

CHAPTER 48

(HB 119)

AN ACT relating to solid waste management.

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

➔Section 1. KRS 109.012 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Board of directors" or "board" means the governing body of a solid waste management district;
- (2) "City" means an existing city of any class;
- (3) "County" means the governing body of a county, including urban-county governments;
- (4) "Cabinet" means the Energy and Environment Cabinet;
- (5) ***"Franchise" means a franchise, contract, right, authorization, or privilege granted by a local government for provision of solid waste management services;***
- (6) ***"Local government" means a city, county, urban-county government, charter county government, consolidated local government, or unified local government or a solid waste management district created pursuant to KRS Chapter 109;***
- (7)~~(5)~~ "Long-term contract" means a contract of sufficient duration to assure the viability of a resource recovery facility to the extent that such viability depends upon solid waste supply;
- (8)~~(6)~~ "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing, but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis;
- (9)~~(7)~~ "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste management facility if solid waste generated by a recovered material processing facility is managed pursuant to KRS Chapter 224 and administrative regulations adopted by the cabinet;
- (10)~~(8)~~ "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (11) ***"Service company" means any person or entity duly authorized by an agency of the Commonwealth of Kentucky pursuant to the Kentucky Revised Statutes, or administrative regulations promulgated thereunder, for the provision of solid waste management services;***
- (12)~~(9)~~ "Solid waste" means any garbage, refuse, sludge, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining waste, coal mining by-products, refuse and overburden), agricultural operations, and from community activities, but does not include those materials including but not limited to sand, soil, rock, gravel, or bridge debris extracted as part of a public road construction project funded wholly or in part with state funds, recovered material, special wastes as designated by KRS 224.50-760, solid or dissolved material in domestic sewage, manure, crops, crop residue, or a combination thereof which are placed on the soil for return to the soil as fertilizers or soil conditions, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

- (a) "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunk houses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and camp grounds;
- (b) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding household and industrial solid waste;
- (c) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste or a special waste as designated by KRS 224.50-760, including but not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment; and
- (d) "Municipal solid waste" means household solid waste and commercial solid waste;
- ~~(13)(10)~~ "Solid waste management" *or "solid waste management services"* means the administration of solid waste activities: collection, storage, transportation, transfer, processing, treatment, and disposal, which shall be in accordance with a cabinet approved county or multicounty solid waste management plan of the cabinet. ***For the purposes of subsection (5) of this section and Section 2 of this Act, "solid waste management services" additionally includes collection, storage, transportation, transfer, processing, treatment, and disposal of special wastes, as designated by Section 5 of this Act, and recovered material;***
- ~~(14)(11)~~ "Solid waste management area" or "area" means any geographical area established or, designated by the cabinet in accordance with the provisions of KRS Chapter 224;
- ~~(15)(12)~~ "Solid waste management facility" means any facility for collection, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether such facility is associated with facilities generating such wastes or otherwise, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility which is subject to regulation pursuant to the chapter for control of environmental impacts and to prevent any public nuisance; and
- ~~(16)(13)~~ "Waste management district" means any county or group of counties electing to form under the provisions of KRS 109.115 and operate in conformance with the provisions of this chapter and with Section 4006 of the Resource Conservation and Recovery Act of 1976, as amended (P.L. 94-580).

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *After the effective date of this Act, a local government shall not:*
 - 1. *Commence solid waste management services that would have the effect of prohibiting a service company from continuing to provide services that it was providing prior to commencement of services by the local government; or*
 - 2. *Award a franchise for solid waste management services where no franchise exists; unless the local government complies with the requirements in this section.*
- (b) *Paragraph (a) of this subsection shall not apply to:*
 - 1. *The renewal, according to its terms, or replacement, upon its expiration, of an existing franchise; or*
 - 2. *The expansion or extension of urban services related to residential waste management services for single family or two-family dwelling units by an urban-county government pursuant to KRS Chapter 67A, so long as that the urban-county government:*
 - a. *Holds at least one (1) public hearing and provides written notice to all service companies registered within the urban-county government no later than ten (10) days prior to the scheduled public hearing; and*
 - b. *Provides written notice to all service companies registered with the urban-county government no later than ten (10) days after:*

