

Kansas Department of Health and Environment
Bureau of Waste Management Policy 05-01
related to
**Notifying Agencies about Proposed
New Solid Waste Facilities and Expansions**

effective May 31, 2005
revised December 29, 2005
revised April 15, 2008

Purpose

This Bureau of Waste Management policy is intended to clarify the requirements for applicants seeking solid waste disposal area and/or processing facility permits to notify other government agencies about proposed facilities and to request information from those agencies relative to the site characteristics.

Background

Kansas Statutes Annotated (K.S.A.) 65-3406(a) authorizes and directs the Kansas Department of Health and Environment (KDHE) to:

(1) Adopt such rules and regulations, standards and procedures relative to solid waste management as necessary to protect public health and environment, prevent public nuisances and enable the secretary to carry out the purposes and provisions of this act.

...and...

(4) Cooperate with appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out duties under this act.

Kansas Administrative Regulations (K.A.R.) 28-29-23(d) stipulates in part that the:

Location of all solid waste disposal areas and solid waste processing facilities shall conform to applicable state laws, and county or city zoning regulations and ordinances.

Specific location restrictions in K.S.A. 65-3407(1) and K.A.R. 28-29-23(d), -102, and -302 identify a number of factors to be used by KDHE in determining the appropriateness of a proposed solid waste facility location. Most of those factors are under the primary authority of other government agencies (e.g., flood plains, wetlands, critical habitat, etc.) and/or are an area of knowledge in which other government agencies specialize (e.g., geologic conditions).

Furthermore, other factors that are not specifically identified in statutes and regulations may be important for KDHE to consider in evaluating proposed solid waste facility locations. Examples include active/abandoned gas/oil wells and appurtenances, water supply recharge areas, and other sensitive/protected areas.

In order to learn whether there are potential concerns such as these it is essential for KDHE to receive input from other agencies when new or expanded solid waste facilities are proposed. It is standard practice for this type of “due diligence” research to be performed prior to most types of municipal, residential, commercial, and industrial land development.

Applicability

The agency notification requirements apply to “designated applicants”, defined as persons applying for the following:

- ▷ a permit for a new solid waste facility
- ▷ a significant permit modification (see BWM Policy 98-05)

The notification requirements may be reduced for solid waste processing facilities located at existing facilities or buildings, or in previously disturbed or developed urban areas. In those situations, the Bureau of Waste Management will determine which agencies must be notified by the applicant based on site characteristics (e.g. if wetlands, flood plain, possible historically significant area, etc. appear to be involved, or if the need for agency notification is uncertain).

Action

Based on the authority and justification described above, the Bureau of Waste Management requires every designated applicant to submit evidence that other government agencies have been notified and to submit the responses received from the agencies. To facilitate this process, KDHE recommends that all applicants comply with the specific guidelines that follow:

1. Each designated applicant should, as part of preparing an application: notify the following agencies in writing about the proposed facility; provide a location map and site layout map; and request comments from the agencies as to whether they are aware of any concerns with the proposed facility location, within the scope of their areas of authority and knowledge.
 - Kansas Biological Survey
 - Kansas Corporation Commission
 - Kansas Department of Agriculture - Division of Water Resources
 - Kansas Department of Wildlife and Parks
 - Kansas Geological Survey
 - Kansas State Conservation Commission
 - Kansas State Historical Society
 - Kansas Water Office
 - U.S. Army Corps of Engineers
 - U.S. Fish and Wildlife Service
2. If the applicant is aware of other agencies that would be appropriate to notify with regard to a proposed facility location, then the applicant should submit a similar notification and request for comments to those agencies as well. If the Bureau determines that agencies other than those listed above would have any authority, interest, or knowledge pertaining to a proposed facility location, then the Bureau may require the applicant to submit a notification and request for comments from those agencies at any time during the application review process.

3. Applicants should not request the agencies to “approve” proposed solid waste facilities; only KDHE has the authority to permit solid waste facilities. The requests should be limited to seeking pertinent information that the agencies may have with regard to proposed facility locations. Applicants should not specify what aspects of a proposed facility location the agencies should address; for example, applicants should not indicate an expectation for the Kansas Geological Survey to make a determination on whether a particular location contains “unstable areas”. Applicants should not cite solid waste management statutes or regulations in the notifications and request for comments.
4. Suggested wording for notification letters to agencies is provided below. The actual wording of these letters may vary, but should be similar to the suggested wording.

Dear [name of agency] staff:

We have been retained by [name of landfill applicant] to prepare an application for a landfill permit. One of the requirements is to check with several agencies to determine if they have any information about the proposed site.

The proposed [type of] landfill would be located on XX acres in the [quadrant] quarter of [section, township, range] in [county name] county. A location map and preliminary site layout plan are attached. We request a response from your agency indicating any issues you may be aware of regarding this proposed land use.

Thank you for your consideration in this matter. If you have any questions about this request, please contact me at [phone number].

Sincerely,

[signature]

Applicants shall submit copies of the notifications and copies of the agency responses to the Bureau with solid waste facility applications. The Bureau will also allow applicants to submit copies of responses after an application has been submitted, if the responses were not available at the time the application was submitted. However, the Bureau may wait to act on applications if they are not “complete”, e.g. if agency responses have not been submitted.



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