

AN ACT

To amend sections 3734.41 and 3734.42 of the Revised Code to revise requirements governing background investigations for purposes of the Solid, Hazardous, and Infectious Wastes Law.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3734.41 and 3734.42 of the Revised Code be amended to read as follows:

Sec. 3734.41. As used in sections 3734.41 to 3734.47 of the Revised Code:

(A) "Applicant" means any person seeking a permit or license for an off-site facility and any person or business concern operating such a facility for an applicant.

(B) "Application" means the forms and accompanying documents filed in connection with the applicant's request for a permit.

(C) "Business concern" means any corporation, association, firm, partnership, trust, or other form of commercial organization.

(D) "Disclosure statement" means a statement submitted to the director of environmental protection and the attorney general by an applicant. The statement shall include all of the following:

(1) The full name, business address, and social security number of the applicant or, if the applicant is a business concern, of all officers, directors, partners, or key employees thereof and all individuals or business concerns holding any equity in or debt liability of that business concern or, if the business concern is a publicly traded corporation, all individuals or business concerns holding more than five per cent of the equity in or debt liability of that business concern, except that when the debt liability is held by a chartered lending institution, the applicant need supply only the name and business address of the lending institution;

(2) The full name, business address, and social security number of all officers, directors, or partners of any business concern disclosed in the statement and the names and addresses of all persons holding any equity in or debt liability of any business concern so disclosed or, if the business

concern is a publicly traded corporation, all individuals or business concerns holding more than five per cent of the equity in or debt liability of that business concern, except that when the debt liability is held by a chartered lending institution, the applicant need supply only the name and business address of the lending institution;

(3) The full name and business address of any company in which the applicant holds an equity interest and that collects, transfers, transports, treats, stores, or disposes of solid wastes, infectious wastes, or hazardous waste or processes solid wastes that consist of scrap tires;

(4) A description of the experience and credentials, including any past or present permits or licenses, for the collection, transfer, transportation, treatment, storage, or disposal of solid wastes, infectious wastes, or hazardous waste, or the processing of solid wastes that consist of scrap tires, possessed by the applicant or, if the applicant is a business concern, by the officers, directors, partners, or key employees thereof;

(5) A listing and explanation of any civil or criminal prosecution by government agencies, administrative enforcement actions resulting in the imposition of sanctions, or license revocations or denials issued by any state or federal authority in the ten years immediately preceding the filing of the application, that are pending or have resulted in a finding or a settlement of a violation of any law or rule or regulation relating to the collection, transfer, transportation, treatment, storage, or disposal of solid wastes, infectious wastes, or hazardous waste, or the processing of solid wastes that consist of scrap tires, or of any other environmental protection statute, by the applicant or, if the applicant is a business concern, by the business concern or any officer, director, partner, or key employee thereof. For the purposes of division (D)(5) of this section, violations of any law or rule relating to the transportation of solid wastes, infectious wastes, or hazardous waste do not include violations that also apply to the transportation of commodities that are not wastes.

(6) A listing and explanation of any judgment of liability or conviction that was rendered pursuant to any state or federal law or local ordinance resulting in the imposition of a sanction against the applicant or, if the applicant is a business concern, against the business concern or any officer, director, partner, or key employee thereof;

(7) A listing of any agency outside this state that has or has had regulatory responsibility over the applicant in connection with its collection, transfer, transportation, treatment, storage, or disposal of solid wastes, infectious wastes, or hazardous waste or processing of solid wastes that consist of scrap tires;

~~(8) Any other information the attorney general or the director may require that relates to the competency, reliability, or good character of the applicant.~~

(E) "Key employee" means any individual, other than a public official or employee as defined in division (B) of section 102.01 of the Revised Code who is required to file a statement under section 102.02 of the Revised Code, employed by the applicant or the licensee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste, infectious waste, or hazardous waste operations of the business concern, but does not include any employee exclusively engaged in the physical or mechanical collection, transfer, transportation, treatment, storage, or disposal of solid wastes, infectious wastes, or hazardous waste or processing of solid wastes that consist of scrap tires. If the applicant or permittee has entered into a contract with another person to operate the facility that is the subject of the permit or license or application for a permit or license, "key employee" also includes those employees of the contractor who act in a supervisory capacity, or are empowered to make discretionary decisions, with respect to the operation of the solid, infectious, or hazardous waste facility. An officer or director of a business concern required to file a disclosure statement under section 3734.42 of the Revised Code who meets the definition of "key employee" shall be considered a key employee for purposes of the filing and disclosure requirements of sections 3734.42 to 3734.47 of the Revised Code.

