



Hazardous Waste

Kansas Statutes Annotated

Chapter 65-Public Health
Article 34-Hazardous Waste

and

Administrative Regulations

Article 31-Hazardous Waste Management

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Kansas Department of Health and Environment
Bureau of Waste Management

Kansas Statutes Annotated and Administrative Regulations
Hazardous Waste Management

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Kansas Statutes Annotated

ARTICLE 34. SOLID AND HAZARDOUS WASTE

65-3430. Hazardous wastes; definitions. As used in K.S.A. 65-3430 to 65-3447, and amendments thereto:

(a) "**Department**" means the Kansas department of health and environment.

(b) "**Disposal**" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(c) "**Facility**" means all contiguous land, structures and other appurtenances and improvements on the land utilized for the purpose of treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operational units.

(d) "**Generator**" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.

(e) (1) "**Hazardous waste**" means any waste or combination of wastes which, because of its quantity, concentration or physical, chemical, biological or infectious characteristics or as otherwise determined by the secretary: (A) Causes or significantly contributes to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (B) poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed.

(2) Hazardous waste shall not include: (A) Household waste; (B) agricultural waste returned to the soil as fertilizer; (C) mining waste and overburden from the extraction, beneficiation and processing of ores and minerals, if returned to the mine site; (D) drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal energy; (E) fly ash, bottom ash, slag and flue gas emission control wastes generated primarily from the combustion of coal or other fossil fuels; (F) cement kiln dust; or (G) materials listed in 40 CFR 261.4, as in effect on July 1, 1983, or any later version as established in rules and regulations adopted by the secretary.

(f) "**Hazardous waste facility**" means a facility or part of a facility: (1) At which hazardous waste is treated; (2) at which hazardous waste is stored; or (3) at which hazardous waste is disposed and will remain after closure. "Hazardous waste facility" includes a hazardous waste injection well.

(g) "**Hazardous waste management**" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous waste.

(h) "**Hazardous waste transfer facility**" means any hazardous waste transportation-related facility, other than the location of generation or of final treatment or disposal, that, during the course of transportation, serves as an area for the accumulation, consolidation, distribution or transfer of hazardous waste shipments, including loading docks, parking areas, rail spurs and other similar areas where shipments of hazardous waste are held during the normal course of transportation. "Hazardous waste transfer facility" does not include hazardous waste facilities or permitted household hazardous waste facilities.

(i) "**Manifest**" means the form prescribed by the secretary to be used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(j) "**Modification**" means the expansion or enlargement of a facility beyond the boundaries established by an existing permit or any material or substantial alteration or addition to an existing permitted facility which would justify the application of permit conditions that would be materially or substantially different from the conditions of the existing permit or are absent from the existing permit.

(k) "**Monitoring**" means all procedures used to (1) systematically inspect and collect samples or require information and copy records or data on the operational parameters of a facility, generator or a transporter; or

(2) to systematically collect and analyze data on the quality of the air, groundwater, surface water or soil on or in the vicinity of a hazardous waste generator, transporter or facility.

(l) "**Off-site facility**" means a facility where treatment, storage or disposal activities are conducted by a person other than the hazardous waste generator.

(m) "**On-site facility**" means a facility which is solely owned and operated by the generator exclusively for the treatment, storage or disposal of wastes which have been generated on the contiguous property and includes the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection and access is by crossing and not going along the right-of-way or noncontiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access.

(n) "**Permit**" means the document issued to a person by the secretary which allows such person to construct and operate a hazardous waste facility in the state.

(o) "**Person**" means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, state, municipality, commission, political subdivision of a state or any interstate body.

(p) "**Secretary**" means the secretary of the department of health and environment.

(q) "**Storage**" means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of or stored elsewhere.

(r) "**Transporter**" means any person who is engaged in the off-site transportation of hazardous waste by air, rail, land, highway or water.

(s) "**Treatment**" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to recover energy or material resources from the waste, to render such waste nonhazardous; less hazardous; safer to transport, store or dispose of; amenable for recovery or storage; or reduced in volume.

(t) "**Waste**" means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial, mining, community and agricultural activities. Waste does not include solid or dissolved materials in domestic sewage or irrigation return flows or solid or dissolved materials or industrial discharges which are point sources subject to permits under K.S.A. 65-165, and amendments thereto.

(u) "**Acutely hazardous waste**" means a commercial chemical product or manufacturing chemical intermediate having a generic name listed in 40 CFR 261.33(e), as in effect on July 1, 1984, or any later version as established in rules and regulations adopted by the secretary; or an off-specification commercial chemical product or manufacturing chemical intermediate which, if either met specifications, would have a generic name listed in 40 CFR 261.33(e), as in effect on July 1, 1984, or any later version as established in rules and regulations adopted by the secretary.

(v) "**Underground injection**" means the subsurface emplacement of fluids through a well for which a permit has been issued by the secretary.

(w) "**Land treatment**" means the practice of applying hazardous waste onto or incorporating hazardous waste into the soil surface so that it degrades or decomposes and renders the waste nonhazardous.

(x) "**Above ground storage**" means the placement of containerized hazardous waste into an above ground structure for a temporary period prior to the reuse or ultimate treatment or disposal of such waste.

(y) "**Closure plan**" means a written document which identifies the procedures by which the owner or operator of a hazardous waste facility will close such facility so as to control, minimize or eliminate, to the extent necessary to prevent a threat to human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall or waste decomposition products to the ground, groundwater, surface waters or to the atmosphere.

(z) "**Post-closure plan**" means the written document which identifies the procedures by which the owner or operator of a hazardous waste facility shall provide, for a minimum of 30 years, for groundwater protection, site security and maintenance of cover and leachate collection systems.

History: L. 1981, ch. 251, § 1; L. 1984, ch. 240, § 1; L. 1985, ch. 218, § 1; L. 1992, ch. 192, § 4; L. 1999, ch. 129, § 1; L. 2000, ch. 103, § 6; July 1.

65-3431. Duties and functions of secretary; standards; permits; fees. The secretary is authorized and directed to:

(a) Adopt such rules and regulations, standards and procedures relative to hazardous waste management as may be necessary to protect the public health and environment and enable the secretary to carry out the purposes and provisions of this act.

(b) Report to the legislature on further assistance needed to administer the hazardous waste management program.

