

SECOND REGULAR SESSION

# HOUSE BILL NO. 1438

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE GALLICK.

3937H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

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

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*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Section A. Section 260.205, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 260.205, to read as follows: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 investigation and obtained preliminary approval from the department. The department shall,

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.

17 within sixty days of such request, conduct a preliminary investigation and approve or  
18 disapprove the site.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88 financial assurance instrument or allow the instrument to terminate until the operator is  
89 released from postclosure monitoring and care responsibilities pursuant to section 260.227.

90 (3) The applicant for a permit to construct a solid waste disposal area shall provide  
91 the department with plans, specifications, and such other data as may be necessary to comply  
92 with the purpose of sections 260.200 to 260.345. The application shall demonstrate  
93 compliance with all applicable local planning and zoning requirements. The department shall  
94 make an investigation of the solid waste disposal area and determine whether it complies with  
95 the provisions of sections 260.200 to 260.345 and the rules and regulations adopted pursuant  
96 to sections 260.200 to 260.345. Within twelve consecutive months of the receipt of an  
97 application for a construction permit the department shall approve or deny the application.  
98 The department shall issue rules and regulations establishing time limits for permit  
99 modifications and renewal of a permit for a solid waste disposal area. The time limit shall be  
100 consistent with this chapter.

101 (4) The applicant for a permit to construct a solid waste processing facility shall  
102 provide the department with plans, specifications and such other data as may be necessary to  
103 comply with the purpose of sections 260.200 to 260.345. Within one hundred eighty days of  
104 receipt of the application, the department shall determine whether it complies with the  
105 provisions of sections 260.200 to 260.345. Within twelve consecutive months of the receipt  
106 of an application for a permit to construct an incinerator as described in the definition of solid  
107 waste processing facility in section 260.200 or a material recovery facility as described in the  
108 definition of solid waste processing facility in section 260.200, and within six months for  
109 permit modifications, the department shall approve or deny the application. Permits issued  
110 for solid waste facilities shall be for the anticipated life of the facility.

111 (5) If the department fails to approve or deny an application for a permit or a permit  
112 modification within the time limits specified in subdivisions (3) and (4) of this subsection, the  
113 applicant may maintain an action in the circuit court of Cole County or that of the county in  
114 which the facility is located or is to be sited. The court shall order the department to show  
115 cause why it has not acted on the permit and the court may, upon the presentation of evidence  
116 satisfactory to the court, order the department to issue or deny such permit or permit  
117 modification. Permits for solid waste disposal areas, whether issued by the department or  
118 ordered to be issued by a court, shall be for the anticipated life of the facility.

119 (6) The applicant for a permit to construct a solid waste processing facility shall pay  
120 an application fee of one thousand dollars. Upon completion of the department's evaluation  
121 of the application, but before receiving a permit, the applicant shall reimburse the department  
122 for all reasonable costs incurred by the department up to a maximum of four thousand dollars.  
123 The applicant for a permit to construct a solid waste disposal area shall pay an application fee  
124 of two thousand dollars. Upon completion of the department's evaluations of the application,

125 but before receiving a permit, the applicant shall reimburse the department for all reasonable  
126 costs incurred by the department up to a maximum of eight thousand dollars. Applicants who  
127 withdraw their application before the department completes its evaluation shall be required to  
128 reimburse the department for costs incurred in the evaluation. The department shall not  
129 collect the fees authorized in this subdivision unless it complies with the time limits  
130 established in this section.

131 (7) When the review reveals that the facility or area does conform with the provisions  
132 of sections 260.200 to 260.345 and the rules and regulations adopted pursuant to sections  
133 260.200 to 260.345, the department shall approve the application and shall issue a permit for  
134 the construction of each solid waste processing facility or solid waste disposal area as set  
135 forth in the application and with any permit terms and conditions which the department deems  
136 appropriate. In the event that the facility or area fails to meet the rules and regulations  
137 adopted pursuant to sections 260.200 to 260.345, the department shall issue a report to the  
138 applicant stating the reason for denial of a permit.

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

143 7. Any person or operator as defined in section 260.200 who intends to obtain a  
144 construction permit in a solid waste management district with an approved solid waste  
145 management plan shall request a recommendation in support of the application from the  
146 executive board created in section 260.315. The executive board shall consider the impact of  
147 the proposal on, and the extent to which the proposal conforms to, the approved district solid  
148 waste management plan prepared pursuant to section 260.325. The executive board shall act  
149 upon the request for a recommendation within sixty days of receipt and shall submit a  
150 resolution to the department specifying its position and its recommendation regarding  
151 conformity of the application to the solid waste plan. The board's failure to submit a  
152 resolution constitutes recommendation of the application. The department may consider the  
153 application, regardless of the board's action thereon and may deny the construction permit if  
154 the application fails to meet the requirements of sections 260.200 to 260.345, or if the  
155 application is inconsistent with the district's solid waste management plan.

