

SECOND REGULAR SESSION

HOUSE BILL NO. 2522

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BIVINS (Sponsor),
LEMBKE AND SCHARNHORST (Co-sponsors).

Read 1st time March 31, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5599L.02I

AN ACT

To repeal section 260.205, RSMo, and to enact in lieu thereof one new section relating to solid waste processing facilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 260.205, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 260.205, to read as follows:

260.205. 1. It shall be unlawful for any person to operate a solid waste processing facility or solid waste disposal area of a solid waste management system without first obtaining an operating permit from the department. It shall be unlawful for any person to construct a solid waste processing facility or solid waste disposal area without first obtaining a construction permit from the department pursuant to this section. A current authorization to operate issued by the department pursuant to sections 260.200 to 260.345 shall be considered to be a permit to operate for purposes of this section for all solid waste disposal areas and processing facilities existing on August 28, 1995. A permit shall not be issued for a sanitary landfill to be located in a flood area, as determined by the department, where flood waters are likely to significantly erode final cover. A permit shall not be required to operate a waste stabilization lagoon, settling pond or other water treatment facility which has a valid permit from the Missouri clean water commission even though the facility may receive solid or semisolid waste materials.

2. No person or operator may apply for or obtain a permit to construct a solid waste disposal area unless the person has requested the department to conduct a preliminary site

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 investigation and obtained preliminary approval from the department. The department shall,
16 within sixty days of such request, conduct a preliminary investigation and approve or disapprove
17 the site.

18 3. All proposed solid waste disposal areas for which a preliminary site investigation
19 request pursuant to subsection 2 of this section is received by the department on or after August
20 28, 1999, shall be subject to a public involvement activity as part of the permit application
21 process. The activity shall consist of the following:

22 (1) The applicant shall notify the public of the preliminary site investigation approval
23 within thirty days after the receipt of such approval. Such public notification shall be by certified
24 mail to the governing body of the county or city in which the proposed disposal area is to be
25 located and by certified mail to the solid waste management district in which the proposed
26 disposal area is to be located;

27 (2) Within ninety days after the preliminary site investigation approval, the department
28 shall conduct a public awareness session in the county in which the proposed disposal area is to
29 be located. The department shall provide public notice of such session by both printed and
30 broadcast media at least thirty days prior to such session. Printed notification shall include
31 publication in at least one newspaper having general circulation within the county in which the
32 proposed disposal area is to be located. Broadcast notification shall include public service
33 announcements on radio stations that have broadcast coverage within the county in which the
34 proposed disposal area is to be located. The intent of such public awareness session shall be to
35 provide general information to interested citizens on the design and operation of solid waste
36 disposal areas;

37 (3) At least sixty days prior to the submission to the department of a report on the results
38 of a detailed site investigation pursuant to subsection 4 of this section, the applicant shall conduct
39 a community involvement session in the county in which the proposed disposal area is to be
40 located. Department staff shall attend any such session. The applicant shall provide public
41 notice of such session by both printed and broadcast media at least thirty days prior to such
42 session. Printed notification shall include publication in at least one newspaper having general
43 circulation within the county in which the proposed disposal area is to be located. Broadcast
44 notification shall include public service announcements on radio stations that have broadcast
45 coverage within the county in which the proposed disposal area is to be located. Such public
46 notices shall include the addresses of the applicant and the department and information on a
47 public comment period. Such public comment period shall begin on the day of the community
48 involvement session and continue for at least thirty days after such session. The applicant shall
49 respond to all persons submitting comments during the public comment period no more than
50 thirty days after the receipt of such comments;

51 (4) If a proposed solid waste disposal area is to be located in a county or city that has
52 local planning and zoning requirements, the applicant shall not be required to conduct a
53 community involvement session if the following conditions are met:

54 (a) The local planning and zoning requirements include a public meeting;

55 (b) The applicant notifies the department of intent to utilize such meeting in lieu of the
56 community involvement session at least thirty days prior to such meeting;

57 (c) The requirements of such meeting include providing public notice by printed or
58 broadcast media at least thirty days prior to such meeting;

59 (d) Such meeting is held at least thirty days prior to the submission to the department of
60 a report on the results of a detailed site investigation pursuant to subsection 4 of this section;

61 (e) The applicant submits to the department a record of such meeting;

62 (f) A public comment period begins on the day of such meeting and continues for at least
63 fourteen days after such meeting, and the applicant responds to all persons submitting comments
64 during such public comment period no more than fourteen days after the receipt of such
65 comments.