(F) "License" means the annual license required by section 3734.05 of the Revised Code for an off-site solid waste disposal or transfer facility or an off-site infectious waste treatment facility.

(G) "Off-site facility" means a facility that is located off the premises where the solid wastes, infectious wastes, or hazardous waste is generated, but does not include any such facility that exclusively disposes of wastes that are generated from the combustion of coal, or from the combustion of primarily coal in combination with scrap tires, that is not combined in any way with garbage or any such facility that is owned and operated by the generator of the waste and that exclusively stores, processes, or disposes of or transfers solid wastes, exclusively treats infectious wastes, or exclusively disposes of hazardous waste, generated at one or more premises owned by the generator.

(H) "Permit" means a permit to install and any subsequent modifications for an off-site solid waste disposal facility, including an incineration facility, or transfer facility, issued under section 3734.05 of the Revised Code; a permit to install and any subsequent modifications for an off-site solid waste

facility that is a scrap tire storage, monocell, monofill, or recovery facility issued under section 3734.76, 3734.77, or 3734.78 of the Revised Code, as applicable; a permit to install and any subsequent modifications for an off-site infectious waste treatment facility issued under section 3734.05 of the Revised Code; and a permit to install and operate an off-site hazardous waste treatment, storage, or disposal facility and the modification or renewal of a hazardous waste permit for the treatment, storage, or disposal of hazardous waste issued under section 3734.05 of the Revised Code.

(I) "Permittee" means any person who has received a permit or license for an off-site facility.

Sec. 3734.42. (A)(1) ~~Except as otherwise provided in division (E)(2) of this section, every~~ Every applicant for a permit other than a permit modification or renewal shall file a disclosure statement, on a form developed by the attorney general, with the director of environmental protection and the attorney general at the same time the applicant files an application for a permit other than a permit modification or renewal with the director.

(2) Any individual required to be listed in the disclosure statement shall be fingerprinted for identification and investigation purposes in accordance with procedures established by the attorney general. An individual required to be fingerprinted under this section shall not be required to be fingerprinted more than once under this section.

(3) The attorney general, within one hundred eighty days after receipt of the disclosure statement from an applicant for a permit, shall prepare and transmit to the director an investigative report on the applicant, based in part upon the disclosure statement, except that this deadline may be extended for a reasonable period of time, for good cause, by the director or the attorney general. In preparing this report, the attorney general may request and receive criminal history information from the federal bureau of investigation and any other law enforcement agency or organization. The attorney general may provide such confidentiality regarding the information received from a law enforcement agency as may be imposed by that agency as a condition for providing that information to the attorney general.

(4) The review of the application by the director shall include a review of the disclosure statement and investigative report.

(B) All applicants and permittees shall provide any assistance or information requested by the director or the attorney general and shall cooperate in any inquiry or investigation conducted by the attorney general and any inquiry, investigation, or hearing conducted by the director. If, upon issuance of a formal request to answer any inquiry or produce information,

evidence, or testimony, any applicant or permittee, any officer, director, or partner of any business concern, or any key employee of the applicant or permittee refuses to comply, the permit of the applicant or permittee may be denied or revoked by the director.

(C) The attorney general may charge and collect such fees from applicants and permittees as are necessary to cover the costs of administering and enforcing the investigative procedures authorized in sections 3734.41 to 3734.47 of the Revised Code. The attorney general shall transmit moneys collected under this division to the treasurer of state to be credited to the solid and hazardous waste background investigations fund, which is hereby created in the state treasury. Moneys in the fund shall be used solely for paying the attorney general's costs of administering and enforcing the investigative procedures authorized in sections 3734.41 to 3734.47 of the Revised Code.

