

AN ACT relating to waste-to-energy facilities.

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

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

- (1) For purposes of this section, "waste disposal facility" means a contained landfill; construction/demolition debris landfill except for a landfill for the disposal of sand, soil, rock, gravel, bridge debris, and other materials extracted as part of a public road construction project funded wholly or in part with state funds; residual landfill; solid waste incinerator; waste-to-energy facility; or a hazardous waste incinerator, landfill, or other site or facility for the land disposal of hazardous waste.
- (2) No permit to construct or expand, when the expansion results in substantial additional capacity, a waste disposal facility shall be issued until a complete application has been submitted to and approved by the cabinet and notice of the application has been published, as provided for in subsections (4) and (5) of this section, at the expense of the applicant in a manner reasonably calculated to inform that portion of the public which is most likely to be affected by the operation of the proposed waste disposal facility. The publication shall take place after the cabinet has determined the application to be technically complete and issued a draft permit.
- (3) For a permit application to construct a solid waste landfill or a permit application to expand, when the expansion results in substantial additional capacity, an existing solid waste landfill, the cabinet shall, upon first receiving the applications require immediately the general public notice provided for in subsections (4) and (5)(a) to (d) of this section and upon determining that the application is administratively complete and at the time technical review begins, give special notice of the application to the county judge/executive or mayor of an urban-county government and members of the fiscal court or urban-county council of the county or urban-county government in which the landfill is or will be located. The special notice shall be in the form of an executive summary of the application. Also, at the time

technical review begins, the cabinet shall again require the general public notice provided for in subsections (4) and (5)(a) to (d) of this section with the additional information that the executive summary shall be available from the office of the county judge/executive or mayor of an urban-county government. Upon request by a county judge/executive, mayor of an urban-county government, or a member of fiscal court or an urban-county council, the cabinet shall explain the application in a manner that is complete and expeditious. The cabinet shall notify the county judge/executive or mayor of an urban-county government if there will not be a public hearing on the applications. If there will be a public hearing, the cabinet shall notify the county judge/executive or mayor of an urban-county government fifteen (15) days prior to the hearing date.

- (4) At a minimum, publication shall be made at least once by advertisement in a daily or weekly newspaper of general circulation in the locality where the proposed waste disposal facility is to be located.
- (5) The contents of the public notice of an application shall include the following:
  - (a) The name and address of the applicant;
  - (b) A brief description of the activity for which a permit is being sought;
  - (c) A description of the proposed location including a description of the primary access routes;
  - (d) The name and address of this cabinet; and
  - (e) The following statement: "Any person who may be aggrieved by the issuance of a permit for this proposed waste disposal facility may file with the cabinet a petition which sets forth the grounds of the objection and demand a hearing pursuant to KRS 224.10-420(2)." Such hearing shall be held within the county where the waste disposal facility is proposed.
- (6) No permit to construct or expand, when the expansion results in substantial additional capacity, a waste disposal facility shall be issued until at least thirty (30)

days have expired following publication of the application. The applicant for a permit shall establish the date of publication by a verified affidavit from the newspaper which publishes the advertisement. If a hearing is requested, no permit to construct or expand, when the expansion results in substantial additional capacity, a waste disposal facility shall be issued prior to a final order of the secretary. In the case of hazardous waste incinerators, landfills, and other sites or facilities for the land disposal of hazardous waste, no permit shall be approved or issued prior to notification of the cabinet by the local unit of government of its actions pursuant to subsection (7) of this section.

- (7) The fiscal court of the county, urban-county government, or governing body of an incorporated municipality wherein a hazardous waste incinerator, landfill, or other site or facility for the land disposal of hazardous waste is proposed, shall conduct a public hearing after public notice has been given in accordance with KRS Chapter 424 and shall vote to approve or disapprove the hazardous waste incinerator, landfill, or other site or facility for the land disposal of hazardous waste within thirty (30) days after the hearing described in subsections (5) and (6) of this section. If no hearing is requested under the provisions of subsections (5) and (6) of this section, the fiscal court, urban-county government, or governing body of an incorporated municipality, shall conduct a public hearing and vote to approve or disapprove the hazardous waste incinerator, landfill, or other site or facility for the land disposal of hazardous waste within sixty (60) days following publication of the application. In making a determination the fiscal court, urban-county government, or governing body of an incorporated municipality shall consider the social and economic impacts of the proposed hazardous waste incinerator, landfill, or other site or facility for the land disposal of hazardous waste on the affected community, including changes in property values, community perception, and other psychic costs; costs and availability of public services, facilities, and improvements required