(c) Administer the hazardous waste management program pursuant to provisions of this act.

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

(e) Develop a statewide hazardous waste management plan.

(f) Provide technical assistance, including the training of personnel, to industry, local units of government and the hazardous waste management industry to meet the requirements of this act.

(g) Initiate, conduct and support research, demonstration projects and investigations and coordinate all state agency research programs with applicable federal programs pertaining to hazardous waste management.

(h) Establish policies for effective hazardous waste management.

(i) Authorize issuance of such permits and orders, conduct inspections and collect samples or require information and copy records or data as may be necessary to implement the provisions of this act and the rules and regulations and standards adopted pursuant to this act.

(j) Conduct and contract for research and investigations in the overall area of hazardous waste storage, collection, transportation, treatment, recovery and disposal including, but not limited to, new and novel procedures.

(k) Adopt rules and regulations establishing criteria for identifying the characteristics of hazardous waste and for listing hazardous waste. The secretary shall prepare and keep current a listing of hazardous wastes and set of characteristics based on the rules and regulations adopted pursuant to this subsection. The listing shall identify, but need not be inclusive of, all the hazardous waste subject to the provisions of this act. The criteria for identification and listing shall be consistent with the criteria for identification and listing adopted by the administrator of the United States environmental protection agency under the authority vested in the administrator by the Resource Conservation and Recovery Act of 1976 (42 USC 6921) as amended by the Solid Waste Disposal Act of 1980 (P.L. 94-482, October 21, 1980), and as amended by the Hazardous and Solid Waste Act of 1984 (P.L. 98-616, November 8, 1984).

(l) Adopt rules and regulations establishing: (1) Appropriate measures for monitoring generators, transporters and facilities during operation, during closure and after closure of such facilities to insure compliance with the rules and regulations adopted under this act and any permit issued under this act; (2) procedures to suspend operation of such generators, transporters or facilities as may be required to protect the public health and safety or the environment; and (3) appropriate measures to insure that any use of a hazardous waste facility after closure will not endanger the public health or safety or the environment.

(m) Adopt rules and regulations establishing standards for hazardous waste generators including, but not limited to, notification of hazardous waste generation, reporting, recordkeeping, labeling, containerization,

source separation, storage, manifests, monitoring, sampling and analysis and manner of filing notifications, reports and manifests.

(n) Adopt rules and regulations prescribing the form of the manifest and requiring such manifest to accompany any hazardous waste collected, transported, treated, recovered or disposed of, and prescribing the contents of the manifest which shall include, but not be limited to, the quantity and composition of the hazardous waste, generator, transporter, destination, facility and the manner of signing and filing of the manifest and for the maintenance of records.

(o) Adopt rules and regulations establishing standards for routes used for transporting hazardous waste within the state with the concurrence of the state corporation commission. Such standards shall be consistent with those of the United States department of transportation and the state corporation commission, with respect to transportation of hazardous materials. Motor vehicles which are used for the transportation of hazardous waste in accordance with this act shall be exempt from the requirements of K.S.A. 66-1,108 et seq., and amendments thereto, and any rules and regulations adopted thereunder pertaining to routes which shall be under the jurisdiction of the secretary as provided in this act including any rules and regulations adopted thereunder. Otherwise such motor vehicles shall be subject to the requirements of K.S.A. 66-1,108 et seq., and amendments thereto, and any rules and regulations adopted thereunder.

(p) Adopt rules and regulations establishing standards for transporters of hazardous waste including, but not limited to, notification of hazardous waste transport, manifests, labeling, recordkeeping and the filing of reports.

(q) Adopt rules and regulations establishing standards and procedures to protect public health and the environment from any release of hazardous waste into the environment and to insure the prompt correction of any such release and damage resulting therefrom by the person transporting, handling or managing such hazardous waste.

(r) Adopt rules and regulations requiring that, for such period of time as the secretary shall specify, any assignment, sale, conveyance or transfer of all or any part of the real property upon which a hazardous waste facility is or has been located shall be subject to such terms and conditions as to the use of such property as the secretary shall specify to protect human health and the environment.

(s) Adopt rules and regulations establishing a permit system which includes standards for hazardous waste facilities and procedures for implementation of a permit system for the construction, alteration or operation of a hazardous waste facility including, but not limited to, content of applications, evidence of financial responsibility, existing hydrogeological characteristics, environmental assessment, training of personnel, maintenance of operations, qualifications of ownership, continuity of operation, public notification and participation and compliance with those standards established pursuant to subsection (t).

(t) Adopt rules and regulations establishing minimum standards for the design, location, construction, alteration, operation, termination, closing and long-term care of hazardous waste facilities, including, but not limited to, notification of hazardous waste treatment, storage or disposal, general facility standards, contingency plans, emergency procedures, manifest system, recordkeeping, inspections, monitoring, reporting, closure and postclosure plans and financial requirements. The operator of the facility shall be responsible for long-term care of the facility for 30 years after closure of the facility except that the secretary may modify the long-term care requirements for any facility when all hazardous waste is removed from the facility at closure. The secretary may extend the long-term care responsibility of any operator of a facility as the secretary may deem necessary to protect the public health and safety or the environment. Any person acquiring rights of possession or operation of any hazardous waste facility permitted by the secretary at any time after the facility has begun to accept waste and prior to the end of the required period of long-term care shall be subject to all of the requirements, terms and conditions of the permit for the facility including all requirements relating to long-term

care of the facility. The sale or acquisition of a hazardous waste facility during the long-term care period shall be subject to the assignment of long-term care responsibilities as determined by the secretary.

(u) Adopt rules and regulations establishing a schedule of annual fees to be paid to the secretary by: (1) Persons owning or operating hazardous waste facilities; (2) hazardous waste transporters; or (3) hazardous waste generators producing or bringing into existence hazardous waste in Kansas. The fees shall be for monitoring facilities both during and after operation, for monitoring generators of hazardous waste in Kansas and for monitoring the transportation of hazardous wastes. The fees shall be sufficient to reimburse the cost of the state in performing these monitoring responsibilities. The fee established under this subsection for each hazardous waste facility shall not exceed \$50,000 annually. In setting fees, the secretary may exempt those fees which would be payable by generators for hazardous waste which is treated to recover substantial amounts of either energy or materials from hazardous wastes. The secretary shall remit any moneys collected from such fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the hazardous waste management fund created by K.S.A. 65-3491, and amendments thereto.

