

1 AN ACT relating to solid waste management.

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

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

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

5 (1) "Board of directors" or "board" means the governing body of a solid waste
6 management district;

7 (2) "City" means an existing city of any class;

8 (3) "County" means the governing body of a county, including urban-county
9 governments;

10 (4) "Cabinet" means the Energy and Environment Cabinet;

11 **(5) "Franchise" means a franchise, contract, right, authorization, or privilege**
12 **granted by a local government for provision of solid waste management services;**

13 **(6) "Local government" means a city, county, urban-county government, charter**
14 **county government, consolidated local government, or unified local government**
15 **or a solid waste management district created pursuant to KRS Chapter 109;**

16 ~~(7)~~~~(5)~~ "Long-term contract" means a contract of sufficient duration to assure the
17 viability of a resource recovery facility to the extent that such viability depends
18 upon solid waste supply;

19 ~~(8)~~~~(6)~~ "Recovered material" means those materials which have known current use,
20 reuse, or recycling potential, which can be feasibly used, reused, or recycled, and
21 which have been diverted or removed from the solid waste stream for sale, use,
22 reuse, or recycling, whether or not requiring subsequent separation and processing,
23 but does not include materials diverted or removed for purposes of energy recovery
24 or combustion except refuse-derived fuel (RDF), which shall be credited as a
25 recovered material in an amount equal to that percentage of the municipal solid
26 waste received on a daily basis at the processing facility and processed into RDF;
27 but not to exceed fifteen percent (15%) of the total amount of the municipal solid

1 waste received at the processing facility on a daily basis;

2 ~~(9)~~~~(7)~~ "Recovered material processing facility" means a facility engaged solely in the
3 storage, processing, and resale or reuse of recovered material but does not mean a
4 solid waste management facility if solid waste generated by a recovered material
5 processing facility is managed pursuant to KRS Chapter 224 and administrative
6 regulations adopted by the cabinet;

7 ~~(10)~~~~(8)~~ "Person" means an individual, trust, firm, joint stock company, corporation
8 (including a government corporation), partnership, association, federal agency, state
9 agency, city, commission, political subdivision of the Commonwealth, or any
10 interstate body;

11 **(11) "Service company" means any person or entity duly authorized by an agency of**
12 **the Commonwealth of Kentucky pursuant to the Kentucky Revised Statutes, or**
13 **administrative regulations promulgated thereunder, for the provision of solid**
14 **waste management services;**

15 ~~(12)~~~~(9)~~ "Solid waste" means any garbage, refuse, sludge, and other discarded material,
16 including solid, liquid, semisolid, or contained gaseous material resulting from
17 industrial, commercial, mining (excluding coal mining waste, coal mining by-
18 products, refuse and overburden), agricultural operations, and from community
19 activities, but does not include those materials including but not limited to sand,
20 soil, rock, gravel, or bridge debris extracted as part of a public road construction
21 project funded wholly or in part with state funds, recovered material, special wastes
22 as designated by KRS 224.50-760, solid or dissolved material in domestic sewage,
23 manure, crops, crop residue, or a combination thereof which are placed on the soil
24 for return to the soil as fertilizers or soil conditions, or solid or dissolved materials
25 in irrigation return flows or industrial discharges which are point sources subject to
26 permits under Section 402 of the Federal Water Pollution Control Act, as amended
27 (86 Stat. 880), or source, special nuclear, or by-product material as defined by the

1 Atomic Energy Act of 1954, as amended (68 Stat. 923).

2 (a) "Household solid waste" means solid waste, including garbage and trash
3 generated by single and multiple family residences, hotels, motels, bunk
4 houses, ranger stations, crew quarters, and recreational areas such as picnic
5 areas, parks, and camp grounds;

6 (b) "Commercial solid waste" means all types of solid waste generated by stores,
7 offices, restaurants, warehouses, and other service and nonmanufacturing
8 activities, excluding household and industrial solid waste;