to support the incinerator, landfill, or other site or facility and protect public health, safety, and the environment; and the relationship of the proposed hazardous waste incinerator, landfill, or other site or facility for the land disposal of hazardous waste to local planning and existing development. After a fiscal court, urban-county government, or governing body of an incorporated municipality has voted to approve or disapprove a hazardous waste incinerator, landfill, or other site or facility for the land disposal of hazardous waste, the court, urban-county government, or governing body of an incorporated municipality shall so notify the cabinet in writing within ten (10) days. If a hazardous waste incinerator, landfill, or other site or facility for the land disposal of hazardous waste is disapproved by the court, urban-county government, or governing body of an incorporated municipality, the reasons for disapproval shall be set forth clearly and concisely, and recorded in the minutes. No permit shall be issued by the cabinet if a fiscal court, urban-county government, or governing body of an incorporated municipality disapproves the hazardous waste incinerator, landfill, or other site or facility for the land disposal of hazardous waste in the manner prescribed herein.

- (8) Upon first receiving a permit application to modify a solid waste landfill by reducing or eliminating any term or condition pertaining to the liner system, the cabinet shall require immediately the general public notice provided for in subsections (4) and (5) of this section.
- (9) The provisions of subsection (7) of this section shall not apply to:
  - (a) A proposed regional integrated waste treatment and disposal demonstration facility and any on-site remedial action facility authorized pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended;
  - (b) An existing hazardous waste incinerator having all required permits or authorizations as of March 4, 1988, but subsection (7) of this section shall

apply to any incinerator unit proposed for construction at an existing facility for which construction commenced after March 4, 1988, and to proposed hazardous waste incinerators for which a permit application has been filed but has not been issued as of March 4, 1988; and

- (c) On-site incineration of hazardous waste by the generator of the waste at the site of the waste generation including waste generated at another facility owned and operated by that generator or wholly-owned subsidiary.
- (10) An application to construct a solid waste landfill shall consist of three (3) parts: a notice of intent to apply for a solid waste permit; an administrative application; and a technical application. Nothing in this section shall prohibit an applicant from submitting more than one (1) part at one (1) time.
- (a) An applicant proposing to construct a solid waste landfill shall submit to the cabinet a notice of intent to apply for a solid waste permit. The notice of intent shall contain information specified by the cabinet. The cabinet shall within thirty (30) working days of receipt notify the applicant by certified mail, return receipt requested, of the approval or disapproval of the applicant's notice of intent. If the notice of intent is not complete, the cabinet shall state in writing the information necessary to complete the notice of intent and the thirty (30) day time period shall be tolled until such time as the applicant responds. The cabinet shall notify the applicant of the approval or disapproval of the applicant's notice of intent by certified mail, return receipt requested. If the cabinet disapproves a notice of intent to apply for a solid waste permit, it shall state in writing its reasons for the disapproval.
  - (b) The applicant shall submit an administrative application for a solid waste landfill consistent with the notice of intent to apply for a solid waste permit. The administrative application shall contain information specified by the cabinet. The cabinet shall within sixty (60) working days of receipt notify the

applicant by certified mail, return receipt requested, of the approval or disapproval of the applicant's administrative application. If the administrative application is not complete, the cabinet shall state in writing the information necessary to complete the administrative application and the sixty (60) day time period shall be tolled until such time as the applicant responds. The cabinet shall notify the applicant of the approval or disapproval of the applicant's administrative application by certified mail, return receipt requested. If the cabinet disapproves an administrative application to apply for a solid waste permit, it shall state in writing its reasons for the disapproval.

- (c) The applicant shall submit a technical application for a solid waste landfill consistent with the administrative application. The technical application shall contain information specified by the cabinet. The cabinet shall within ninety (90) working days of receipt notify the applicant by certified mail, return receipt requested, of the approval or disapproval of the applicant's technical application. If the technical application is not complete, the cabinet shall state in writing the information necessary to complete the technical application and the ninety (90) day time period shall be tolled until such time as the applicant responds. The cabinet shall notify the applicant of the approval or disapproval of the applicant's technical application by certified mail, returned receipt requested. If the cabinet disapproves a technical application to apply for a solid waste permit, it shall state in writing its reasons for the disapproval.
- (d) The permit review process, from the date of receipt of the notice of intent to the date the cabinet issues a draft permit to construct a solid waste landfill, or denies the application, shall not exceed three hundred sixty-five (365) calendar days, unless the cabinet and applicant agree otherwise. Failure of the cabinet to either issue a draft permit, or deny the application, within three hundred sixty-five (365) calendar days shall be deemed an order appealable

pursuant to the provisions of KRS 224.10-420.