(v) (1) Adopt rules and regulations establishing a schedule of fees to be paid to the secretary by applicants for permits to construct, modify or operate a hazardous waste facility. The fees established under this subsection shall not exceed \$175,000 for each application submitted. These fees shall be based upon resources required to review the application, the type of facility, quantity of waste processed, type of waste processed, degree of hazard and potential impact upon human health and environment.

(2) The secretary shall remit any money collected pursuant to this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the hazardous waste management fund created by K.S.A. 65-3491, and amendments thereto.

(w) (1) Adopt rules and regulations establishing a schedule of fees to be paid to the secretary by off-site hazardous waste facilities at which hazardous waste is treated and off-site hazardous waste facilities at which hazardous waste is disposed and will remain after closure. In establishing fees, the secretary shall give consideration to the degree of hazard, energy content, quantity of waste, costs of treatment or disposal and estimated future receipts. Fees shall be in an amount not to exceed \$.01 per pound of hazardous waste treated, or burned for energy or material recovery. In no event shall the fees established under this subsection exceed the following annual calendar year caps: \$60,000 for a facility which burns hazardous waste for energy or material recovery only; \$200,000 for a facility which burns hazardous waste for treatment or disposal only. Facilities which burn hazardous waste for: (A) Energy or material recovery; and (B) treatment or disposal shall be subject to a total facility cap of \$200,000, which includes a separate cap of \$60,000 for hazardous wastes which are burned for energy or material recovery. The secretary shall establish a differential fee schedule for hazardous wastes based upon waste characteristics which is consistently applied to all facilities which burn hazardous wastes. In all other cases, fees shall be in an amount not to exceed \$.05 per pound of hazardous waste disposed.

(2) The secretary shall remit any money collected pursuant to this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the hazardous waste management fund created by K.S.A. 65-3491, and amendments thereto, except that 25% of any such deposit shall be deposited to the credit of the hazardous waste collection fund created by K.S.A. 65-3460, and amendments thereto.

(x) Encourage, coordinate or participate in one or more waste exchange clearing houses for the purpose of promoting reuse and recycling of industrial wastes.

(y) Adopt rules and regulations establishing the criteria to specify when a change of principal owners or management of a hazardous waste facility occurs and under what circumstances and procedures a new permit shall be required to be issued to the transferees of a facility which was permitted to the transferor.

(z) Adopt rules and regulations concerning the generation, transportation, storage, blending, marketing, burning and types of hazardous waste for which any method, technique or process to recover energy will be considered hazardous waste treatment. Such rules and regulations should specify a minimum heat value of the waste so as to ensure that a legitimate energy recovery will occur and should consider other characteristics of the waste which are appropriate to ensure that such method, technique or process for energy recovery will not pose a threat to the public health or environment.

History: L. 1981, ch. 251, § 2; L. 1983, ch. 286, § 5; L. 1984, ch. 240, § 2; L. 1985, ch. 218, § 2; L. 1986, ch. 240, § 1; L. 1987, ch. 295, § 6; L. 1989, ch. 48, § 87; L. 1991, ch. 198, § 1; L. 1992, ch. 272, § 7; L. 1993, ch. 274, § 5; L. 1996, ch. 253, § 16; L. 1996, ch. 253, § 17; L. 1999, ch. 44, § 1; L. 2000, ch. 103, § 7; L. 2001, ch. 5, § 248; July 1.

65-3432. Repealed. History: L. 1981, ch. 251, § 4; L. 1982, ch. 347, § 26; L. 1984, ch. 240, § 3; Repealed, L. 1992, ch. 192, § 17; July 1.

65-3433. Permit, construction or modification of facility; duties of secretary. (a) After the effective date of this act, no person shall modify or construct an off-site hazardous waste facility without a permit issued by the secretary under this act.

(b) Upon receipt of an application for a permit to construct an off-site hazardous waste facility which complies with the requirements of this section, the secretary shall:

(1) Publish a notice once per week for three consecutive weeks in a newspaper having major circulation in the county in which the facility is proposed to be located. The required published notice shall contain a map indicating the location of the proposed facility and shall contain a description of the proposed action and the location where the permit application and related documents may be reviewed and where copies may be obtained. The notice shall describe the procedure by which the permit may be granted. The secretary shall transmit a copy of the notice to the clerk of any city which is located within three miles of the proposed facility.

(2) Review the plans of the proposed facility to determine if the proposed operation complies with this act and the rules and regulations promulgated under this act. The review shall include but not be limited to air quality, water quality, waste management and hydrogeology. If the facility review, the plan review and the application meet the requirements of this act and the rules and regulations promulgated under this act, the secretary shall approve construction or modification of the facility which approval may contain conditions specifically applicable to the facility and operation. An expansion, enlargement or modification of a facility beyond the specified areas indicated in the existing permit constitutes a new proposal for which a new construction permit application is required.

(c) The secretary shall approve or deny a construction permit application within 240 days after the secretary receives an application meeting the requirements of this section except such time period shall not apply to an application for a license to be issued under the authority of K.S.A. 48-1607, and amendments thereto. If the secretary approves an application, the secretary immediately shall notify the applicant. If the secretary denies an application, the secretary shall notify the applicant in writing of the reasons for the denial. No local ordinance, permit or other requirements may prohibit the construction or modification of such a facility or restrict transportation to the facility.

History: L. 1981, ch. 251, § 5; L. 1984, ch. 240, § 4; L. 1992, ch. 192, § 5; L. 2000, ch. 103, § 8; July 1.

65-3434. Repealed. History: L. 1981, ch. 251, § 6; L. 1988, ch. 356, § 205; Repealed, L. 1992, ch. 192, § 17; July 1.

65-3435. Same; conditions precedent to approval of application. The secretary shall not approve any application unless the applicant has fee simple title to the property where the facility is to be located, free of any liens, easements, covenants, or any other encumbrances on the title.

History: L. 1981, ch. 251, § 7; L. 1982, ch. 267, § 4; L. 1984, ch. 240, § 5; L. 1992, ch. 192, § 6; July 1.

65-3436. Repealed. History: L. 1981, ch. 251, § 8; L. 1984, ch. 240, § 6; L. 1986, ch. 318, § 101; Repealed, L. 1992, ch. 192, § 17; July 1.