66 4. No person may apply for or obtain a permit to construct a solid waste disposal area
67 unless the person has submitted to the department a plan for conducting a detailed surface and
68 subsurface geologic and hydrologic investigation and has obtained geologic and hydrologic site
69 approval from the department. The department shall approve or disapprove the plan within thirty
70 days of receipt. The applicant shall conduct the investigation pursuant to the plan and submit
71 the results to the department. The department shall provide approval or disapproval within sixty
72 days of receipt of the investigation results.

73 5. (1) Every person desiring to construct a solid waste processing facility or solid waste
74 disposal area shall make application for a permit on forms provided for this purpose by the
75 department. Every applicant shall submit evidence of financial responsibility with the
76 application. Any applicant who relies in part upon a parent corporation for this demonstration
77 shall also submit evidence of financial responsibility for that corporation and any other
78 subsidiary thereof.

79 (2) Every applicant shall provide a financial assurance instrument or instruments to the
80 department prior to the granting of a construction permit for a solid waste disposal area. The
81 financial assurance instrument or instruments shall be irrevocable, meet all requirements
82 established by the department and shall not be canceled, revoked, disbursed, released or allowed
83 to terminate without the approval of the department. After the cessation of active operation of
84 a sanitary landfill, or other solid waste disposal area as designed by the department, neither the
85 guarantor nor the operator shall cancel, revoke or disburse the financial assurance instrument or

86 allow the instrument to terminate until the operator is released from postclosure monitoring and
87 care responsibilities pursuant to section 260.227.

88 (3) The applicant for a permit to construct a solid waste disposal area shall provide the
89 department with plans, specifications, and such other data as may be necessary to comply with
90 the purpose of sections 260.200 to 260.345.

91 The application shall demonstrate compliance with all applicable local planning and zoning
92 requirements. The department shall make an investigation of the solid waste disposal area and
93 determine whether it complies with the provisions of sections 260.200 to 260.345 and the rules
94 and regulations adopted pursuant to sections 260.200 to 260.345. Within twelve consecutive
95 months of the receipt of an application for a construction permit the department shall approve
96 or deny the application. The department shall issue rules and regulations establishing time limits
97 for permit modifications and renewal of a permit for a solid waste disposal area. The time limit
98 shall be consistent with this chapter.

99 (4) [The applicant for a permit to construct a solid waste processing facility shall provide
100 the department with plans, specifications and such other data as may be necessary to comply with
101 the purpose of sections 260.200 to 260.345. Within one hundred eighty days of receipt of the
102 application, the department shall determine whether it complies with the provisions of sections
103 260.200 to 260.345.] **Any applicant for a permit to construct a solid waste facility shall**
104 **notify by first class mail all residents within one thousand feet of the proposed solid waste**
105 **facility of his or her intent to build and operate such facility. The applicant shall sponsor**
106 **a community involvement session during which residents may discuss any concerns about**
107 **the design and operation of the proposed solid waste facility. The community involvement**
108 **session shall be held during the early evening on a weekday or during normal daylight**
109 **hours on a weekend. The date and time of such session shall be contained in the**
110 **notification letter required by this subdivision and shall also be prominently displayed on**
111 **at least four signs posted on the site of the proposed solid waste facility. The community**
112 **involvement session shall be held prior to the expiration of thirty days after the day that**
113 **legal notice is required under subsection 10 of this section. Notwithstanding the outcome**
114 **of the community involvement session, residents notified under this subdivision shall have**
115 **the following rights:**

116 (a) **The right to request a public hearing before the department within thirty days**
117 **after the legal notice required by subsection 10 of this section;**

118 (b) **The right to appeal the issuance of a permit within thirty days of the day on**
119 **which such permit was issued by the department; and**

120 (c) **The right to appeal any final decision or order of the department to the**
121 **administrative hearing commission and, after such administrative review is exhausted, to**
122 **appeal to any court of proper jurisdiction.**

123 (5) **The applicant for a permit to construct a solid waste processing facility shall**
124 **provide the department with plans, specifications, and such other data as may be necessary**
125 **to comply with the purpose of sections 260.200 to 260.345. If a public hearing is requested,**
126 **the department shall within two hundred seventy days determine whether the permit**
127 **application complies with the provisions of sections 260.200 to 260.345. If no public**
128 **hearing is requested, the department shall act on the application within one hundred eighty**
129 **days.**