9 (c) "Industrial solid waste" means solid waste generated by manufacturing or
10 industrial processes that is not a hazardous waste or a special waste as
11 designated by KRS 224.50-760, including but not limited to waste resulting
12 from the following manufacturing processes: electric power generation;
13 fertilizer or agricultural chemicals; food and related products or by-products;
14 inorganic chemicals; iron and steel manufacturing; leather and leather
15 products; nonferrous metals manufacturing/foundries; organic chemicals;
16 plastics and resins manufacturing; pulp and paper industry; rubber and
17 miscellaneous plastic products; stone, glass, clay, and concrete products;
18 textile manufacturing; transportation equipment; and water treatment; and

19 (d) "Municipal solid waste" means household solid waste and commercial solid
20 waste;

21 ~~(13)~~⁽¹⁰⁾ "Solid waste management" or "solid waste management services" means the
22 administration of solid waste activities: collection, storage, transportation, transfer,
23 processing, treatment, and disposal, which shall be in accordance with a cabinet
24 approved county or multicounty solid waste management plan of the cabinet. For
25 the purposes of subsection (5) of this section and Section 2 of this Act, "solid
26 waste management services" additionally includes collection, storage,
27 transportation, transfer, processing, treatment, and disposal of special wastes, as

1 **designated by Section 5 of this Act, and recovered material;**

2 ~~(14)~~~~(11)~~ "Solid waste management area" or "area" means any geographical area
3 established or, designated by the cabinet in accordance with the provisions of KRS
4 Chapter 224;

5 ~~(15)~~~~(12)~~ "Solid waste management facility" means any facility for collection, storage,
6 transportation, transfer, processing, treatment, or disposal of solid waste, whether
7 such facility is associated with facilities generating such wastes or otherwise, but
8 does not include a container located on property where solid waste is generated and
9 which is used solely for the purpose of collection and temporary storage of that
10 solid waste prior to off-site disposal, or a recovered material processing facility
11 which is subject to regulation pursuant to the chapter for control of environmental
12 impacts and to prevent any public nuisance; and

13 ~~(16)~~~~(13)~~ "Waste management district" means any county or group of counties electing
14 to form under the provisions of KRS 109.115 and operate in conformance with the
15 provisions of this chapter and with Section 4006 of the Resource Conservation and
16 Recovery Act of 1976, as amended (P.L. 94-580).

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

19 **(1) (a) After the effective date of this Act, a local government shall not:**

20 **1. Commence solid waste management services that would have the**
21 **effect of prohibiting a service company from continuing to provide**
22 **services that it was providing prior to commencement of services by**
23 **the local government; or**

24 **2. Award a franchise for solid waste management services where no**
25 **franchise exists;**

26 **unless the local government complies with the requirements in this section.**

27 **(b) Paragraph (a) of this subsection shall not apply to the renewal or**

1 replacement of an existing franchise according to the franchise's terms.

2 (2) Not less than one hundred eighty (180) days prior to making a final
3 determination to take an action described in subsection (1)(a) of this section, a
4 local government shall send written notification by certified mail to the local
5 Kentucky address of all service companies providing solid waste management
6 services within the solid waste management area where the action is proposed to
7 occur that:

8 (a) Describes the proposed action in detail;

9 (b) Provides the date, time, and location of the public hearing required
10 pursuant to subsection (3) of this section; and

11 (c) Designates a responsible official within the local government to be available
12 to personally communicate with any service company regarding the
13 particular details of and rationale for the proposed action, including but not
14 limited to the economic and employment consequences of the proposed
15 action.

16 (3) No sooner than forty-five (45) days but within one hundred eighty (180) days
17 following the written notice required under subsection (2) of this section, the
18 local government shall:

19 (a) Hold one (1) public hearing that is advertised to the public in accordance
20 with KRS 424.130 for the purposes of:

21 1. Describing the proposed action, including but not limited to the
22 economic and employment consequences of the plan; and

23 2. Accepting written comments from the public and service companies
24 regarding the proposed action; and

25 (b) Accept additional verbal and written comments regarding the proposed
26 action for no less than thirty (30) days following the public hearing
27 described in paragraph (a) of this subsection.