~~(D) Annually on the anniversary date of the submission to the director by the attorney general of the investigative report for a specific facility, or annually on another date assigned by the attorney general, the An appropriate applicant, a permittee, or a prospective owner shall submit to the attorney general, on a form provided by the attorney general, any and all information required to be included in a disclosure statement that has changed or been added in the immediately preceding year. If, in the immediately preceding year, there have been no changes in or additions to the information required to be included in a disclosure statement, the appropriate applicant, permittee, or prospective owner shall submit to the attorney general an affidavit stating that there have been no changes in or additions to that information during that time period.~~

~~Notwithstanding the requirement for an annual submission of information, the following information shall be submitted within the periods specified:~~

~~(1) Information required to be included in the disclosure statement for any new officer, director, partner, or key employee, to be submitted within ninety days from the addition of the officer, director, partner, or key employee;~~

~~(2) Information required to be included in a disclosure statement for regarding the addition of any new business concern; to be submitted within ninety days from the addition of the new business concern;~~

~~(3) Information regarding any new criminal conviction, to be submitted within ninety days from the judgment entry of conviction.~~

(E)(1) The attorney general shall enter in the database established under section 109.5721 of the Revised Code the name, the fingerprints, and other

relevant information concerning each officer, director, partner, or key employee of an applicant, permittee, or prospective owner.

(2) For purposes of section 109.5721 of the Revised Code, annually on a date assigned by the attorney general, an applicant, permittee, or prospective owner shall provide the attorney general with a list of both of the following:

(a) Each officer, director, partner, or key employee of the applicant, permittee, or prospective owner and the person's address and social security number;

(b) Any officer, director, partner, or key employee of the applicant, permittee, or prospective owner who has left a position previously held with the applicant, permittee, or prospective owner during the previous one-year period and the person's social security number.

(3) Annually, the attorney general shall update the database established under section 109.5721 of the Revised Code to reflect the information provided by an applicant, permittee, or prospective owner under divisions (E)(2)(a) and (b) of this section.

(4) Notwithstanding division (C) of this section, the attorney general shall charge and collect fees from an applicant, permittee, or prospective owner that is required to submit information under this division in accordance with rules adopted under section 109.5721 of the Revised Code. The fees shall not exceed fees that are charged to any other person who is charged fees for purposes of the database established under that section and who is not an officer, director, partner, or key employee of an applicant, permittee, or prospective owner under this section.

(F)(1) Every three years, the attorney general shall request from the federal bureau of investigation any information regarding a criminal conviction with respect to each officer, director, partner, or key employee of an applicant, permittee, or prospective owner. The attorney general may take any actions necessary for purposes of this division, including, as necessary, requesting the submission of any necessary documents authorizing the release of information.

(2) Every three years, an applicant, permittee, or prospective owner shall submit an affidavit listing all of the following regarding a business concern required to be listed in the applicant's, permittee's, or prospective owner's disclosure statement:

(a) Any administrative enforcement order issued to the business concern in connection with any violation of any federal or state environmental protection laws, rules, or regulations during the previous three-year period;

(b) Any civil action in which the business concern was determined to be liable or was the subject of injunctive relief or another type of civil relief in

connection with any violation of any federal or state environmental protection laws, rules, or regulations during the previous three-year period;

(c) Any criminal conviction for a violation of any federal or state environmental protection laws, rules, or regulations that has been committed knowingly or recklessly by the business concern during the previous three-year period.

(G) With respect to an applicant, permittee, or prospective owner, the attorney general shall notify the director of environmental protection of any crime ascertained under division (E) or (F) of this section that is a disqualifying crime under section 3734.44 of the Revised Code. The attorney general shall provide the notification not later than thirty days after the crime was ascertained.

(H) The failure to provide such information under this section may constitute the basis for the revocation of a permit or license, the denial of a permit or license application, the denial of a renewal of any a permit or license issued in accordance with this chapter, provided that prior, or the disapproval of a change in ownership as described in division (I) of this section. Prior to any such a denial of, revocation, or disapproval, the director shall notify the applicant of, permittee, or prospective owner of the director's intention to do so and. The director shall give the applicant of, permittee, or prospective owner fourteen days from the date of the notice to explain why the information was not provided. The director shall consider this information the explanation when determining whether to revoke or deny the permit or license, deny the permit or license application or renewal, or disapprove the change in ownership.