130 (6) **Within twelve consecutive months of the receipt of an application for a permit to**
131 **construct an incinerator as defined in section 260.200 or a material recovery facility as defined**
132 **in section 260.200, and within six months for permit modifications, the department shall approve**
133 **or deny the application. Permits issued for solid waste facilities shall be for the anticipated life**
134 **of the facility.**

135 [(5)] (7) **If the department fails to approve or deny an application for a permit or a permit**
136 **modification within the time limits specified in subdivisions (3) [and (4)] , (5), and (6) of this**
137 **subsection, the applicant may maintain an action in the circuit court of Cole County or that of**
138 **the county in which the facility is located or is to be sited. The court shall order the department**
139 **to show cause why it has not acted on the permit and the court may, upon the presentation of**
140 **evidence satisfactory to the court, order the department to issue or deny such permit or permit**
141 **modification. Permits for solid waste disposal areas, whether issued by the department or**
142 **ordered to be issued by a court, shall be for the anticipated life of the facility.**

143 [(6)] (8) **The applicant for a permit to construct a solid waste processing facility shall pay**
144 **an application fee of one thousand dollars. Upon completion of the department's evaluation of**
145 **the application, but before receiving a permit, the applicant shall reimburse the department for**
146 **all reasonable costs incurred by the department up to a maximum of four thousand dollars. The**
147 **applicant for a permit to construct a solid waste disposal area shall pay an application fee of two**
148 **thousand dollars. Upon completion of the department's evaluations of the application, but before**
149 **receiving a permit, the applicant shall reimburse the department for all reasonable costs incurred**
150 **by the department up to a maximum of eight thousand dollars. Applicants who withdraw their**
151 **application before the department completes its evaluation shall be required to reimburse the**
152 **department for costs incurred in the evaluation. The department shall not collect the fees**
153 **authorized in this subdivision unless it complies with the time limits established in this section.**

154 [(7)] (9) **When the review reveals that the facility or area does conform with the**
155 **provisions of sections 260.200 to 260.345 and the rules and regulations adopted pursuant to**

156 sections 260.200 to 260.345, the department shall approve the application and shall issue a
157 permit for the construction of each solid waste processing facility or solid waste disposal area
158 as set forth in the application and with any permit terms and conditions which the department
159 deems appropriate. In the event that the facility or area fails to meet the rules and regulations
160 adopted pursuant to sections 260.200 to 260.345, the department shall issue a report to the
161 applicant stating the reason for denial of a permit.

162 6. Plans, designs, and relevant data for the construction of solid waste processing
163 facilities and solid waste disposal areas shall be submitted to the department by a registered
164 professional engineer licensed by the state of Missouri for approval prior to the construction,
165 alteration or operation of such a facility or area.

166 7. Any person or operator as defined in section 260.200 who intends to obtain a
167 construction permit in a solid waste management district with an approved solid waste
168 management plan shall request a recommendation in support of the application from the
169 executive board created in section 260.315. The executive board shall consider the impact of
170 the proposal on, and the extent to which the proposal conforms to, the approved district solid
171 waste management plan prepared pursuant to section 260.325. The executive board shall act
172 upon the request for a recommendation within sixty days of receipt and shall submit a resolution
173 to the department specifying its position and its recommendation regarding conformity of the
174 application to the solid waste plan. The board's failure to submit a resolution constitutes
175 recommendation of the application. The department may consider the application, regardless of
176 the board's action thereon and may deny the construction permit if the application fails to meet
177 the requirements of sections 260.200 to 260.345, or if the application is inconsistent with the
178 district's solid waste management plan.

179 8. If the site proposed for a solid waste disposal area is not owned by the applicant, the
180 owner or owners of the site shall acknowledge that an application pursuant to sections 260.200
181 to 260.345 is to be submitted by signature or signatures thereon. The department shall provide
182 the owner with copies of all communication with the operator, including inspection reports and
183 orders issued pursuant to section 260.230.

184 9. The department shall not issue a permit for the operation of a solid waste disposal area
185 designed to serve a city with a population of greater than four hundred thousand located in more
186 than one county, if the site is located within one-half mile of an adjoining municipality, without
187 the approval of the governing body of such municipality. The governing body shall conduct a
188 public hearing within fifteen days of notice, shall publicize the hearing in at least one newspaper
189 having general circulation in the municipality, and shall vote to approve or disapprove the land
190 disposal facility within thirty days after the close of the hearing.

