

1 AN ACT relating to solid waste.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔ Section 1. KRS 224.40-310 is amended to read as follows:

4 (1) For purposes of this section, "waste disposal facility" means a

5 (a) Contained landfill;

6 (b) ***Residual landfill;***

7 (c) ***Solid waste incinerator;***

8 (d) ***Waste-to-energy facility;***

9 (e) ***Hazardous waste incinerator;***

10 (f) ***Landfill;***

11 (g) Construction/demolition debris landfill except for a landfill for the disposal of
12 sand, soil, rock, gravel, bridge debris, and other materials extracted as part of
13 a public road construction project funded wholly or in part with state funds;{
14 residual landfill; solid waste incinerator; waste-to-energy facility; or a
15 hazardous waste incinerator, landfill,} or

16 (h) Other site or facility for the land disposal of hazardous waste.

17 (2) No permit to construct or expand, when the expansion results in substantial
18 additional capacity, a waste disposal facility shall be issued until a complete
19 application has been submitted to and approved by the cabinet and notice of the
20 application has been published, as provided for in subsections (4) and (5) of this
21 section, at the expense of the applicant in a manner reasonably calculated to inform
22 that portion of the public which is most likely to be affected by the operation of the
23 proposed waste disposal facility. The publication shall take place after the cabinet
24 has determined the application to be technically complete and issued a draft permit.

25 (3) For a permit application to construct a solid waste landfill or a permit application to
26 expand, when the expansion results in substantial additional capacity, an existing
27 solid waste landfill, the cabinet shall, upon first receiving the applications require

1 immediately the general public notice provided for in subsections (4) and (5)(a) to
2 (d) of this section and upon determining that the application is administratively
3 complete and at the time technical review begins, give special notice of the
4 application to the county judge/executive or mayor of an urban-county government
5 and members of the fiscal court or urban-county council of the county or urban-
6 county government in which the landfill is or will be located. The special notice
7 shall be in the form of an executive summary of the application. Also, at the time
8 technical review begins, the cabinet shall again require the general public notice
9 provided for in subsections (4) and (5)(a) to (d) of this section with the additional
10 information that the executive summary shall be available from the office of the
11 county judge/executive or mayor of an urban-county government. Upon request by a
12 county judge/executive, mayor of an urban-county government, or a member of
13 fiscal court or an urban-county council, the cabinet shall explain the application in a
14 manner that is complete and expeditious. The cabinet shall notify the county
15 judge/executive or mayor of an urban-county government if there will not be a
16 public hearing on the applications. If there will be a public hearing, the cabinet shall
17 notify the county judge/executive or mayor of an urban-county government fifteen
18 (15) days prior to the hearing date.

19 (4) At a minimum, publication shall be made at least once by advertisement in a daily
20 or weekly newspaper of general circulation in the locality where the proposed waste
21 disposal facility is to be located.

22 (5) The contents of the public notice of an application shall include the following:

- 23 (a) The name and address of the applicant;
- 24 (b) A brief description of the activity for which a permit is being sought;
- 25 (c) A description of the proposed location including a description of the primary
26 access routes;
- 27 (d) The name and address of this cabinet; and

- 1 (e) The following statement: "Any person who may be aggrieved by the issuance
2 of a permit for this proposed waste disposal facility may file with the cabinet a
3 petition which sets forth the grounds of the objection and demand a hearing
4 pursuant to KRS 224.10-420(2)." Such hearing shall be held within the county
5 where the waste disposal facility is proposed.
- 6 (6) No permit to construct or expand, when the expansion results in substantial
7 additional capacity, a waste disposal facility shall be issued until at least thirty (30)
8 days have expired following publication of the application. The applicant for a
9 permit shall establish the date of publication by a verified affidavit from the
10 newspaper which publishes the advertisement. If a hearing is requested, no permit
11 to construct or expand, when the expansion results in substantial additional
12 capacity, a waste disposal facility shall be issued prior to a final order of the
13 secretary. In the case of hazardous waste incinerators, landfills, and other sites or
14 facilities for the land disposal of hazardous waste, no permit shall be approved or
15 issued prior to notification of the cabinet by the local unit of government of its
16 actions pursuant to subsection (7) of this section.
- 17 (7) The fiscal court of the county, urban-county government, or governing body of an
18 incorporated municipality wherein a hazardous waste incinerator, landfill, or other
19 site or facility for the land disposal of hazardous waste is proposed, shall conduct a
20 public hearing after public notice has been given in accordance with KRS Chapter
21 424 and shall vote to approve or disapprove the hazardous waste incinerator,
22 landfill, or other site or facility for the land disposal of hazardous waste within
23 thirty (30) days after the hearing described in subsections (5) and (6) of this section.
24 If no hearing is requested under the provisions of subsections (5) and (6) of this
25 section, the fiscal court, urban-county government, or governing body of an
26 incorporated municipality, shall conduct a public hearing and vote to approve or
27 disapprove the hazardous waste incinerator, landfill, or other site or facility for the