- i. *Receiving a petition to extend urban services;*
 - ii. *Mailing voting cards to proposed service recipients regarding the petition so long as the written notice contains the date that voting cards are to be returned by the recipient; and*
 - iii. *Making a final determination.*
- (2) *Not less than one hundred eighty (180) days prior to making a final determination to take an action described in subsection (1)(a) of this section, a local government shall send written notification by certified mail to the local Kentucky address of all service companies providing solid waste management services within the solid waste management area where the action is proposed to occur that:*
- (a) *Describes the proposed action in detail;*
 - (b) *Provides the date, time, and location of the public hearing required pursuant to subsection (3) of this section; and*
 - (c) *Designates a responsible official within the local government to be available to personally communicate with any service company regarding the particular details of and rationale for the proposed action, including but not limited to the economic and employment consequences of the proposed action.*
- (3) *No sooner than forty-five (45) days but within one hundred eighty (180) days following the written notice required under subsection (2) of this section, the local government shall:*
- (a) *Hold one (1) public hearing that is advertised to the public in accordance with KRS 424.130 for the purposes of:*
 - 1. *Describing the proposed action, including but not limited to the economic and employment consequences of the plan; and*
 - 2. *Accepting written comments from the public and service companies regarding the proposed action; and*
 - (b) *Accept additional verbal and written comments regarding the proposed action for no less than thirty (30) days following the public hearing described in paragraph (a) of this subsection.*
- (4) *No later than sixty (60) days following the close of the public comment period described in subsection (3) of this section, the local government shall prepare a summary of all comments, and the local government's response to each comment, received at the public hearings. The local government shall send, by certified mail, the summary and response to any service company that has submitted comments and make the summary and response to comments available to the public as an open record.*
- (5) (a) *If a local government makes a final determination to take an action described in subsection (1)(a) of this section, the effective time for the action shall be governed by this subsection.*
- (b) *For actions described in subsection (1)(a)1. of this section, the action shall take place no sooner than eighteen (18) months following the local government's final determination.*
- (c) *For actions described in subsection (1)(a)2. of this section, the franchise award shall be effective no sooner than twelve (12) months following the local government's final determination.*
- (d) *This subsection shall not apply to actions taken by a county or solid waste management district pursuant to KRS 109.059.*
- (6) *If a local government makes a final determination to take an action described in subsection (1)(a) of this section, the final determination shall be made no later than three hundred sixty-five (365) days from the date of the notice required pursuant to subsection (2) of this section.*
- (7) *If a local government submits a bid or proposal to perform solid waste management services in competition with a service company, the local government shall incorporate in its bid or proposal all elements that are required of bids from service companies for the same services.*
- (8) *For actions described in subsection (1)(a)1. of this section, nothing in this section shall be interpreted to preclude a local government and the service company or companies impacted by the action from entering into an agreement that provides alternative terms and conditions to govern the rights of a local government*

and a service company or companies, including but not limited to a complete waiver of the requirements of this section.

(9) *This section shall not apply to actions taken by a local government:*

- (a) *To the extent necessary to mitigate conditions caused by a service company that are reasonably determined to threaten the health or safety of the residents of the community, or a material breach of a contract with the local government, after the service company has been given written notice and the opportunity to cure the condition. If the contract with the local government provides for the remedy associated with a breach of the contract, the terms of the contract shall take precedence over this paragraph; or*
- (b) *That would result in the service company's loss of fifty (50) or fewer residential customers due to the action. A local government may only take one (1) action to which this paragraph applies every three (3) years.*

➔Section 3. KRS 224.43-315 is amended to read as follows:

- (1) Each county shall provide a universal collection program by October 1, 2003, for all municipal solid waste generated within the county. Collection programs may include one (1) or more of the following options:
 - (a) Door-to-door household collection: Collection service may be provided by the county, by contract, or franchise;
 - (b) Direct haul to staffed convenience centers or staffed transfer facilities within the county: The county may allow residents to haul their waste directly to cabinet-approved staffed convenience centers or staffed transfer facilities within the county. The number of convenience centers and transfer facilities shall be adequate to assure reasonable convenience; and
 - (c) Other alternatives proposed by counties: Counties may propose other alternatives including subscription service and unstaffed convenience centers, and the cabinet shall approve same as long as the county can demonstrate that all of its citizens are being given access to the solid waste collection system which is proposed.
- (2) Beginning October 1, 2003, all persons providing collection service, including collection for the purpose of recycling, shall register annually with the counties in which they provide the service.
- (3) Beginning March 1, 2004, all persons providing collection service, including collection for the purpose of recycling, shall report annually to the counties in which they provide the service. The reports shall include:
 - (a) The number of households, businesses, and industries from which municipal solid waste was being collected on October 1 of the previous year;
 - (b) The amount of municipal solid waste collected for disposal during the previous calendar year;
 - (c) The amount of municipal solid waste collected for recycling, by volume, weight, or number of items during the previous calendar year; and
 - (d) The types of items collected for recycling.
- (4) The county shall submit an annual report to the cabinet and to any waste management district of which it is a member detailing its solid waste collection activities in accordance with this section and any requirements established by the cabinet by administrative regulation.
- (5) The county may enter into agreements with any person for the performance of the responsibilities described in this section, including cities within its geographic boundaries, but the county shall be responsible for providing the universal collection program described in this section, except:
 - (a) Any designated city having sole responsibility for developing its portion of the solid waste plan shall be responsible for providing the universal collection within its jurisdiction; or
 - (b) Any city contracting for the collection of its solid waste on February 26, 1991, may continue to contract for the collection of its solid waste if the contract provides for disposal in accordance with the area solid waste management plan.
- (6) *Any agreement that the county enters into after the effective date of this Act for the collection of solid waste in a city that is not a designated city as defined in subsection (9) of this section within the solid waste management area shall include both the county and the city.*

(7) If a county or city fails to comply with the provisions of this section, the Commonwealth shall not endorse projects that generate solid waste under the Kentucky intergovernmental review process for the county or city.

~~(8)(7)~~ A commercial or industrial entity which transports or contracts for the transport of the municipal solid waste it generates or which operates an industrial solid waste management facility for its exclusive use may be excluded from participation in the universal collection program, if the commercial or industrial entity demonstrates to the county that the solid waste generated is disposed of in accordance with applicable statutes and administrative regulations.

~~(9)(8)~~ (a) As used in this section, "designated city" means a city of the first class or a city on the registry maintained by the Department for Local Government under paragraph (b) of this subsection.

(b) On or before January 1, 2015, the Department for Local Government shall create and maintain a registry of cities that, as of August 1, 2014, were classified as cities of the second class. The Department for Local Government shall make the information included on the registry available to the public by publishing it on its Web site.

➔Section 4. KRS 224.43-345 is amended to read as follows:

(1) Each area solid waste management plan shall be prepared in accordance with any administrative regulations of the cabinet and shall be required to include the following:

(a) Identification of the area that will be included in the plan;

(b) A demographic study of the planning area of current and projected populations five (5), ten (10) and twenty (20) years in the future. A projection of the amount and source of solid waste generated, collected, and requiring disposal at municipal solid waste disposal facilities for each of these time periods shall be provided;

(c) An inventory and description of all existing solid waste management facilities and activities. The description shall include their identity, location, life expectancies, ownership, cost to the users, and level of compliance with state and federal laws. The description is not required to include any solid waste management facility which is operated exclusively by a solid waste generator on property owned by the solid waste generator for the purpose of accepting solid waste from the solid waste generator or waste generated at another facility owned and operated by the generator or wholly owned subsidiary. After commencement of operation by a solid waste generator of a solid waste disposal facility which is permitted but not included in a solid waste management plan, an amendment to a solid waste management plan shall be required for any solid waste which is to be no longer disposed by the solid waste generator in its own solid waste disposal facility;