191 10. Upon receipt of an application for a permit to construct a solid waste processing
192 facility or disposal area, the department shall notify the public of such receipt:

193 (1) By legal notice published in a newspaper of general circulation in the area of the
194 proposed disposal area or processing facility;

195 (2) By certified mail to the governing body of the county or city in which the proposed
196 disposal area or processing facility is to be located; and

197 (3) By mail to the last known address of all record owners of contiguous real property
198 or real property located within one thousand feet of the proposed disposal area and, for a
199 proposed processing facility, notice as provided in section 64.875, RSMo, or section 89.060,
200 RSMo, whichever is applicable.

201 (4) If an application for a construction permit meets all statutory and regulatory
202 requirements for issuance, a public hearing on the draft permit shall be held by the department
203 in the county in which the proposed solid waste disposal area is to be located prior to the
204 issuance of the permit. The department shall provide public notice of such hearing by both
205 printed and broadcast media at least thirty days prior to such hearing. Printed notification shall
206 include publication in at least one newspaper having general circulation within the county in
207 which the proposed disposal area is to be located. Broadcast notification shall include public
208 service announcements on radio stations that have broadcast coverage within the county in which
209 the proposed disposal area is to be located.

210 11. After the issuance of a construction permit for a solid waste disposal area, but prior
211 to the beginning of disposal operations, the owner and the department shall execute an easement
212 to allow the department, its agents or its contractors to enter the premises to complete work
213 specified in the closure plan, or to monitor or maintain the site or to take remedial action during
214 the postclosure period. After issuance of a construction permit for a solid waste disposal area,
215 but prior to the beginning of disposal operations, the owner shall submit evidence that he or she
216 has recorded, in the office of the recorder of deeds in the county where the disposal area is
217 located, a notice and covenant running with the land that the property has been permitted as a
218 solid waste disposal area and prohibits use of the land in any manner which interferes with the
219 closure and, where appropriate, postclosure plans filed with the department.

220 12. Every person desiring to obtain a permit to operate a solid waste disposal area or
221 processing facility shall submit applicable information and apply for an operating permit from
222 the department. The department shall review the information and determine, within sixty days
223 of receipt, whether it complies with the provisions of sections 260.200 to 260.345 and the rules
224 and regulations adopted pursuant to sections 260.200 to 260.345. When the review reveals that
225 the facility or area does conform with the provisions of sections 260.200 to 260.345 and the rules
226 and regulations adopted pursuant to sections 260.200 to 260.345, the department shall issue a

227 permit for the operation of each solid waste processing facility or solid waste disposal area and
228 with any permit terms and conditions which the department deems appropriate. In the event that
229 the facility or area fails to meet the rules and regulations adopted pursuant to sections 260.200
230 to 260.345, the department shall issue a report to the applicant stating the reason for denial of
231 a permit.

232 13. Each solid waste disposal area, except utility waste landfills unless otherwise and to
233 the extent required by the department, and those solid waste processing facilities designated by
234 rule, shall be operated under the direction of a certified solid waste technician in accordance with
235 sections 260.200 to 260.345 and the rules and regulations promulgated pursuant to sections
236 260.200 to 260.345.

237 14. Base data for the quality and quantity of groundwater in the solid waste disposal area
238 shall be collected and submitted to the department prior to the operation of a new or expansion
239 of an existing solid waste disposal area. Base data shall include a chemical analysis of
240 groundwater drawn from the proposed solid waste disposal area.

241 15. Leachate collection and removal systems shall be incorporated into new or expanded
242 sanitary landfills which are permitted after August 13, 1986. The department shall assess the
243 need for a leachate collection system for all types of solid waste disposal areas, other than
244 sanitary landfills, and the need for monitoring wells when it evaluates the application for all new
245 or expanded solid waste disposal areas. The department may require an operator of a solid waste
246 disposal area to install a leachate collection system before the beginning of disposal operations,
247 at any time during disposal operations for unfilled portions of the area, or for any portion of the
248 disposal area as a part of a remedial plan. The department may require the operator to install
249 monitoring wells before the beginning of disposal operations or at any time during the
250 operational life or postclosure care period if it concludes that conditions at the area warrant such
251 monitoring. The operator of a demolition landfill or utility waste landfill shall not be required
252 to install a leachate collection and removal system or monitoring wells unless otherwise and to
253 the extent the department so requires based on hazardous waste characteristic criteria or site
254 specific geohydrological characteristics or conditions.