65-3437. Same; application for permits, contents; duties of secretary. (a) No person shall construct, modify or operate a hazardous waste facility or otherwise dispose of hazardous waste within this state without a permit from the secretary.

(b) The application for a permit shall contain the name and address of the applicant, the location of the proposed facility and other information considered necessary by the secretary, including proof of financial capability.

(c) Before reviewing any application for permit, the secretary shall conduct a background investigation of the applicant. The secretary shall consider the financial, technical and management capabilities of the applicant as conditions for issuance of a permit. The secretary may reject the application without conducting an investigation into the merits of the application if the secretary finds that:

(1) The applicant currently holds, or in the past has held, a permit under this section and that while the applicant held a permit under this section the applicant violated a provision of subsection (a) of K.S.A. 65-3441, and amendments thereto; or

(2) the applicant previously held a permit under this section and that permit was revoked by the secretary; or

(3) the applicant failed or continues to fail to comply with any of the provisions of the air, water or waste statutes, including rules and regulations issued thereunder, relating to environmental protection or to the protection of public health in this or any other state or the federal government of the United States, or any condition of any permit or license issued by the secretary; or if the secretary finds that the applicant has shown a lack of ability or intention to comply with any provision of any law referred to in this subsection or any rule or regulation or order or permit issued pursuant to any such law as indicated by past or continuing violations.

In case of a corporate applicant, the secretary may deny the issuance of a permit if the secretary finds that the applicant or any person who holds an interest in, or exercises total or partial control of or does business with the applicant or a principal of the corporation was a principal of another corporation which would not be eligible to receive a permit because of the provisions of this act.

(d) Upon receipt of a permit application meeting the requirements of this section, the secretary or an authorized representative of the secretary shall inspect the location of the proposed facility and determine if the same complies with this act and the rules and regulations promulgated under this act. An inspection report shall be filed in writing by the secretary before issuing a permit and shall be made available for public review.

History: L. 1981, ch. 251, § 9; L. 1984, ch. 240, § 7; L. 1985, ch. 218, § 3; L. 1991, ch. 198, § 2; July 1.

65-3438. Same; secretary's decision on permit application; time period, extensions. The secretary shall make a final decision on a permit application within 240 days of the receipt of the application unless the time for such decision has been extended by the applicant in writing or by rules and regulations adopted by the secretary for the issuance of permits under this act. In the issuance of such permits, the secretary may include

conditions specifically applicable to the operation of the facility. No local ordinance, permit or other requirements may prohibit operation of a facility having a permit under this act.

History: L. 1981, ch. 251, § 10; L. 1992, ch. 192, § 7; July 1.

65-3439. Same; terms and conditions; revocation or suspension; appeals. (a) Permits for hazardous waste facilities shall be issued for fixed terms not to exceed 10 years.

(b) Plans, designs and relevant data for the construction of hazardous waste facilities shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, modification or operation of such a facility. In adopting rules and regulations, the secretary may specify sites, areas or facilities where the environmental impact is minimal and may waive the requirement that plans and designs for on-site storage or treatment facilities be prepared by a professional engineer.

(c) Each permit granted by the secretary, as provided in this act, shall be subject to such conditions as the secretary deems necessary to protect human health and the environment and to conserve the sites. Such conditions shall include approval by the secretary of the types and quantities of hazardous waste allowable for storage, treatment or disposal at the permitted location and, in the case of underground injection wells, minimum pretreatment standards established by the secretary.

(d) The secretary shall not issue a permit for a hazardous waste underground injection well unless such methodology is deemed the most reasonable method of disposing of the hazardous waste after considering the health and environmental effects, alternative treatment and disposal technologies and economic impact relating to such well.

(e) Permits granted by the secretary, as provided in this act, shall be revocable or subject to suspension for failure to pay any fee as required by this act or if the secretary determines that:

(1) A hazardous waste facility is or has been constructed or operated in violation of this act or the rules and regulations or standards adopted pursuant to the act or is creating a hazard to the public health or safety or to the environment;

(2) the permittee has committed past or continuing violations such that an original permit application would be denied under the provisions of subsection (c)(3) of K.S.A. 65-3437, and amendments thereto; or

(3) in the case of a corporate permittee, the permittee, any person who holds an interest in or exercises total or partial control of or does business with the permittee or any principal of the corporation is the principal of another corporation which has committed past or continuing violations such that an original permit application would be denied under the provisions of subsection (c)(3) of K.S.A. 65-3437, and amendments thereto.

(f) In case any permit is denied, suspended or revoked, any person aggrieved by such decision may request a hearing before the secretary in accordance with K.S.A. 65-3440, and amendments thereto.

History: L. 1981, ch. 251, § 11; L. 1984, ch. 240, § 8; L. 1985, ch. 218, § 4; L. 2000, ch. 103, § 9; July 1.

65-3440. Permit, revocation or suspension, hearing; judicial review. Any person aggrieved by any order or denial of the secretary, may within 15 days of service of the order request in writing a hearing on the order. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any person adversely affected by any action of the secretary pursuant to this section may obtain review of such action in accordance with the Kansas judicial review act.

History: L. 1981, ch. 251, § 12; L. 1986, ch. 318, § 102; L. 1988, ch. 356, § 206; L. 2010, ch. 17, § 148; July 1.

65-3441. Unlawful acts; penalties. (a) It shall be unlawful for any person to:

(1) Dump or deposit, or permit the dumping or depositing of, any hazardous waste regulated by this act into any facility which does not comply with the provisions of this act or rules or regulations, standards or orders of the secretary, but this provision shall not prohibit: (A) The use of hazardous wastes in normal farming operations or in the processing or manufacturing of other products in a manner that will not adversely affect the public health or environment; or (B) a generator who periodically produces a quantity of hazardous waste less than the quantity regulated under subsection (k) of K.S.A. 65-3431, and amendments thereto, from disposing such quantity of hazardous waste into a facility approved by the department which has a permit issued under K.S.A. 65-3407, and amendments thereto.

(2) Construct, modify or operate a hazardous waste facility without a permit or other required written approval from the secretary or to be in violation of the rules and regulations, standards or orders of the secretary.

(3) Violate any condition of any permit issued by the secretary.

(4) Store, collect, treat or dispose of hazardous waste contrary to the rules and regulations, standards or orders of the secretary.