1 land disposal of hazardous waste within sixty (60) days following publication of the
2 application. In making a determination the fiscal court, urban-county government,
3 or governing body of an incorporated municipality shall consider the social and
4 economic impacts of the proposed hazardous waste incinerator, landfill, or other
5 site or facility for the land disposal of hazardous waste on the affected community,
6 including changes in property values, community perception, and other psychic
7 costs; costs and availability of public services, facilities, and improvements required
8 to support the incinerator, landfill, or other site or facility and protect public health,
9 safety, and the environment; and the relationship of the proposed hazardous waste
10 incinerator, landfill, or other site or facility for the land disposal of hazardous waste
11 to local planning and existing development. After a fiscal court, urban-county
12 government, or governing body of an incorporated municipality has voted to
13 approve or disapprove a hazardous waste incinerator, landfill, or other site or
14 facility for the land disposal of hazardous waste, the court, urban-county
15 government, or governing body of an incorporated municipality shall so notify the
16 cabinet in writing within ten (10) days. If a hazardous waste incinerator, landfill, or
17 other site or facility for the land disposal of hazardous waste is disapproved by the
18 court, urban-county government, or governing body of an incorporated
19 municipality, the reasons for disapproval shall be set forth clearly and concisely,
20 and recorded in the minutes. No permit shall be issued by the cabinet if a fiscal
21 court, urban-county government, or governing body of an incorporated municipality
22 disapproves the hazardous waste incinerator, landfill, or other site or facility for the
23 land disposal of hazardous waste in the manner prescribed herein.

24 (8) Upon first receiving a permit application to modify a solid waste landfill by
25 reducing or eliminating any term or condition pertaining to the liner system, the
26 cabinet shall require immediately the general public notice provided for in
27 subsections (4) and (5) of this section.

- 1 (9) The provisions of subsection (7) of this section shall not apply to:
- 2 (a) A proposed regional integrated waste treatment and disposal demonstration
- 3 facility and any on-site remedial action facility authorized pursuant to the
- 4 Comprehensive Environmental Response, Compensation, and Liability Act of
- 5 1980, as amended; and
- 6 (b) An existing hazardous waste incinerator having all required permits or
- 7 authorizations as of March 4, 1988, but subsection (7) of this section shall
- 8 apply to any incinerator unit proposed for construction at an existing facility
- 9 for which construction commenced after March 4, 1988, and to proposed
- 10 hazardous waste incinerators for which a permit application has been filed but
- 11 has not been issued as of March 4, 1988~~[- and~~
- 12 ~~(c) On-site incineration of hazardous waste by the generator of the waste at the~~
- 13 ~~site of the waste generation including waste generated at another facility~~
- 14 ~~owned and operated by that generator or wholly owned subsidiary].~~
- 15 (10) An application to construct a solid waste landfill shall consist of three (3) parts: a
- 16 notice of intent to apply for a solid waste permit; an administrative application; and
- 17 a technical application. Nothing in this section shall prohibit an applicant from
- 18 submitting more than one (1) part at one (1) time.
- 19 (a) An applicant proposing to construct a solid waste landfill shall submit to the
- 20 cabinet a notice of intent to apply for a solid waste permit. The notice of intent
- 21 shall contain information specified by the cabinet. The cabinet shall within
- 22 thirty (30) working days of receipt notify the applicant by certified mail, return
- 23 receipt requested, of the approval or disapproval of the applicant's notice of
- 24 intent. If the notice of intent is not complete, the cabinet shall state in writing
- 25 the information necessary to complete the notice of intent and the thirty (30)
- 26 day time period shall be tolled until such time as the applicant responds. The
- 27 cabinet shall notify the applicant of the approval or disapproval of the

1 applicant's notice of intent by certified mail, return receipt requested. If the
2 cabinet disapproves a notice of intent to apply for a solid waste permit, it shall
3 state in writing its reasons for the disapproval.