255 16. Permits granted by the department, as provided in sections 260.200 to 260.345, shall
256 be subject to suspension for a designated period of time, civil penalty or revocation whenever
257 the department determines that the solid waste processing facility or solid waste disposal area
258 is, or has been, operated in violation of sections 260.200 to 260.345 or the rules or regulations
259 adopted pursuant to sections 260.200 to 260.345, or has been operated in violation of any permit
260 terms and conditions, or is creating a public nuisance, health hazard, or environmental pollution.
261 In the event a permit is suspended or revoked, the person named in the permit shall be fully
262 informed as to the reasons for such action.

17. Each permit for operation of a facility or area shall be issued only to the person named in the application. Permits are transferable as a modification to the permit. An application to transfer ownership shall identify the proposed permittee. A disclosure statement for the proposed permittee listing violations contained in subsection 19 of this section shall be submitted to the department. The operation and design plans for the facility or area shall be updated to provide compliance with the currently applicable law and rules. A financial assurance instrument in such an amount and form as prescribed by the department shall be provided for solid waste disposal areas by the proposed permittee prior to transfer of the permit. The financial assurance instrument of the original permittee shall not be released until the new permittee's financial assurance instrument has been approved by the department and the transfer of ownership is complete.

18. Those solid waste disposal areas permitted on January 1, 1996, shall, upon submission of a request for permit modification, be granted a solid waste management area operating permit if the request meets reasonable requirements set out by the department.

19. In case a permit required pursuant to this section is denied or revoked, the person may request a hearing in accordance with section 260.235.

20. Any person seeking a permit or renewal of a permit to operate a commercial solid waste processing facility, or a solid waste disposal area shall, concurrently with the filing of application for a permit, file a disclosure statement with the department of natural resources. The disclosure statement shall include, but not be limited to, a listing of any felony convictions by state or federal agencies, and a listing of other enforcement actions, sanctions, permit revocations or denials by any state or federal authority of every person seeking a permit, including officers, directors, partners and facility or location managers of each person seeking a permit, any violations of Missouri environmental statutes, violations of the environmental statutes of other states or federal statutes and a listing of convictions for any crimes or criminal acts, an element of which involves restraint of trade, price-fixing, intimidation of the customers of another person or for engaging in any other acts which may have the effect of restraining or limiting competition concerning activities regulated pursuant to this chapter or similar laws of other states or the federal government; except that convictions for violations by entities purchased or acquired by an applicant or permittee which occurred prior to the purchase or acquisition shall not be included. The department shall by rule, define those environmental violations which must be reported pursuant to this section. For purposes of this section, additional persons as required by rule shall be named in the statement and violations or convictions of such persons shall be listed. The department or its representative shall verify the information provided on the disclosure statement prior to permit issuance. The disclosure statement shall be used by the department in determining whether a permit should be granted or denied on the basis of the applicant's status

299 as a habitual violator; however, the department has the authority to make a habitual violator
300 determination independent of the information contained in the disclosure statement. After permit
301 issuance, each facility shall annually file an updated disclosure statement with the department
302 of natural resources on or before March thirty-first of each year. Any county, district,
303 municipality, authority or other political subdivision of this state which owns and operates a
304 sanitary landfill shall be exempt from the provisions of this subsection.

305 21. Any person seeking a permit to operate a solid waste disposal area, a solid waste
306 processing facility or a resource recovery facility shall, concurrently with the filing of the
307 application for a permit, disclose any convictions in this state of municipal or county public
308 health or land use ordinances related to the management of solid waste. If the department finds
309 that there has been a continuing pattern of serious adjudicated violations by the applicant, the
310 department may deny the application.

311 22. No permit to construct or permit to operate shall be required pursuant to this section
312 for any utility waste landfill located in a county of the third classification with a township form
313 of government which has a population of at least eleven thousand inhabitants and no more than
314 twelve thousand five hundred inhabitants according to the most recent decennial census, if such
315 utility waste landfill complies with all design and operating standards and closure requirements
316 applicable to utility waste landfills pursuant to sections 260.200 to 260.345 and provided that
317 no waste disposed of at such utility waste landfill is considered hazardous waste pursuant to the
318 Missouri hazardous waste law.

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