- 1 (4) If an action described in subsection (1)(a) of this section involves the expansion
2 of an urban service district under KRS 67A.150, the public advertisement
3 required in subsection (3)(a) of this section may be satisfied by any public
4 advertisement related to the expansion of the urban service district if the local
5 government complies with the time frames and other procedures established in
6 subsection (3) of this section.
- 7 (5) No later than sixty (60) days following the close of the public comment period
8 described in subsection (3) of this section, the local government shall prepare a
9 summary of all comments, and the local government's response to each
10 comment, received at the public hearings. The local government shall send, by
11 certified mail, the summary and response to any service company that has
12 submitted comments and make the summary and response to comments available
13 to the public as an open record.
- 14 (6) (a) If a local government makes a final determination to take an action
15 described in subsection (1)(a) of this section, the effective time for the action
16 shall be governed by this subsection.
- 17 (b) For actions described in subsection (1)(a)1. of this section, the action shall
18 take place no sooner than eighteen (18) months following the local
19 government's final determination.
- 20 (c) For actions described in subsection (1)(a)2. of this section, the franchise
21 award shall be effective no sooner than twelve (12) months following the
22 local government's final determination.
- 23 (d) This subsection shall not apply to actions taken by a county or solid waste
24 management district pursuant to KRS 109.059.
- 25 (7) If a local government makes a final determination to take an action described in
26 subsection (1)(a) of this section, the final determination shall be made no later
27 than three hundred sixty-five (365) days from the date of the notice required

1 pursuant to subsection (2) of this section.

2 (8) If a local government submits a bid or proposal to perform solid waste
 3 management services in competition with a service company, the local
 4 government shall incorporate in its bid or proposal all elements that are required
 5 of bids from service companies for the same services.

6 (9) For actions described in subsection (1)(a)1. of this section, nothing in this section
 7 shall be interpreted to preclude a local government and the service company or
 8 companies impacted by the action from entering into an agreement that provides
 9 alternative terms and conditions to govern the rights of a local government and a
 10 service company or companies, including but not limited to a complete waiver of
 11 the requirements of this section.

12 (10) This section shall not apply to actions taken by a local government:

13 (a) To the extent necessary to mitigate conditions caused by a service company
 14 that are reasonably determined to threaten the health or safety of the
 15 residents of the community, or a material breach of a contract with the local
 16 government, after the service company has been given written notice and
 17 the opportunity to cure the condition. If the contract with the local
 18 government provides for the remedy associated with a breach of the
 19 contract, the terms of the contract shall take precedence over this
 20 paragraph; or

21 (b) That would result in the service company's loss of fifty (50) or fewer
 22 residential customers due to the action. A local government may only take
 23 one (1) action to which this paragraph applies every three (3) years.

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

25 (1) Each county shall provide a universal collection program by October 1, 2003, for all
 26 municipal solid waste generated within the county. Collection programs may
 27 include one (1) or more of the following options:

- 1 (a) Door-to-door household collection: Collection service may be provided by the
2 county, by contract, or franchise;
- 3 (b) Direct haul to staffed convenience centers or staffed transfer facilities within
4 the county: The county may allow residents to haul their waste directly to
5 cabinet-approved staffed convenience centers or staffed transfer facilities
6 within the county. The number of convenience centers and transfer facilities
7 shall be adequate to assure reasonable convenience; and
- 8 (c) Other alternatives proposed by counties: Counties may propose other
9 alternatives including subscription service and unstaffed convenience centers,
10 and the cabinet shall approve same as long as the county can demonstrate that
11 all of its citizens are being given access to the solid waste collection system
12 which is proposed.
- 13 (2) Beginning October 1, 2003, all persons providing collection service, including
14 collection for the purpose of recycling, shall register annually with the counties in
15 which they provide the service.
- 16 (3) Beginning March 1, 2004, all persons providing collection service, including
17 collection for the purpose of recycling, shall report annually to the counties in which
18 they provide the service. The reports shall include:
- 19 (a) The number of households, businesses, and industries from which municipal
20 solid waste was being collected on October 1 of the previous year;
- 21 (b) The amount of municipal solid waste collected for disposal during the
22 previous calendar year;
- 23 (c) The amount of municipal solid waste collected for recycling, by volume,
24 weight, or number of items during the previous calendar year; and
- 25 (d) The types of items collected for recycling.
- 26 (4) The county shall submit an annual report to the cabinet and to any waste
27 management district of which it is a member detailing its solid waste collection