(d) An estimate of the area's long-range needs for solid waste management and facilities for five (5), ten (10), and twenty (20) years into the future;

(e) Identification and assessment of current and future solid waste management problems faced by the area. List any deficiencies with existing solid waste management facilities in meeting current and future area needs, and identify opportunities for improvement;

(f) Outline short-term, mid-term, and long-term goals and objectives of the solid waste management area. The goals and objectives shall be consistent with the policies and goals set out in KRS 224.43-010;

(g) Based on the problems, needs, goals, and objectives previously identified, identify alternative approaches to solid waste management and select the optimal alternatives. Solid waste management activities and facilities to be addressed include:

1. Identification of those regulations and ordinances which provide for proper, safe, and sanitary management of solid waste;

2. A description of proposed improvements to existing solid waste collection and transportation systems necessary to achieve universal collection;

3. Establishment of a siting procedure and development program to assure the orderly location, development, and financing of new or expanded municipal solid waste management facilities. The plan shall demonstrate how all persons in the planning area will within the near future have reasonable opportunity to dispose of their waste in a manner that complies with state and federal laws;

4. Identification of planned programs for the control and cleanup of litter and open dumps. The programs shall include: identification of an approved schedule for the cleanup of open dumps in existence as of October 1, 2002; an annual survey of the planning area to discover new open dumps which shall then be scheduled for cleanup within one (1) year unless the cabinet approves a longer schedule; measures to prevent the recurrence of dumping at sites which are cleaned up; cleanup of litter along public roads three (3) times per year; and cleanup of litter along city streets two (2) times per year. In these public road cleanups and also open dump cleanups, nonviolent misdemeanor and Class D felon inmate laborers may be used. A county that does not receive in any year an allocation from the Kentucky pride fund sufficient to complete the number of road cleanups provided for in this section shall not be deemed out of compliance;
5. An assessment of opportunities to reduce the need for land disposal by banning grass clippings, leaves, and other yard wastes from municipal solid waste disposal facilities and the institution of composting operations for grass clippings, leaves, and other yard wastes;
6. Establishment of a plan to reduce the need for land disposal through waste reduction and recycling, materials recovery, and energy recovery and the provision of opportunities for recycling that may include, but are not limited to, drop-off centers or door-to-door collection. Where recycling or material recovery is not deemed feasible, specific factual analysis shall be provided to support the conclusion; and
7. A description of any proposed recycling, materials recovery, or energy recovery plan or facility;
 - (h) A five (5) year schedule and description of activities to be undertaken to implement the proposed plan;
 - (i) A description of short-term costs of the plan including capital and operational costs for each element of the plan, and the identification of the means of financing plan implementation;
 - (j) Designation of the governing body for implementation of the solid waste management plan or components of the plan. A description of its responsibilities and authority shall be provided;
 - (k) A description of proposed surveillance and enforcement procedures to assure that solid waste in the planning area is properly managed. Identification of modifications to local laws and regulations necessary to implement the area plan;
 - (l) Specific provisions to assure that adequate capacity for a ten (10) year period shall be available for municipal solid waste generated in the solid waste management area, and identification of any additional capacity authorized for disposal of out-of-area municipal solid waste;
 - (m) Contractual agreements for use of waste disposal capacity at any municipal solid waste disposal facility inside or outside the waste management area identified and relied upon in the plan;
 - (n) Provisions to assure achievement of the policies and goals of KRS 224.43-010;
 - (o) Establishment of a public information and participation process including the following components:
 1. Formation of an advisory committee *composed*~~comprised~~ of local residents, ~~and~~ business and industry representatives; ***and, with respect to collection of solid waste, representatives of any city that is located within the solid waste management area, is not a designated city as defined in subsection (9) of Section 3 of this Act, and is not located within a county containing a consolidated local government;***
 2. Preparation of a draft plan for public notice and comment;
 3. Convening of a public hearing upon request; and
 4. Publication of a response to public comments.
- (2) A solid waste management plan complying with subsection (1) of this section shall be submitted to the cabinet by October 1, 2002, and updated every five (5) years thereafter. The cabinet shall make its determination approving or disapproving a plan within one hundred twenty (120) days of receipt. A plan on which the cabinet has not yet made a determination shall remain in effect until the determination is made.