4 (b) The applicant shall submit an administrative application for a solid waste
5 landfill consistent with the notice of intent to apply for a solid waste permit.
6 The administrative application shall contain information specified by the
7 cabinet. The cabinet shall within sixty (60) working days of receipt notify the
8 applicant by certified mail, return receipt requested, of the approval or
9 disapproval of the applicant's administrative application. If the administrative
10 application is not complete, the cabinet shall state in writing the information
11 necessary to complete the administrative application and the sixty (60) day
12 time period shall be tolled until such time as the applicant responds. The
13 cabinet shall notify the applicant of the approval or disapproval of the
14 applicant's administrative application by certified mail, return receipt
15 requested. If the cabinet disapproves an administrative application to apply for
16 a solid waste permit, it shall state in writing its reasons for the disapproval.

17 (c) The applicant shall submit a technical application for a solid waste landfill
18 consistent with the administrative application. The technical application shall
19 contain information specified by the cabinet. The cabinet shall within ninety
20 (90) working days of receipt notify the applicant by certified mail, return
21 receipt requested, of the approval or disapproval of the applicant's technical
22 application. If the technical application is not complete, the cabinet shall state
23 in writing the information necessary to complete the technical application and
24 the ninety (90) day time period shall be tolled until such time as the applicant
25 responds. The cabinet shall notify the applicant of the approval or disapproval
26 of the applicant's technical application by certified mail, returned receipt
27 requested. If the cabinet disapproves a technical application to apply for a

1 solid waste permit, it shall state in writing its reasons for the disapproval.

2 (d) The permit review process, from the date of receipt of the notice of intent to
3 the date the cabinet issues a draft permit to construct a solid waste landfill, or
4 denies the application, shall not exceed three hundred sixty-five (365)
5 calendar days, unless the cabinet and applicant agree otherwise. Failure of the
6 cabinet to either issue a draft permit, or deny the application, within three
7 hundred sixty-five (365) calendar days shall be deemed an order appealable
8 pursuant to the provisions of KRS 224.10-420.

9 (e) If the cabinet does not request additional information or notify the applicant of
10 the disapproval of the notice of intent or administrative application for a solid
11 waste landfill within the time periods specified in this subsection, that portion
12 of the application under review shall be deemed complete and approved,
13 unless the cabinet and applicant agree otherwise.

14 (11) During construction of a liner system in a solid waste landfill, the cabinet shall
15 periodically conduct inspections to verify that construction is being made in
16 accordance with administrative regulations adopted by the cabinet and conditions
17 contained in the permit. Except as otherwise provided in this section, the permittee
18 shall not commence installation of any synthetic liner prior to a final inspection of
19 any soil liner. The cabinet shall respond to any request for an inspection within two
20 (2) working days of the request. If the cabinet fails to inspect within two (2)
21 working days, the permittee may proceed to the next phase of construction,
22 including installation of a synthetic liner, after submitting certification from a
23 registered professional engineer that construction has been completed in accordance
24 with applicable regulations and permit conditions. All inspections conducted for the
25 cabinet shall be performed by a professional engineer registered in Kentucky.

26 (12) An applicant who is issued a permit to construct or expand, when the expansion
27 results in substantial additional capacity, a solid waste landfill shall be issued a

1 permit to operate in the areas included under the construction permit without further
2 action when:

- 3 (a) The applicant submits a certification by an engineer registered in Kentucky
4 that the liner system and facilities are constructed in accordance with the
5 approved plans and specifications;
- 6 (b) A registered professional engineer for the cabinet inspects the facility and
7 verifies in writing within ten (10) days of the submission of the engineer
8 certification that the facility has been developed according to plans and that
9 necessary equipment is available to operate the facility; and
- 10 (c) The required financial responsibility for closure has been established using
11 any of the mechanisms required by KRS 224.40-650 in an amount determined
12 by an approved closure plan and cost estimate.