1 activities in accordance with this section and any requirements established by the
2 cabinet by administrative regulation.

3 (5) The county may enter into agreements with any person for the performance of the
4 responsibilities described in this section, including cities within its geographic
5 boundaries, but the county shall be responsible for providing the universal
6 collection program described in this section, except:

7 (a) Any designated city having sole responsibility for developing its portion of the
8 solid waste plan shall be responsible for providing the universal collection
9 within its jurisdiction; or

10 (b) Any city contracting for the collection of its solid waste on February 26, 1991,
11 may continue to contract for the collection of its solid waste if the contract
12 provides for disposal in accordance with the area solid waste management
13 plan.

14 (6) Any agreement for the collection of solid waste that is entered into after the
15 effective date of this Act between a county and a city within a solid waste
16 management area that is not a designated city as defined in subsection (9) of this
17 section shall include both the county and the city.

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

21 ~~(8)~~~~(7)~~ A commercial or industrial entity which transports or contracts for the
22 transport of the municipal solid waste it generates or which operates an industrial
23 solid waste management facility for its exclusive use may be excluded from
24 participation in the universal collection program, if the commercial or industrial
25 entity demonstrates to the county that the solid waste generated is disposed of in
26 accordance with applicable statutes and administrative regulations.

27 ~~(9)~~~~(8)~~ (a) As used in this section, "designated city" means a city of the first class

1 or a city on the registry maintained by the Department for Local Government
2 under paragraph (b) of this subsection.

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

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

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

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

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

18 (c) An inventory and description of all existing solid waste management facilities
19 and activities. The description shall include their identity, location, life
20 expectancies, ownership, cost to the users, and level of compliance with state
21 and federal laws. The description is not required to include any solid waste
22 management facility which is operated exclusively by a solid waste generator
23 on property owned by the solid waste generator for the purpose of accepting
24 solid waste from the solid waste generator or waste generated at another
25 facility owned and operated by the generator or wholly owned subsidiary.
26 After commencement of operation by a solid waste generator of a solid waste
27 disposal facility which is permitted but not included in a solid waste

- 1 management plan, an amendment to a solid waste management plan shall be
2 required for any solid waste which is to be no longer disposed by the solid
3 waste generator in its own solid waste disposal facility;
- 4 (d) An estimate of the area's long-range needs for solid waste management and
5 facilities for five (5), ten (10), and twenty (20) years into the future;
- 6 (e) Identification and assessment of current and future solid waste management
7 problems faced by the area. List any deficiencies with existing solid waste
8 management facilities in meeting current and future area needs, and identify
9 opportunities for improvement;
- 10 (f) Outline short-term, mid-term, and long-term goals and objectives of the solid
11 waste management area. The goals and objectives shall be consistent with the
12 policies and goals set out in KRS 224.43-010;
- 13 (g) Based on the problems, needs, goals, and objectives previously identified,
14 identify alternative approaches to solid waste management and select the
15 optimal alternatives. Solid waste management activities and facilities to be
16 addressed include:
- 17 1. Identification of those regulations and ordinances which provide for
18 proper, safe, and sanitary management of solid waste;
 - 19 2. A description of proposed improvements to existing solid waste
20 collection and transportation systems necessary to achieve universal
21 collection;
 - 22 3. Establishment of a siting procedure and development program to assure
23 the orderly location, development, and financing of new or expanded
24 municipal solid waste management facilities. The plan shall demonstrate
25 how all persons in the planning area will within the near future have
26 reasonable opportunity to dispose of their waste in a manner that
27 complies with state and federal laws;