(5) Refuse or hinder entry, inspection, sampling and the examination or copying of records related to the purposes of this act by an agent or employee of the secretary after such agent or employee identifies and gives notice of their purpose at any time.

(6) Knowingly make any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with this act.

(7) Knowingly destroy, alter or conceal any record required to be maintained under rules and regulations promulgated by the secretary pursuant to this act.

(8) Fail to designate on a manifest a facility which is authorized to operate under the federal hazardous waste program or under a state hazardous waste program which has received approval to operate in lieu of the federal hazardous waste program.

(9) Transport hazardous waste to a facility which is not authorized to operate under the federal hazardous waste program or under a state hazardous waste program which has received approval to operate in lieu of the federal hazardous waste program.

(10) Add, mix or blend any hazardous waste with fuel oil or any other fuel intended for use by residential consumers or sell such blended fuel to a residential consumer.

(11) Transport and dispose of, or cause the transportation and disposition of, hazardous waste in a manner contrary to the rules and regulations, standards or orders of the secretary. It shall not constitute a defense to the generator that the generator acted through an independent contractor in the transportation or disposition of the hazardous waste.

(12) Operate a hazardous waste transfer facility at which hazardous waste is transferred from one or more containers to one or more different containers. The provisions of this subsection shall not apply to overpacking of hazardous waste containers when the overpack containers are marked with labels that contain all the information on the original labels.

(b) Any person who violates any provision of paragraphs (1) to (10), inclusive, of subsection (a) shall be guilty of a class A nonperson misdemeanor and, upon conviction thereof, shall be punished as provided by law. Any person who violates any provision of paragraph (11) or (12) of subsection (a) shall be guilty of a severity level 10, nonperson felony and, upon conviction thereof, shall be punished as provided by law.

(c) Any person who knowingly violates any provisions of paragraphs (1) to (12), inclusive, of subsection (a) shall be guilty of a severity level 6, nonperson felony and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation and, upon conviction thereof, shall be punished as provided by law.

(d) Any individual who violates any of the provisions of paragraphs (1) to (12), inclusive, of subsection (a) shall be legally responsible to the same extent as if such acts were in the individual's own name or on the individual's own behalf.

(e) The county or district attorney of every county shall file appropriate actions for enforcement of this section upon request of the secretary or upon the county or district attorney's own motion after consultation with the secretary.

(f) No person shall be held responsible for failure to secure a permit under the provisions of this section for the dumping or depositing of any hazardous waste on land owned or leased by such person without their expressed or implied consent, permission or knowledge.

History: L. 1981, ch. 251, § 13; L. 1984, ch. 240, § 9; L. 1985, ch. 219, § 3; L. 1993, ch. 291, § 233; L. 1999, ch. 129, § 2; L. 2000, ch. 103, § 10; July 1.

65-3442. Same; vesting of title to hazardous waste; liability for cleanup costs. (a) Title to hazardous waste transported, stored, treated or disposed of in accordance with the provisions of this act and the rules and regulations and standards adopted thereunder, shall vest with the owner of the hazardous waste management facility in which the waste is located, unless specific contractual arrangements are otherwise provided with the generator or contractor. Hazardous waste disposed of in ways other than in accordance with the provisions of this act remain the property of the generator and the generator is liable for removal of the waste, restoration of the area in which the wastes were disposed and the disposal of the waste in accordance with this act.

(b) A generator who transfers hazardous waste to a hazardous waste transporter for transport to an approved hazardous waste facility shall be relieved of liability for cleanup or disposal for such waste, except as otherwise provided in this act. This subsection shall not operate to relieve any contractual obligation owing to the operator of the approved hazardous waste facility or to the transporter by the generator.

(c) If a generator utilizes or arranges for unapproved transportation, storage, disposal or treatment, the generator and any person aiding or abetting the generator shall be liable for all costs resulting from cleanup, disposal or treatment of the waste.

(d) The duties, responsibilities and liabilities of this section shall apply to both intrastate and interstate shipments of hazardous waste by a generator located in the state of Kansas.

History: L. 1981, ch. 251, § 14; L. 1984, ch. 240, § 10; July 1.

65-3443. Prevention or removal of hazard or pollution. (a) If the secretary finds that the generation, accumulation, management or disposal of a hazardous waste by any person is causing or threatens to cause pollution of the land, air or waters of the state or is or threatens to become a hazard to persons, property or

public health or safety or that the provisions of this act or any rule and regulation adopted pursuant thereto have been otherwise violated, the secretary may order the person to modify the generation, accumulation, management or disposal of the hazardous waste or to provide and implement such hazardous waste management procedures as will prevent or remove the pollution or hazard or take any other action deemed necessary. The secretary may order any person having a permit issued under this act, and who operates a public or commercial hazardous waste management facility, which the secretary finds suitable to manage the hazardous waste, to provide and implement hazardous waste management procedures to prevent or remove such pollution or hazard. Such order shall specify a fair compensation to the owner or permittee for property taken or used and shall specify the terms and conditions under which the permittee shall provide the hazardous waste management services. Any order issued shall specify the length of time after receipt of the order during which the person or permittee shall provide or implement hazardous waste management procedures or modify the generation, accumulation or management of the hazardous waste.

(b) The secretary shall adopt rules and regulations providing for approval of closure and postclosure plans, establishing standards for underground injection, land treatment, mound landfill and aboveground storage of hazardous waste.

(c) Any order of the secretary pursuant to subsection (a) is subject to hearing and review in accordance with K.S.A. 65-3440 and amendments thereto.

History: L. 1981, ch. 251, § 15; L. 1984, ch. 240, § 11; L. 1985, ch. 219, § 2; L. 1986, ch. 318, § 103; L. 1988, ch. 356, § 207; July 1, 1989.

65-3444. Violations of act; penalties. (a) A person who violates any provisions of this act, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed \$25,000 for every such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) In assessing the civil penalty under this section, the district court shall consider, when applicable, the following factors:

(1) The extent to which the violation presents a substantial hazard to the health of individuals;

(2) the extent to which the violation has or may have an adverse effect upon the environment to be determined by the court according to the toxicity, degradability and dispersal characteristics of the hazardous waste disposed of or the potential for such damage if no hazardous waste has been disposed, the sensitivity of the receiving environment and the degree to which the disposal degrades existing environmental quality or the potential for such degradation if no disposal has occurred;

(3) the amount of the reasonable costs incurred by the state in detection, investigation and attempted correction of the violation;

(4) the economic savings realized by the person in not complying with the provision for which a violation is charged including, but not limited to, that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to comply with the provision violated;

(5) the quantity of the hazardous waste disposed of, if any, in a manner which constitutes a violation; and

(6) the amount which would constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) A civil action under this section may be commenced in the name of the state by the secretary or the county or district attorney of the county in which the violation is alleged to have occurred, or at the request of the secretary, by the attorney general.