156 8. If the site proposed for a solid waste disposal area is not owned by the applicant,  
157 the owner or owners of the site shall acknowledge that an application pursuant to sections  
158 260.200 to 260.345 is to be submitted by signature or signatures thereon. The department  
159 shall provide the owner with copies of all communication with the operator, including  
160 inspection reports and orders issued pursuant to section 260.230.

161 9. The department shall not issue a permit for the **construction or** operation of a solid  
162 waste disposal area **or solid waste processing facility** designed to serve a city with a  
163 population of greater than four hundred thousand located in more than one county, if:

164 (1) The site is located within [~~one-half~~] **one** mile of an adjoining municipality,  
165 without the approval of the governing body of such municipality. The governing body shall  
166 conduct a public hearing within [~~fifteen~~] **thirty** days of notice, shall publicize the hearing in  
167 at least one newspaper having general circulation in the municipality, and shall vote to  
168 approve or disapprove the [~~land~~] **solid waste disposal area or solid waste processing** facility  
169 within thirty days after the close of the hearing; **or**

170 (2) **The site is located within one mile of the boundary of an accredited school**  
171 **district having a total student enrollment of no fewer than fifteen-thousand-five-**  
172 **hundred students but no more than eighteen-thousand-seven-hundred-fifty students**  
173 **without the approval of the governing body of any such school district. The governing**  
174 **body shall conduct a public hearing within thirty days of notice, shall publicize the**  
175 **hearing in at least one newspaper having general circulation in the area, and shall vote**  
176 **to approve or disapprove the solid waste disposal area or solid waste processing facility**  
177 **within thirty days after the close of the hearing.**

178 10. (1) Upon receipt of an application for a permit to construct a solid waste  
179 processing facility or disposal area, the department shall notify the public of such receipt:

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

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

184 (c) By mail to the last known address of all record owners of contiguous real property  
185 or real property located within one thousand feet of the proposed disposal area and, for a  
186 proposed processing facility, notice as provided in section 64.875 or section 89.060,  
187 whichever is applicable.

188 (2) If an application for a construction permit meets all statutory and regulatory  
189 requirements for issuance, a public hearing on the draft permit shall be held by the department  
190 in the county in which the proposed solid waste disposal area is to be located prior to the  
191 issuance of the permit. The department shall provide public notice of such hearing by both  
192 printed and broadcast media at least thirty days prior to such hearing. Printed notification  
193 shall include publication in at least one newspaper having general circulation within the  
194 county in which the proposed disposal area is to be located. Broadcast notification shall  
195 include public service announcements on radio stations that have broadcast coverage within  
196 the county in which the proposed disposal area is to be located.

197           11. After the issuance of a construction permit for a solid waste disposal area, but  
198 prior to the beginning of disposal operations, the owner and the department shall execute an  
199 easement to allow the department, its agents or its contractors to enter the premises to  
200 complete work specified in the closure plan, or to monitor or maintain the site or to take  
201 remedial action during the postclosure period. After issuance of a construction permit for a  
202 solid waste disposal area, but prior to the beginning of disposal operations, the owner shall  
203 submit evidence that such owner has recorded, in the office of the recorder of deeds in the  
204 county where the disposal area is located, a notice and covenant running with the land that the  
205 property has been permitted as a solid waste disposal area and prohibits use of the land in any  
206 manner which interferes with the closure and, where appropriate, postclosure plans filed with  
207 the department.

208           12. Every person desiring to obtain a permit to operate a solid waste disposal area or  
209 processing facility shall submit applicable information and apply for an operating permit from  
210 the department. The department shall review the information and determine, within sixty  
211 days of receipt, whether it complies with the provisions of sections 260.200 to 260.345 and  
212 the rules and regulations adopted pursuant to sections 260.200 to 260.345. When the review  
213 reveals that the facility or area does conform with the provisions of sections 260.200 to  
214 260.345 and the rules and regulations adopted pursuant to sections 260.200 to 260.345, the  
215 department shall issue a permit for the operation of each solid waste processing facility or  
216 solid waste disposal area and with any permit terms and conditions which the department  
217 deems appropriate. In the event that the facility or area fails to meet the rules and regulations  
218 adopted pursuant to sections 260.200 to 260.345, the department shall issue a report to the  
219 applicant stating the reason for denial of a permit.

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

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

229           15. Leachate collection and removal systems shall be incorporated into new or  
230 expanded sanitary landfills which are permitted after August 13, 1986. The department shall  
231 assess the need for a leachate collection system for all types of solid waste disposal areas,  
232 other than sanitary landfills, and the need for monitoring wells when it evaluates the  
233 application for all new or expanded solid waste disposal areas. The department may require

234 an operator of a solid waste disposal area to install a leachate collection system before the  
235 beginning of disposal operations, at any time during disposal operations for unfilled portions  
236 of the area, or for any portion of the disposal area as a part of a remedial plan. The  
237 department may require the operator to install monitoring wells before the beginning of  
238 disposal operations or at any time during the operational life or postclosure care period if it  
239 concludes that conditions at the area warrant such monitoring. The operator of a demolition  
240 landfill or utility waste landfill shall not be required to install a leachate collection and  
241 removal system or monitoring wells unless otherwise and to the extent the department so  
242 requires based on hazardous waste characteristic criteria or site specific geohydrological  
243 characteristics or conditions.