13 (13) A permit issued pursuant to this section shall carry with it the right of successive
14 renewal upon expiration with respect to areas within the boundaries of the existing
15 permit. The permittee may request renewal and such renewal shall be issued unless
16 it is established and written findings are made by the cabinet that:

- 17 (a) The terms and conditions of the existing permit, this chapter, or applicable
18 administrative regulations adopted by the cabinet are not being satisfactorily
19 met;
- 20 (b) The permittee has not provided evidence that any performance bond in effect
21 will continue in full force and effect for any renewal requested as well as any
22 additional bond the cabinet might require;
- 23 (c) Any additional revised or updated information required by the cabinet has not
24 been provided.

25 (14) Any permit renewal shall be for a term not to exceed the period of original permit.
26 Application for permit renewal shall be made at least one hundred eighty (180) days
27 prior to the expiration of the existing permit. At the time of filing an application for

1 permit renewal, the cabinet shall publish a notice in a daily or weekly newspaper of
2 the largest circulation in the county where the solid waste landfill is located. The
3 notice shall include the following:

- 4 (a) The name and address of the applicant;
- 5 (b) Identification of the permit for which the renewal is sought; and
- 6 (c) A statement informing the public of a thirty (30) day period in which public
7 comments may be submitted to the cabinet on whether the renewal of the
8 permit should be approved pursuant to subsection (13) of this section.

9 (15) The cabinet shall not adopt any regulation or standard or allow any exemption
10 which applies to privately-owned solid waste management facilities more
11 stringently than it applies to publicly- or municipally-owned solid waste
12 management facilities.

13 ➔Section 2. KRS 224.40-315 is amended to read as follows:

14 (1) No permit to construct or expand a municipal solid waste disposal facility shall be
15 accepted for processing by the cabinet unless the application contains a
16 determination from the governing body for the solid waste management area in
17 which the facility is or will be located concerning the consistency of the application
18 with the area solid waste management plan submitted under KRS 224.43-345(1)(a)
19 to (d) and (l) until January 1, 1993, and the entire plan after January 1, 1993. The
20 governing body for the area shall, within sixty (60) days of receipt of a written
21 request, make the determination after public notice and opportunity for public
22 comment and public hearing. For applications with a notice of intent filed prior to
23 February 26, 1991, the cabinet shall continue to process the application but no
24 permit shall be approved until the governing body for the solid waste management
25 area in which the facility is or will be located has made a determination in
26 accordance with this section.

27 (2) No permit to construct or expand a municipal solid waste disposal facility shall be

1 approved unless the applicant affirmatively demonstrates and the cabinet makes a
2 written finding in the preliminary determination made pursuant to KRS 224.40-
3 310(2) that the application conforms to and is consistent with all of the following:

- 4 (a) The capacity needs identified in the area solid waste management plan;
- 5 (b) Other elements of the area solid waste management plan, for permit
6 applications filed after approval of those elements;
- 7 (c) The statewide solid waste reduction and management plan, for permit
8 applications filed after completion of the plan; and
- 9 (d) Applicable zoning regulations adopted pursuant to KRS Chapter 100.

10 (3) If the cabinet approves a permit to construct or expand a municipal solid waste
11 management facility after the governing body for the area has determined the
12 application to be inconsistent with the area solid waste management plan, as part of
13 the written finding the cabinet shall state in detail the reasons why it did not accept
14 the determination of the governing body for the area.

15 (4) For the purposes of this section, the term municipal solid waste disposal facility
16 includes, in addition to those facilities defined in KRS 224.1-010(14), any residual
17 or contained landfill or incinerator disposing of industrial solid waste for a fee~~], but~~
18 ~~does not include a waste site or facility which is operated exclusively by a solid~~
19 ~~waste generator on property owned by the solid waste generator which accepts only~~
20 ~~industrial solid waste from the solid waste generator or industrial solid waste~~
21 ~~generated at another facility owned and operated by the generator or wholly-owned~~
22 ~~subsidiary].~~