- 1 4. Identification of planned programs for the control and cleanup of litter
2 and open dumps. The programs shall include: identification of an
3 approved schedule for the cleanup of open dumps in existence as of
4 October 1, 2002; an annual survey of the planning area to discover new
5 open dumps which shall then be scheduled for cleanup within one (1)
6 year unless the cabinet approves a longer schedule; measures to prevent
7 the recurrence of dumping at sites which are cleaned up; cleanup of litter
8 along public roads three (3) times per year; and cleanup of litter along
9 city streets two (2) times per year. In these public road cleanups and also
10 open dump cleanups, nonviolent misdemeanor and Class D felon
11 inmate laborers may be used. A county that does not receive in any year
12 an allocation from the Kentucky pride fund sufficient to complete the
13 number of road cleanups provided for in this section shall not be deemed
14 out of compliance;
- 15 5. An assessment of opportunities to reduce the need for land disposal by
16 banning grass clippings, leaves, and other yard wastes from municipal
17 solid waste disposal facilities and the institution of composting
18 operations for grass clippings, leaves, and other yard wastes;
- 19 6. Establishment of a plan to reduce the need for land disposal through
20 waste reduction and recycling, materials recovery, and energy recovery
21 and the provision of opportunities for recycling that may include, but are
22 not limited to, drop-off centers or door-to-door collection. Where
23 recycling or material recovery is not deemed feasible, specific factual
24 analysis shall be provided to support the conclusion; and
- 25 7. A description of any proposed recycling, materials recovery, or energy
26 recovery plan or facility;
- 27 (h) A five (5) year schedule and description of activities to be undertaken to

- 1 implement the proposed plan;
- 2 (i) A description of short-term costs of the plan including capital and operational
3 costs for each element of the plan, and the identification of the means of
4 financing plan implementation;
- 5 (j) Designation of the governing body for implementation of the solid waste
6 management plan or components of the plan. A description of its
7 responsibilities and authority shall be provided;
- 8 (k) A description of proposed surveillance and enforcement procedures to assure
9 that solid waste in the planning area is properly managed. Identification of
10 modifications to local laws and regulations necessary to implement the area
11 plan;
- 12 (l) Specific provisions to assure that adequate capacity for a ten (10) year period
13 shall be available for municipal solid waste generated in the solid waste
14 management area, and identification of any additional capacity authorized for
15 disposal of out-of-area municipal solid waste;
- 16 (m) Contractual agreements for use of waste disposal capacity at any municipal
17 solid waste disposal facility inside or outside the waste management area
18 identified and relied upon in the plan;
- 19 (n) Provisions to assure achievement of the policies and goals of KRS 224.43-
20 010;
- 21 (o) Establishment of a public information and participation process including the
22 following components;
- 23 1. Formation of an advisory committee composed~~comprised~~ of local
24 residents;~~[-, and]~~ business and industry representatives; and, with respect
25 to collection of solid waste, representatives of any city that is located
26 within the solid waste management area, is not a designated city as
27 defined in subsection (9) of Section 3 of this Act, and is not located

1 *within a county containing a consolidated local government;*

- 2 2. Preparation of a draft plan for public notice and comment;
- 3 3. Convening of a public hearing upon request; and
- 4 4. Publication of a response to public comments.

5 (2) A solid waste management plan complying with subsection (1) of this section shall
6 be submitted to the cabinet by October 1, 2002, and updated every five (5) years
7 thereafter. The cabinet shall make its determination approving or disapproving a
8 plan within one hundred twenty (120) days of receipt. A plan on which the cabinet
9 has not yet made a determination shall remain in effect until the determination is
10 made.

