

Kansas Department of Health and Environment  
Bureau of Waste Management Policy 2009-P1  
**Limit on Term of RD&D Variances**

**Purpose**

The purpose of this policy is to explain how a 21-year limit on variances to the liquids restriction, run-on control system, and final cover design at municipal solid waste landfills (MSWLFs) will be implemented, and to clarify the implications of the 21-year limit.

**Background**

In order to maintain Federal approval for administering the solid waste program in Kansas, the Kansas Department of Health and Environment (KDHE) must ensure that state laws, regulations, and policies are in place that are at least as stringent as the Federal solid waste laws and regulations.

On March 22, 2004, the U.S. Environmental Protection Agency (EPA) promulgated the Research, Development, and Demonstration Permits (RD&D) rule ([40 CFR 258.4](#)) for MSWLFs. Under this rule, KDHE has the authority to issue MSWLF permits in which the restriction on liquid waste, the run-on control system, and/or the final cover design differ from the regulatory criteria, provided certain other requirements are met. One of the requirements is that each landfill that has been granted such a variance to the regulatory criteria must submit data annually that evaluate the success of the alternative operations and/or design. The 2004 federal rule stipulated a 12-year limit for RD&D permits.

KDHE has issued permits to MSWLFs that include variances to the solid waste regulations under the authority of [K.A.R. 28-29-2](#). This regulation requires reevaluation of the variance every two years but does not put a limit on the total length of the variance. To remain as stringent the 2004 federal rule, the Bureau of Waste Management issued the previous version of this policy, dated June 18, 2009, which set a 12-year limit on RD&D variances issued by KDHE.

On May 10, 2016, EPA promulgated a final rule that increased the previous 12-year total RD&D permit term. Effective November 10, 2016, 40 CFR 258.4(e)(1) requires that the term of any RD&D permit must be no more than 21 years. This revised policy implements this change for the Kansas solid waste program.

**Action**

When issuing permits, including permit modifications, that include any variance that differs from than federal regulations concerning liquids restriction, run-on systems, or design of the final cover, KDHE will limit the total length of the variance to 21 years. This limit will be included as one of the special conditions of the permit. The 21-year period will be calculated from the issue date of the permit or permit modification which contains the variance.

RD&D variances will not be granted to a landfill that has been granted an exemption to design criteria pursuant to [K.A.R. 28-29-103](#).

### **Implications**

KDHE will not allow any continuation of the variance after the 21-year period passes unless EPA modifies the RD&D rule to eliminate this restriction. This would mean that previously approved design or operations plans would need to cease at the end of 21 years, but permanently constructed systems would not need to be eliminated and replaced. More specifically, a facility could not construct an alternative final cover after the 21-year period but would need to redesign the cover to meet the standard final cover requirements set forth in [K.A.R. 28-29-121](#).

Alternative operations related to liquids additions and run-on controls would need to cease at the end of 21 years and the facility would need to modify its operations plan to comply with the applicable requirements set forth in [K.A. R. 28-29-108\(j\)](#) and (k). The required changes to the design and operating plans to address the conversion from the approved variance(s) to standard requirements should be submitted to KDHE at least 12 months before the end of the 21-year variance period. Alternative final covers constructed before the end of the 21-year period may be left in place as long as monitoring data indicates adequate performance.

If the facility wants the variance to extend beyond the 21-year limit, the facility should seek a site-specific or general rulemaking from EPA that would allow continuation of the practice or design. The EPA evaluation and rulemaking process could take several years, so the request should be made well ahead of the end of the 21-year period.

***This policy replaces Bureau of Waste Management Policy 09-01 signed June 18, 2009 and is effective on the date that EPA publishes acknowledgement of this change to the Kansas solid waste program in the Federal Register***



Julie Coleman  
Director, Bureau of Waste Management

Date: November 16, 2021

effective January 5, 2009  
revised June 18, 2009  
revised November 16, 2021

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-R07-RCRA-2021-0665; FRL-9126-01-R7]

**Kansas: Notice of Modification to Kansas' Research, Development and Demonstration (RD&D) Permit Provisions for Municipal Solid Waste Landfills (MSWLF)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** On May 10, 2016, EPA issued a revision to the regulations allowing Research, Development and Demonstration (RD&D) permits to increase the number of permit renewals allowed to six, for a total permit term of up to 21 years. On October 19, 2016, Kansas Department of Health and Environment (KDHE) submitted a notification to EPA Region 7 regarding a modification by policy to its RD&D program. EPA acknowledges receipt of Kansas' notification regarding a modification to its RD&D program, and that Kansas' notification meets the requirements set forth in the **Federal Register** document that published on May 10, 2016.