Nothing in this ~~division~~ section affects the rights of the director or the attorney general granted under sections 3734.40 to 3734.47 of the Revised Code to request information from a person at any other time.

~~(E)(1) Except as otherwise provided in division (E)(2) of this section, every permittee who is not otherwise required to file a disclosure statement shall file a disclosure statement within five years after June 24, 1988, pursuant to a schedule for submissions of disclosure statements developed by the attorney general. The schedule shall provide all permittees and holders of a license with at least one hundred eighty days' notice prior to the date upon which the statement is to be submitted. All other terms of the schedule shall be established at the discretion of the attorney general and shall not be subject to judicial review.~~

~~(2) An applicant for a permit for an off-site solid waste facility that is a scrap tire storage, monocell, monofill, or recovery facility issued under section 3734.76, 3734.77, or 3734.78 of the Revised Code, as applicable,~~

~~shall file a disclosure statement within five years after October 29, 1993, pursuant to a schedule for submissions of disclosure statements developed by the attorney general. The schedule shall provide all such applicants with at least one hundred eighty days' notice prior to the date upon which the statement shall be submitted. All other terms of the schedule shall be established at the discretion of the attorney general and shall not be subject to judicial review.~~

~~Beginning five years after October 29, 1993, an applicant for such a permit shall file a disclosure statement in accordance with division (A)(1) of this section.~~

~~(3) When a permittee submits a disclosure statement at the time it submits an application for a renewal or modification of its permit, the attorney general shall remove the permittee from the submission schedule established pursuant to division (E)(1) or (2) of this section.~~

~~(4) After receiving a disclosure statement under division (E)(1) or (2) of this section, the attorney general shall prepare an investigative report and transmit it to the director. The director shall review the disclosure statement and investigative report to determine whether the statement or report contains information that if submitted with a permit application would require a denial of the permit pursuant to section 3734.44 of the Revised Code. If the director determines that the statement or report contains such information, the director may revoke any previously issued permit pursuant to section 3734.45 of the Revised Code, or the director shall deny any application for a renewal of a permit or license. When the renewal of the license is being performed by a board of health, the director shall instruct the board of health about those circumstances under which the renewal is required to be denied by this section.~~

~~(F)(I)(1) Whenever there is a change in ownership of any operating off-site solid waste facility, including incinerators, any transfer facility, any operating off-site infectious waste treatment facility, or any operating off-site hazardous waste treatment, storage, or disposal facility, the prospective owner shall file a disclosure statement with the attorney general and the director at least one hundred eighty days prior to the proposed change in ownership. In addition, whenever there is a change in ownership of any operating on-site solid waste facility, any operating on-site infectious waste facility, or any operating on-site hazardous waste facility and the prospective owner intends to operate the facility as an off-site facility by accepting wastes other than wastes generated by the facility owner, the prospective owner shall file a disclosure statement with the attorney general and the director. The prospective owner shall file the disclosure statement at~~

least one hundred eighty days prior to the proposed change in ownership.
~~Upon~~

Upon receipt of the disclosure statement, the attorney general shall prepare an investigative report and transmit it to the director. The director shall review the disclosure statement and investigative report to determine whether the statement or report contains information that if submitted with a permit application would require a denial of the permit pursuant to section 3734.44 of the Revised Code. If the director determines that the statement or report contains such information, the director shall disapprove the change in ownership.

(2) If the parties to a change in ownership decide to proceed with the change prior to the action of the director on the disclosure statement and investigative report, the parties shall include in all contracts or other documents reflecting the change in ownership language expressly making the change in ownership subject to the approval of the director and expressly negating the change if it is disapproved by the director pursuant to division ~~(F)~~(I)(1) of this section.

(3) As used in this section, "change in ownership" includes ~~any~~ a change in the names, other than those of the individuals or entities who own a solid waste facility, infectious waste facility, or hazardous waste facility. "Change in ownership" does not include a legal change in a business concern's name when its ownership otherwise remains the same. "Change in ownership" also does not include a personal name change of officers, directors, partners, or key employees; contained in the a disclosure statement.

SECTION 2. That existing sections 3734.41 and 3734.42 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 302

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____