*

21 (iii) *a well used for a public water supply system;*

22 (iv) *a stream segment with an estimated median flow at the down-*
23 *stream end of greater than 10 cubic feet per second, using the most-recent*
24 *ten years of record as published by the U.S. Geologic Survey;*

25 (v) *a wildlife refuge, as defined in K.S.A. 65-171d, and the Tallgrass*
26 *Prairie National Preserve, the Cimarron National Grassland, the Konza*
27 *Prairie Biological Station, the Pratt Sandhills Wildlife Area and the Smoky*
28 *Valley Ranch; or*

29 (vi) *the Arkansas River.*

30 (2) ~~*Any permit, issued before the effective date of this act, to con-*~~
31 ~~*struct or operate a solid waste disposal area is hereby declared void if*~~
32 ~~*such area is not yet in operation and is located within ½ mile of a navi-*~~
33 ~~*gable stream used for interstate commerce or within one mile of an intake*~~
34 ~~*point for any public surface water supply system. For the purposes of*~~
35 ~~*subsection (l)(3), except as specified in subsection (l)(3)(G), the expansion*~~
36 ~~*of a permitted solid waste disposal area shall mean an increase in the land*~~
37 ~~*area authorized for waste disposal pursuant to a permit issued by the*~~
38 ~~*secretary prior to July 1, 2006, by extending disposal operations onto*~~
39 ~~*contiguous property.*~~

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

42 (A) Issuance of a permit for ~~lateral~~ *the expansion onto land contigu-*
43 ~~*ous to*~~ *of a permitted solid waste disposal area in operation on the effective*

1 ~~date of this act~~, located within one of the protected water resource areas
2 listed in subsection (l)(1)(A) or (B) provided:

3 (i) The expansion is designed and constructed in accordance with en-
4 hanced standards necessary to protect human health and the environment
5 as specified in rules and regulations adopted by the secretary; or
6 (ii) the applicant demonstrates, using site-specific hydrogeological
7 data, that the movement of groundwater from the expansion of the solid
8 waste disposal area takes five years or longer to reach the nearest public
9 water supply well within the aquifer. The design and construction of the
10 expansion shall include a groundwater monitoring system approved by
11 the secretary;

12 (B) issuance of a permit for a new solid waste disposal area ~~for dis-~~
13 ~~posal of a solid waste by-product produced on-site~~, located within one of
14 the protected water resource areas listed in subsection (l)(1)(A) or sub-
15 section (l)(1)(B) provided the disposal area is designed and constructed
16 in accordance with enhanced standards specified in rules and regulations
17 adopted by the secretary;

18 (C) issuance of a permit for the expansion of a permitted solid waste
19 disposal area located within one mile of a protected water resource or
20 wildlife refuge listed in subsection (l)(1)(C) provided:

21 (i) The expansion moves the disposal area no closer to the protected
22 water resource or wildlife refuge; or
23 (ii) the expansion moves the disposal area no closer than 1000 feet
24 from the protected water resource or wildlife area and the applicant dem-
25 onstrates that the expansion will not adversely impact the water resource
26 or wildlife refuge;

27 (D) issuance of a permit for a new solid waste disposal area within
28 one mile of, but no closer than 1000 feet from, a protected water resource
29 or wildlife refuge specified in subsection (l)(1)(C) provided the applicant
30 demonstrates that the proposed solid waste disposal area will not ad-
31 versely impact the water resource or wildlife refuge;

32 (E) issuance of a permit for a new or expanded solid waste disposal
33 area for disposal of a solid waste by-product produced on-site within one
34 mile of a public water supply well provided the well only supplies water
35 to the facility generating the waste;

36 (F) issuance of a permit for the expansion of a permitted solid waste
37 disposal area that moves the disposal area closer to a public water supply
38 well than the separation distances provided in this subsection, if the owner
39 of the public water supply well agrees to waive the separation distances
40 in writing;

41 (G) issuance of a permit to expand the capacity of a permitted solid
42 waste disposal area provided all disposal will occur within the permitted
43 footprint established in a permit that had been issued prior to July 1,

1 2006;

2 ~~(G)~~ (H) renewal of an existing permit for a solid waste area in oper-
3 ation on the effective date of this act; or

4 ~~(D)~~ (I) activities which are regulated under K.S.A. 65-163 through
5 65-165 or 65-171d, and amendments thereto.

6 (4) *The secretary shall develop and adopt rules and regulations to*
7 *implement the provisions of this act, including rules and regulations that*
8 *specify the demonstration methods and criteria to be used by applicants*
9 *proposing to construct and operate landfills within the restricted areas*
10 *listed in subsection (l)(1). Demonstrations shall evaluate the potential for*
11 *impacts to the protected water resources and wildlife refuges considering,*
12 *but not limited to, waste characteristics, site characteristics, and engi-*
13 *neering controls.*

14 (m) Before reviewing any application for a solid waste processing fa-
15 cility or solid waste disposal area, the secretary shall require the following
16 information as part of the application:

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

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

30 (3) For a solid waste disposal area permit issued on or after July 1,
31 1999, proof that the permittee owns the land where the disposal area will
32 be located, if the disposal area is: (A) A municipal solid waste landfill; or
33 (B) a solid waste disposal area that has: (i) A leachate or gas collection or
34 treatment system; (ii) waste containment systems or appurtenances with
35 planned maintenance schedules; or (iii) an environmental monitoring sys-
36 tem with planned maintenance schedules or periodic sampling and anal-
37 ysis requirements. This requirement shall not apply to a permit for lateral
38 or vertical expansion contiguous to a permitted solid waste disposal area
39 in operation on July 1, 1999, if such expansion is on land leased by the
40 permittee before April 1, 1999.

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

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