➔Section 5. KRS 224.50-760 is amended to read as follows:

- (1) (a) For purposes of this section and KRS 224.46-580(7), special wastes are those wastes of high volume and low hazard which include but are not limited to mining wastes, utility wastes (fly ash, bottom ash, scrubber sludge), wastes from coal gasification facilities (vitrified coarse solid residues, prilled or

blocked sulfur) approved by the cabinet based on submittal of appropriate testing demonstrating that the wastes are of low hazard, sludge from water treatment facilities and wastewater treatment facilities, cement kiln dust, gas and oil drilling muds, and oil production brines. Other wastes may be designated special wastes by the cabinet;

- (b) Disposal sites or facilities for special wastes shall be exempt from the provisions of KRS 224.46-520 and the provisions of KRS 224.43-810, 224.43-815, and KRS 224.46-820 to 224.46-870 but may be regulated by the cabinet consistent with the Resource Conservation and Recovery Act of 1976, as amended (Pub. L. 94-580), and regulations issued pursuant thereto, unless the special waste received is listed or meets the criteria of a hazardous waste in regulations pursuant to KRS 224.46-510(3). If the special waste is a hazardous waste as specified in regulations pursuant to KRS 224.46-510(3), the site or facility shall be required by the cabinet to comply with the provisions of KRS 224.46-520 but shall not be subject to the requirements of KRS 224.40-310(6);
 - (c) Generators of special wastes shall register with the cabinet and be subject to the provisions of KRS 224.46-510, except for generators of coal mining wastes which shall be regulated pursuant to the provisions of KRS Chapter 350;
 - (d) The cabinet shall, when promulgating regulations affecting special waste, recognize special waste as a separate and distinct indivisible category and shall recognize the distinct differences between the category of special wastes and other hazardous wastes and solid wastes as defined in KRS 224.1-010(31)(a) and 109.012(12)(9) due to the fact that special wastes have large volume but low hazardousness. The cabinet's regulations for the generation, transport, recordkeeping, reporting, treatment, storage, and disposal shall reflect those distinct differences. The cabinet's regulations shall recognize and incorporate, where appropriate, and if consistent with the policies of KRS 224.46-510 to 224.46-570, any deadline extensions, studies, and specialized requirements for specific kinds of special wastes that are or may be undertaken at the federal or other levels of government; and
 - (e) It is the intent of the General Assembly that the processing of sludge from water treatment facilities and wastewater treatment facilities by composting shall be considered an industrial process. The cabinet shall, when promulgating administrative regulations affecting sludge from water treatment facilities and wastewater treatment facilities, consider the treatment of this sludge by composting as an industrial process. The provisions of this paragraph and subsection (3) of this section shall not apply to a city, county, urban-county government, charter county government, or special district as defined in KRS Chapter 65, or to a public or private college or university that processes its own water treatment or wastewater treatment sludge by composting on property owned or leased by the city, county, urban-county government, charter county government, special district, or public or private college or university.
- (2) Generators of waste oil shall be exempt from the provisions of KRS 224.46-510 and 224.46-520 so long as waste oil is not specified as a hazardous waste in regulations pursuant to KRS 224.46-510(3) but may be regulated by the cabinet consistent with the Resource Conservation and Recovery Act of 1976, as amended (Pub. L. 94-580), and regulations issued pursuant thereto.
 - (3) A permit application to establish, operate, or modify a composting site or composting facility for the processing of water treatment sludge or wastewater treatment sludge, shall require immediately the general public notice provided for in KRS 224.40-310(4) and (5). If a hearing is requested, no permit to establish, operate, or modify a composting site or facility shall be issued prior to the public hearing. The hearing shall be held within the county where the composting site or facility is located or proposed. Composting of this sludge shall be considered an industrial process.

Signed by Governor March 20, 2017.