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

252 17. Each permit for operation of a facility or area shall be issued only to the person  
253 named in the application. Permits are transferable as a modification to the permit. An  
254 application to transfer ownership shall identify the proposed permittee. A disclosure  
255 statement for the proposed permittee listing violations contained in the definition of  
256 disclosure statement found in section 260.200 shall be submitted to the department. The  
257 operation and design plans for the facility or area shall be updated to provide compliance with  
258 the currently applicable law and rules. A financial assurance instrument in such an amount  
259 and form as prescribed by the department shall be provided for solid waste disposal areas by  
260 the proposed permittee prior to transfer of the permit. The financial assurance instrument of  
261 the original permittee shall not be released until the new permittee's financial assurance  
262 instrument has been approved by the department and the transfer of ownership is complete.

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

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

268 20. Every applicant for a permit shall file a disclosure statement with the information  
269 required by and on a form developed by the department of natural resources at the same time  
270 the application for a permit is filed with the department.



271           21. Upon request of the director of the department of natural resources, the applicant  
272 for a permit, any person that could reasonably be expected to be involved in management  
273 activities of the solid waste disposal area or solid waste processing facility, or any person who  
274 has a controlling interest in any permittee shall be required to submit to a criminal  
275 background check under section 43.543.

276           22. All persons required to file a disclosure statement shall provide any assistance or  
277 information requested by the director or by the Missouri state highway patrol and shall  
278 cooperate in any inquiry or investigation conducted by the department and any inquiry,  
279 investigation or hearing conducted by the director. If, upon issuance of a formal request to  
280 answer any inquiry or produce information, evidence or testimony, any person required to file  
281 a disclosure statement refuses to comply, the application of an applicant or the permit of a  
282 permittee may be denied or revoked by the director.

283           23. If any of the information required to be included in the disclosure statement  
284 changes, or if any additional information should be added after the filing of the statement, the  
285 person required to file it shall provide that information to the director in writing, within thirty  
286 days after the change or addition. The failure to provide such information within thirty days  
287 may constitute the basis for the revocation of or denial of an application for any permit issued  
288 or applied for in accordance with this section, but only if, prior to any such denial or  
289 revocation, the director notifies the applicant or permittee of the director's intention to do so  
290 and gives the applicant or permittee fourteen days from the date of the notice to explain why  
291 the information was not provided within the required thirty-day period. The director shall  
292 consider this information when determining whether to revoke, deny or conditionally grant  
293 the permit.

294           24. No person shall be required to submit the disclosure statement required by this  
295 section if the person is a corporation or an officer, director or shareholder of that corporation  
296 or any subsidiary thereof, and that corporation:

297           (1) Has on file and in effect with the federal Securities and Exchange Commission a  
298 registration statement required under Section 5, Chapter 38, Title 1 of the Securities Act of  
299 1933, as amended, 15 U.S.C. Section 77e(c);

300           (2) Submits to the director with the application for a permit evidence of the  
301 registration described in subdivision (1) of this subsection and a copy of the corporation's  
302 most recent annual form 10-K or an equivalent report; and

303           (3) Submits to the director on the anniversary date of the issuance of any permit it  
304 holds under the Missouri solid waste management law evidence of registration described in  
305 subdivision (1) of this subsection and a copy of the corporation's most recent annual form 10-  
306 K or an equivalent report.

307           25. After permit issuance, each facility shall annually file an update to the disclosure  
308 statement with the department of natural resources on or before March thirty-first of each  
309 year. Failure to provide such update may result in penalties as provided for under section  
310 260.240.

311           26. Any county, district, municipality, authority, or other political subdivision of this  
312 state which owns and operates a sanitary landfill shall be exempt from the requirement for the  
313 filing of the disclosure statement and annual update to the disclosure statement.

314           27. Any person seeking a permit to operate a solid waste disposal area, a solid waste  
315 processing facility, or a resource recovery facility shall, concurrently with the filing of the  
316 application for a permit, disclose any convictions in this state, county or county-equivalent  
317 public health or land use ordinances related to the management of solid waste. If the  
318 department finds that there has been a continuing pattern of adjudicated violations by the  
319 applicant, the department may deny the application.

320           28. No permit to construct or permit to operate shall be required pursuant to this  
321 section for any utility waste landfill located in a county of the third classification with a  
322 township form of government which has a population of at least eleven thousand inhabitants  
323 and no more than twelve thousand five hundred inhabitants according to the most recent  
324 decennial census, if such utility waste landfill complies with all design and operating  
325 standards and closure requirements applicable to utility waste landfills pursuant to sections  
326 260.200 to 260.345 and provided that no waste disposed of at such utility waste landfill is  
327 considered hazardous waste pursuant to the Missouri hazardous waste law.

328           29. Advanced recycling facilities are not subject to the requirements of this section as  
329 long as the feedstocks received by such facility are source-separated or diverted or recovered  
330 from municipal or other waste streams prior to acceptance at the advanced recycling facility.

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