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

- 12 (1) (a) For purposes of this section and KRS 224.46-580(7), special wastes are those
13 wastes of high volume and low hazard which include but are not limited to
14 mining wastes, utility wastes (fly ash, bottom ash, scrubber sludge), wastes
15 from coal gasification facilities (vitrified coarse solid residues, prilled or
16 blocked sulfur) approved by the cabinet based on submittal of appropriate
17 testing demonstrating that the wastes are of low hazard, sludge from water
18 treatment facilities and wastewater treatment facilities, cement kiln dust, gas
19 and oil drilling muds, and oil production brines. Other wastes may be
20 designated special wastes by the cabinet;
- 21 (b) Disposal sites or facilities for special wastes shall be exempt from the
22 provisions of KRS 224.46-520 and the provisions of KRS 224.43-810,
23 224.43-815, and KRS 224.46-820 to 224.46-870 but may be regulated by the
24 cabinet consistent with the Resource Conservation and Recovery Act of 1976,
25 as amended (Pub. L. 94-580), and regulations issued pursuant thereto, unless
26 the special waste received is listed or meets the criteria of a hazardous waste
27 in regulations pursuant to KRS 224.46-510(3). If the special waste is a

1 hazardous waste as specified in regulations pursuant to KRS 224.46-510(3),
2 the site or facility shall be required by the cabinet to comply with the
3 provisions of KRS 224.46-520 but shall not be subject to the requirements of
4 KRS 224.40-310(6);

5 (c) Generators of special wastes shall register with the cabinet and be subject to
6 the provisions of KRS 224.46-510, except for generators of coal mining
7 wastes which shall be regulated pursuant to the provisions of KRS Chapter
8 350;

9 (d) The cabinet shall, when promulgating regulations affecting special waste,
10 recognize special waste as a separate and distinct indivisible category and
11 shall recognize the distinct differences between the category of special wastes
12 and other hazardous wastes and solid wastes as defined in KRS 224.1-
13 010(31)(a) and 109.012(12)(~~9~~) due to the fact that special wastes have large
14 volume but low hazardousness. The cabinet's regulations for the generation,
15 transport, recordkeeping, reporting, treatment, storage, and disposal shall
16 reflect those distinct differences. The cabinet's regulations shall recognize and
17 incorporate, where appropriate, and if consistent with the policies of KRS
18 224.46-510 to 224.46-570, any deadline extensions, studies, and specialized
19 requirements for specific kinds of special wastes that are or may be
20 undertaken at the federal or other levels of government; and

21 (e) It is the intent of the General Assembly that the processing of sludge from
22 water treatment facilities and wastewater treatment facilities by composting
23 shall be considered an industrial process. The cabinet shall, when
24 promulgating administrative regulations affecting sludge from water treatment
25 facilities and wastewater treatment facilities, consider the treatment of this
26 sludge by composting as an industrial process. The provisions of this
27 paragraph and subsection (3) of this section shall not apply to a city, county,

1 urban-county government, charter county government, or special district as
2 defined in KRS Chapter 65, or to a public or private college or university that
3 processes its own water treatment or wastewater treatment sludge by
4 composting on property owned or leased by the city, county, urban-county
5 government, charter county government, special district, or public or private
6 college or university.

7 (2) Generators of waste oil shall be exempt from the provisions of KRS 224.46-510 and
8 224.46-520 so long as waste oil is not specified as a hazardous waste in regulations
9 pursuant to KRS 224.46-510(3) but may be regulated by the cabinet consistent with
10 the Resource Conservation and Recovery Act of 1976, as amended (Pub. L. 94-
11 580), and regulations issued pursuant thereto.

12 (3) A permit application to establish, operate, or modify a composting site or
13 composting facility for the processing of water treatment sludge or wastewater
14 treatment sludge, shall require immediately the general public notice provided for in
15 KRS 224.40-310(4) and (5). If a hearing is requested, no permit to establish,
16 operate, or modify a composting site or facility shall be issued prior to the public
17 hearing. The hearing shall be held within the county where the composting site or
18 facility is located or proposed. Composting of this sludge shall be considered an
19 industrial process.