(d) Any sum assessed under this section shall be deposited as ordered by the district court judge: (1) In the state general fund; (2) in the hazardous waste management fund created by K.S.A. 65-3491 and amendments

thereto; or (3) part in the state general fund and the balance in the hazardous waste management fund. Moneys deposited in the hazardous waste management fund under this subsection (d) shall be to reimburse such fund, to the extent practicable as determined by the district court judge, for expenditures from such fund, if any, in the matter which gave rise to the civil action.

History: L. 1981, ch. 251, § 16; L. 1981, ch. 239, § 1; L. 1984, ch. 240, § 12; L. 1999, ch. 44, § 2; July 1.

65-3445. Protection from hazards; orders and injunctions; judicial review. (a) Notwithstanding any other provision of this act, upon receipt of information that the storage, transportation, treatment or disposal of any hazardous waste may present a substantial hazard to the health of persons or to the environment or for a threatened or actual violation of this act or any rules or regulations adopted pursuant thereto or any orders issued pursuant thereto or any permit conditions required thereby, the secretary may take such action as may be necessary to protect the health of persons or the environment. The action the secretary may take shall include, but not be limited to:

(1) Issuing an order directing the owner, generator, transporter or operator of the hazardous waste facility or site, or the custodian of the waste, which constitutes the hazard, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard. The action may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Commencing an action to enjoin acts or practices specified in subsection (a)(1) or requesting that the attorney general or appropriate district or county attorney commence an action to enjoin those acts or practices. Upon a showing by the secretary that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection (a)(2) shall have precedence over other cases in respect to order of trial.

(3) Applying to the district court in the county in which an order of the secretary under subsection (a)(1) will take effect, in whole or in part, for an order of that court directing compliance with the order of the secretary. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this subsection (a)(3) for a court order shall have precedence over other cases in respect to order of trial.

(b) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction or permanent injunction shall issue without such allegations and without such proof.

(c) Any order of the secretary pursuant to subsection (a)(1) is subject to hearing and review in accordance with K.S.A. 65-3440 and amendments thereto.

History: L. 1981, ch. 251, § 17; L. 1984, ch. 240, § 13; L. 1986, ch. 318, § 104; L. 1988, ch. 356, § 208; L. 2000, ch. 103, § 11; July 1.

65-3446. Administrative penalties; procedure; hearing; judicial review. (a) The secretary of the department of health and environment or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of K.S.A. 65-3441, and amendments thereto, may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation, the penalty to be

imposed and, in the case of an order of the director of the division of environment, the right to appeal to the secretary for a hearing thereon. Any person may appeal an order of the director of the division of environment by making a written request to the secretary for a hearing within 15 days of service of such order. The secretary shall hear the person within 30 days after receipt of such request, unless such time period is waived or extended by written consent of all parties or by a showing of good cause. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Any action of the secretary pursuant to this section is subject to review in accordance with the Kansas judicial review act.

History: L. 1981, ch. 251, § 18; L. 1984, ch. 240, § 14; L. 1986, ch. 318, § 105; L. 1988, ch. 356, § 209; L. 2010, ch. 17, § 149; July 1.

65-3447. Administrative penalties; trade secrets; duties of secretary; disclosure of information. Any person submitting any records, reports, documents, or information required by this act, may upon a showing satisfactory to the secretary, claim any portion of such record, report, document, or information confidential as a trade secret. "Trade secret" as used in this section shall have the same meaning as provided in K.S.A. 60-3320, and amendments thereto. The department shall establish procedures to insure that trade secrets are utilized by the secretary or any authorized representatives of the secretary only in connection with the responsibilities of the department pursuant to this act. Trade secrets shall not be otherwise used or disseminated by the secretary or any representative of the secretary without the consent of the person furnishing the information. Such record, report, document, or information may be disclosed to other officers, employees or authorized representatives of the state of Kansas concerned with carrying out this act or when relevant in any proceeding under this act. Such records, reports, documents or information may be disclosed to authorized representatives of the administrator of the United States environmental protection agency in connection with any regulation promulgated by the agency or memorandum of agreement with the department pursuant to that agency's responsibilities under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6926). In submitting any confidential information under this subsection the secretary shall submit the claim of confidentiality to the United States environmental protection agency.

History: L. 1981, ch. 251, § 19; L. 2005, ch. 67, § 8; July 1.

65-3448. Repealed. History: L. 1981, ch. 251, § 20; Repealed, L. 1984, ch. 240, § 17; July 1.

65-3449. Same; notification of legislature and governor of site investigations for disposal of radioactive wastes; acquisition by state of physical sites, when; contracts by secretary for operation and closure of sites. (a) No geologic investigation to determine the suitability of any location in this state for the disposal of radioactive hazardous waste materials shall be undertaken by any person, firm, corporation or other association of persons or governmental authority, until the governor and the house of representatives and the senate of the Kansas legislature have first been notified of all the details of such proposed investigation.

(b) In order to provide for the proper care and surveillance of facilities subject to this act, the state of Kansas may acquire by gift or transfer from any person or another government agency, any and all lands, buildings, and grounds necessary to fulfill the purposes of this act, except that, with respect to any commercial radioactive waste disposal or storage facility, the state of Kansas shall acquire the lands comprising the physical site of the facility or such lands shall be owned by the federal government. Any and all lands, buildings, and grounds acquired under this section shall be owned in fee title absolute by the state of Kansas. Any such gift, acquisition or transfer is subject to approval and acceptance by the legislature.

(c) The secretary may lease, license or contract with any person to provide for the operation, closure, monitoring or maintenance of any lands, buildings or ground acquired by the state of Kansas under subsection (b) of this section.

History: L. 1981, ch. 251, § 3; July 1.