- (e) If the cabinet does not request additional information or notify the applicant of the disapproval of the notice of intent or administrative application for a solid waste landfill within the time periods specified in this subsection, that portion of the application under review shall be deemed complete and approved, unless the cabinet and applicant agree otherwise.
- (11) During construction of a liner system in a solid waste landfill, the cabinet shall periodically conduct inspections to verify that construction is being made in accordance with administrative regulations adopted by the cabinet and conditions contained in the permit. Except as otherwise provided in this section, the permittee shall not commence installation of any synthetic liner prior to a final inspection of any soil liner. The cabinet shall respond to any request for an inspection within two (2) working days of the request. If the cabinet fails to inspect within two (2) working days, the permittee may proceed to the next phase of construction, including installation of a synthetic liner, after submitting certification from a registered professional engineer that construction has been completed in accordance with applicable regulations and permit conditions. All inspections conducted for the cabinet shall be performed by a professional engineer registered in Kentucky.
- (12) An applicant who is issued a permit to construct or expand, when the expansion results in substantial additional capacity, a solid waste landfill shall be issued a permit to operate in the areas included under the construction permit without further action when:
- (a) The applicant submits a certification by an engineer registered in Kentucky that the liner system and facilities are constructed in accordance with the approved plans and specifications;
  - (b) A registered professional engineer for the cabinet inspects the facility and verifies in writing within ten (10) days of the submission of the engineer

- certification that the facility has been developed according to plans and that necessary equipment is available to operate the facility; and
- (c) The required financial responsibility for closure has been established using any of the mechanisms required by KRS 224.40-650 in an amount determined by an approved closure plan and cost estimate.
- (13) A permit issued pursuant to this section shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The permittee may request renewal and such renewal shall be issued unless it is established and written findings are made by the cabinet that:
- (a) The terms and conditions of the existing permit, this chapter, or applicable administrative regulations adopted by the cabinet are not being satisfactorily met;
- (b) The permittee has not provided evidence that any performance bond in effect will continue in full force and effect for any renewal requested as well as any additional bond the cabinet might require;
- (c) Any additional revised or updated information required by the cabinet has not been provided.
- (14) Any permit renewal shall be for a term not to exceed the period of original permit. Application for permit renewal shall be made at least one hundred eighty (180) days prior to the expiration of the existing permit. At the time of filing an application for permit renewal, the cabinet shall publish a notice in a daily or weekly newspaper of the largest circulation in the county where the solid waste landfill is located. The notice shall include the following:
- (a) The name and address of the applicant;
- (b) Identification of the permit for which the renewal is sought; and
- (c) A statement informing the public of a thirty (30) day period in which public comments may be submitted to the cabinet on whether the renewal of the



permit should be approved pursuant to subsection (13) of this section.

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

**(16) (a) The cabinet shall promulgate administrative regulations to take effect on January 1, 2017, setting forth permit requirements for waste-to-energy facilities that are constructed or substantially expanded after that date. At a minimum, the permit requirements shall ensure compliance with all applicable state and local environmental, public health, public safety, and planning and zoning requirements.**

**(b) Except as provided in paragraph (d) of this subsection, the cabinet shall not approve a permit for a new or substantially expanded waste-to-energy facility that is or will be located within one thousand three hundred twenty (1,320) feet of any school, hospital, church or place of worship, or residentially zoned or used property.**

**(c) The cabinet may promulgate administrative regulations establishing minimum setback requirements for waste-to-energy facilities from additional locations that the cabinet identifies as having vulnerable populations or as being particularly vulnerable to the risk of explosion. Any additional setback requirements established by the cabinet under this paragraph shall be reasonably calculated to determine the distances required to minimize, to the greatest extent possible, the risks posed to public safety. The cabinet may tier these additional minimum setback requirements, depending on the size of a waste-to-energy facility, the amount of flammable gas that it produces, and the number and size of nearby locations described by this paragraph that would be at risk in the**

event of an explosion at the facility.

(d) The minimum distance requirements described in paragraph (b) of this subsection and any administrative regulations promulgated under paragraph (c) of this subsection shall not apply to a waste-to-energy facility that is or will be located on:

1. A landfill;
2. A wastewater treatment facility; or
3. Property that is put to agricultural use as defined in KRS 100.111.

(e) As used in this subsection, "waste-to-energy facility" means any waste-to-energy facility that is or will be located in a county with a population of more than five hundred thousand (500,000) people and that uses any feedstock that would otherwise be discarded to produce biogas, methane, or other flammable gas, either for sale or to produce electricity that is then sold.