**DATES:** The modification to the Kansas RD&D permit program will become applicable on November 16, 2021.

**FOR FURTHER INFORMATION CONTACT:** Marcus G. Rivas, U.S. EPA Region 7 Land, Chemicals and Redevelopment Division; 11201 Renner Boulevard, Lenexa, Kansas 66219, (913) 551-7669, [rivas.marcus@epa.gov](mailto:rivas.marcus@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On March 22, 2004, EPA issued a final rule amending the Municipal Solid Waste Landfills (MSWLF) criteria in 40 CFR part 258 to allow for RD&D permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through state-issued RD&D permits. RD&D permits are available only in states with approved MSWLF permit programs that have been modified to incorporate RD&D permit authority. On May 10, 2016, the EPA issued a revision to the regulations allowing RD&D permits to increase the number of permit renewals allowed to six, for a total permit term of up to 21 years (40 CFR 258.4).

While states are not required to incorporate this new RD&D permit provision into their previous approved MSWLF program, those states interested in increasing the total length of time for

which RD&D permits can be issued, from 12 years to 21 years, must provide notification to EPA in accordance with 40 CFR part 239.

On September 4, 2009, Kansas received approval of its RD&D permit program (74 FR 45769). Kansas' RD&D provisions can be found in Kansas Statutes Annotated (K.S.A.) Chapter 65—Public Health, Article 34—Solid Waste and Kansas Administrative Regulations (K.A.R.), Agency 28—Kansas Department of Health and Environment, Article 29—Solid Waste Management. On October 19, 2016, KDHE submitted a notification to EPA Region 7 of its modification of its RD&D program through policy, increasing the total length of time for which RD&D permits can be issued from 12 years to 21 years as described in the **Federal Register** document that published on May 10, 2016, (81 FR 28720) and at 40 CFR 239.12.

**B. EPA Acknowledgment of Notification**

In today's **Federal Register** document, EPA acknowledges receipt of the notification provided by Kansas of its modification by policy in increasing the total length of time for which RD&D permits can be issued from 12 years to 21 years, and that Kansas' notification meets the requirements set forth at 81 FR 28720 and 40 CFR 239.12.

**Authority:** This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 40 U.S.C. 6912, 6945 and 6949(a).

Dated: November 8, 2021.

**Edward H. Chu,**

*Acting Regional Administrator, Region 7.*

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**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9259-01-OW]

**Meeting of the National Drinking Water Advisory Council**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of a public meeting.

**SUMMARY:** The U.S. Environmental Protection Agency's (EPA) Office of Ground Water and Drinking Water is announcing a virtual meeting of the National Drinking Water Advisory Council (NDWAC or Council) as authorized under the Safe Drinking Water Act (SDWA). During this meeting the NDWAC will primarily focus discussions on developing advice and

recommendations to EPA on targeted issues related to revisions to the Consumer Confidence Report rule, as required by the America's Water Infrastructure Act of 2018.

**DATES:** The meeting will be held on December 1, 2021, from 10:30 a.m. to 5:30 p.m., eastern time; and on December 2, 2021 from 10:00 a.m. to 5:30 p.m., eastern time.

**ADDRESSES:** This will be a virtual meeting. There will be no in-person gathering for this meeting. For more information about attending, providing oral statements, and accessibility for the meeting, as well as sending written comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Corr, NDWAC Designated Federal Officer, Office of Ground Water and Drinking Water (Mail Code 4601), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-3798; email address: [corr.elizabeth@epa.gov](mailto:corr.elizabeth@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Attending the Meeting:** The meeting will be open to the general public. The meeting agenda, including additional topics for discussion, and information on how to register for and attend the meeting online will be provided on EPA's website at <https://www.epa.gov/ndwac> prior to the meeting.

**Oral Statements:** EPA will allocate one hour for the public to present oral comments during the meeting. Oral statements will be limited to five minutes per person during the public comment period. It is preferred that only one person present a statement on behalf of a group or organization. Persons interested in presenting an oral statement should send an email to Elizabeth Corr, at [corr.elizabeth@epa.gov](mailto:corr.elizabeth@epa.gov) by noon, eastern time, on November 23, 2021.

**Written Statements:** Any person who wishes to file a written statement can do so before or after the Council meeting. Send written statements by email to [corr.elizabeth@epa.gov](mailto:corr.elizabeth@epa.gov) or see the **FOR FURTHER INFORMATION CONTACT** section if sending statements by mail. Written statements received by noon, eastern time, on November 23, 2021, will be distributed to all members of the Council prior to the meeting. Statements received after that time will become part of the permanent file for the meeting and will be forwarded to the Council members after conclusion of the meeting.

**Accessibility:** For information on access or services for individuals with disabilities, or to request