65-3450. Same; intervention of interested parties in civil actions. If the secretary, county or district attorney or attorney general brings a civil enforcement action pursuant to this act, any person who has an interest which is or may be adversely affected, upon timely application, shall be allowed to intervene in such action pursuant to K.S.A. 60-224, and amendments thereto.

History: L. 1984, ch. 240, § 15; L. 1985, ch. 219, § 4; July 1.

65-3451. Same; time schedule for regulation of generators by secretary. (a) Any person who generates a total of 2.2 pounds (one kilogram) or more of acutely hazardous waste, as defined by subsection (y) of K.S.A. 65-3430, and amendments thereto, in any calendar month shall be subject to regulation by the secretary pursuant to K.S.A. 65-3430 et seq., and amendments thereto.

(b) Any person who generates any hazardous waste, which is not an acutely hazardous waste, in any calendar month shall be subject to regulation by the secretary pursuant to K.S.A. 65-3430 et seq., and amendments thereto, in accordance with the following schedule:

- (1) From and after July 1, 1984, all persons generating 165 pounds (75 kilograms) or more per month;
- (2) from and after July 1, 1985, all persons generating 110 pounds (50 kilograms) or more per month;
- (3) from and after July 1, 1986, all persons generating 55 pounds (25 kilograms) or more per month.

History: L. 1984, ch. 240, § 16; July 1.

65 -3452. Repealed. History: L. 1984, ch. 219, § 1; Repealed, L. 1988, ch. 256, § 7; July 1.

65-3452a. Definition of hazardous substances. As used in this act, unless the context clearly requires otherwise, "hazardous substances" shall have the meaning ascribed to such term by section 101 of the comprehensive environmental response, compensation and liability act of 1980 of the United States as in effect on January 1, 1988.

History: L. 1988, ch. 256, § 1; July 1.

65-3453. Authority of secretary concerning clean-up activities. (a) The secretary shall have the power to:

- (1) Determine that the clean up of a site is necessary to protect the public health or the environment;
- (2) expend and authorize the expenditure of moneys from the environmental response fund;
- (3) issue clean-up orders to persons responsible for the health or environmental hazard created by the hazardous substance;
- (4) recover moneys from persons responsible for the health or environmental hazard created by the hazardous substance;
- (5) assign personnel and equipment necessary to carry out the purpose of this act;
- (6) enter into contracts or agreements with any person or company to conduct the necessary clean-up operations.

(b) Any authorized officer, employee or agent of the department or any person under contract with the department may enter onto any property or premises, at reasonable times and upon written notice to the owner or occupant, to gather data, conduct investigations, or take remedial action where the secretary determines that such action is necessary to protect the public health or environment:

(1) If consent is not granted by the person in control of a site or suspected site regarding any request made by any employee or agent of the secretary under the provisions of this section, the secretary may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances;

(2) The secretary may ask the attorney general to commence a civil action to compel compliance with a request or order referred to in paragraph (1). Where there is a reasonable basis to believe there may be pollution, the court shall take the following actions:

(A) In the case of interference with entry or investigation, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or investigation unless under circumstances of the case the demand for entry or investigation is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;

(3) All orders issued hereunder shall be subject to the provisions of K.S.A. 65-3456a and amendments thereto.

(c) The secretary is hereby authorized to adopt any rules and regulations necessary to carry out the provisions of this act.

History: L. 1984, ch. 219, § 2; L. 1988, ch. 256, § 3; July 1.

65-3454. Repealed. History: L. 1984, ch. 219, § 3; Repealed, L. 1988, ch. 256, § 7; July 1.

65-3454a. Environmental response fund created; receipts and expenditures; subaccounts. (a) (1) There is hereby created the environmental response fund. All moneys received by the secretary as grants, gifts, bequests or state or federal appropriations to carry out remedial action at sites polluted by hazardous substances shall be deposited in such fund. All expenditures from the environmental response fund shall be made in accordance with appropriations acts and upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary.

(2) The secretary is authorized to receive from the federal government or any of its agencies or from any private or governmental source any funds made available under laws, rules and regulations for site cleanup or other remedial action where environmental pollution is or threatens to create a health or environmental hazard.

(b) The environmental response fund shall be maintained as individual subaccounts, as follows:

(1) State appropriations or funds from other sources designated for remedial activities at specific state-lead sites shall be maintained in a separate account. Disbursement of funds from this account shall be made only for activities related to the sites at which the appropriating or donating person has designated.

(2) State appropriations or funds from other sources designated as state match for remedial activities at federal national priority list sites shall be maintained in a separate account. Disbursement of funds from this account shall be made only for remedial design and remedial action at the national priority list sites for which the appropriating or donating person has designated.

(3) State appropriations or funds from other sources designated for emergency response activities or environmental response at nonspecific sites shall be maintained in a separate account. Disbursement of funds from this account shall be made for activities at any sites polluted by hazardous substances where remedial action is necessary to protect public health or the environment.

(4) State appropriations of funds from other sources designated as state match for federal leaking underground storage tank trust fund resources used to conduct remedial action to reduce or eliminate

environmental pollution from leaking underground storage tanks of petroleum or hazardous substances shall be maintained in a separate account. Disbursements of funds from this account shall be made only for remedial action to reduce or eliminate environmental pollution from leaking underground petroleum or hazardous substance storage tanks. Moneys recovered from any responsible person for remediation to reduce or eliminate environmental pollution shall be deposited to the credit of the environmental response fund except that a proportional share may be returned to the federal source from which it came.

(c) Subject to the limitations in subsection (b), the secretary is authorized to use funds from the environmental response fund to pay the cost of:

- (1) The design and review of remedial action plans;
- (2) contracting for services needed to supplement the department's staff expertise in site investigations;
- (3) consultation needed concerning remedial action;
- (4) mitigation of adverse environmental impacts;
- (5) emergency or long-term remedial activities;
- (6) legal costs, including expert witnesses, incurred in recovery of fund expenditures;
- (7) state matching costs for remedial action funded with the federal hazardous substance superfund

established by section 9507 of the internal revenue code of 1986; and

(8) state matching costs for remedial action funded with the federal leaking underground storage tank trust fund established by section 9508 of the internal revenue code of 1986.

(d) On the effective date of this act, the director of accounts and reports shall transfer all moneys in the pollutant discharge cleanup fund and the hazardous waste cleanup fund to the environmental response fund, and the pollutant discharge cleanup fund and the hazardous waste cleanup fund are hereby abolished.

History: L. 1988, ch. 256, § 2; July 1.

65-3455. Responsibility for payment of clean-up costs; actions to recover costs. Any person responsible for the discharge, abandonment or disposal of hazardous substances which the secretary determines is necessary to be cleaned up pursuant to K.S.A. 65-3453 and amendments thereto shall be responsible for the payment of the costs of investigation to determine whether remedial action is necessary at the site. If remedial action is required to protect the public health and environment, the costs of that remedial action shall be borne by the responsible party. If the secretary incurs costs or expends funds for such activities, the responsible person shall be notified of such costs and expenditures and shall make repayment of all costs incurred for response to the site in accordance with K.S.A. 65-3454a and amendments thereto. If the responsible person fails to pay for such costs, such payment or repayment shall be recoverable in an action brought by the secretary in the district court of Shawnee county. Any money recovered under this section shall be deposited in the environmental response fund.

History: L. 1984, ch. 219, § 4; L. 1988, ch. 256, § 4; July 1.

65-3456. Repealed. History: L. 1984, ch. 219, § 5; L. 1986, ch. 318, § 106; L. 1988, ch. 356, § 210; Repealed, L. 1988, ch. 256, § 7; Repealed, L. 1989, ch. 198, § 1; July 1.

65-3456a. Review of secretary's actions or decisions. (a) Any person adversely affected by any order or decision of the secretary may, within 15 days of service of the order or decision, request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person adversely affected by any action of the secretary pursuant to this act may obtain review of such action in accordance with the Kansas judicial review act.

History: L. 1988, ch. 256, § 5; L. 2010, ch. 17, § 150; July 1.

65-3457. Repealed. History: L. 1984, ch. 219, § 6; Repealed, L. 1988, ch. 256, § 7; July 1.

65-3457a. Existing law regarding oil and gas pollution not affected. Nothing in this act shall be construed to affect any existing laws concerning activities relating to the protection of surface water and groundwater from oil and gas activities.

History: L. 1988, ch. 256, § 6; July 1.

65-3458. Burial prohibited; exceptions; procedure. (a) The underground burial of hazardous waste produced by persons generating quantities of such waste greater than those specified in K.S.A. 65-3451, and amendments thereto, is prohibited except as provided by order of the secretary of health and environment issued pursuant to this act. Such prohibition shall not be construed as prohibiting (1) mound landfill, (2) aboveground storage, (3) land treatment, (4) underground injection of hazardous waste or (5) on-site disposal or consolidation of solid and hazardous wastes, including soils, sediments and debris, if the wastes are generated as the result of a clean-up, approved by the secretary, at the site, which may include adjacent or nearby property under separate ownership that is part of the approved clean-up. Any existing hazardous waste facility which utilizes underground burial shall cease such practice and, with the approval of the secretary, shall implement closure and postclosure plans for all units of the facility in which hazardous wastes have been disposed of underground.

(b) (1) The secretary shall decide whether or not an exception to the prohibition against underground burial of hazardous waste shall be granted for a particular hazardous waste. No decision to grant an exception shall be rendered unless it is demonstrated to the secretary that, except for underground burial, no economically reasonable or technologically feasible methodology exists for the disposal of a particular hazardous waste. The procedures for obtaining an exception to the prohibition against underground burial of hazardous waste shall include a public hearing conducted in accordance with the provisions of the Kansas administrative procedure act and such other procedures as are established and prescribed by rules and regulations adopted by the secretary. Such rules and regulations shall include requirements for the form and contents of a petition desiring an exception.

(2) Within 90 days after submission of a petition desiring an exception, and if the secretary decides to grant an exception to the prohibition against underground burial of hazardous waste, the secretary of health and environment shall issue an order so providing. Any action by the secretary pursuant to this section is subject to review in accordance with the Kansas judicial review act.

History: L. 1985, ch. 219, § 1; L. 1986, ch. 318, § 107; L. 1988, ch. 356, § 211; L. 2000, ch. 103, § 12; L. 2010, ch. 17, § 151; L. 2014, ch. 26, § 1; July 1.

65-3459. Repealed. History: L. 1986, ch. 225, § 1; Repealed, L. 1989, ch. 199, § 2; March 9.

65-3460. Voluntary local hazardous waste programs; duties of the secretary; rules and regulations; reports. (a) In order to (1) provide for the safe disposal of small quantities of hazardous waste in the possession of homeowners, householders, farmers and exempt small quantity hazardous waste generators in amounts not exceeding the amount prescribed in K.S.A. 65-3451 and amendments thereto; (2) educate the public about the dangers posed by hazardous waste; and (3) encourage local units of government to develop local hazardous waste collection programs either individually or jointly, the secretary of health and environment may coordinate voluntary hazardous waste collection programs to ensure the safe collection and disposal of such waste.

(b) The secretary of health and environment may adopt rules and regulations for conducting both hazardous temporary and permanent waste collection programs. The secretary shall supervise the program and

ensure that the local unit of government contracts with a bonded waste handling company approved by the secretary for implementation of the program.

(c) The secretary of health and environment may receive moneys for use as grants to help defray the expense of operating hazardous waste collection programs. Any money received to defray the cost of the programs shall be deposited in the state treasury and credited to the hazardous waste collection fund, which is hereby created. Costs and expenses arising from the implementation of this section shall be paid from such fund.

(d) Not later than the first day of each legislative session, the secretary of health and environment shall submit to the speaker of the house of representatives and the president of the senate a report on hazardous waste collection programs carried out under this section during the preceding calendar year.

History: L. 1989, ch. 199, § 1; L. 1995, ch. 221, § 7; July 1.

65-3471. Definitions. When used in this act, the following words and phrases shall have the following meanings:

(a) "Discharge" means and includes leakage, seepage or other release.

(b) "Hazardous materials" means a substance or material which has been determined by the secretary of the United States department of transportation to be capable of posing an unreasonable risk to health, safety and property when transported in commerce and which has been so designated.

(c) "Person" means and includes any individual, partnership, corporation, association or other entity.

History: L. 1984, ch. 220, § 1; July 1.

65-3472. Immunity; exceptions. (a) Any person who renders assistance or advice concerning an emergency or accident involving threatened discharge of hazardous materials or the cleanup thereof shall not be liable for any civil damages for any acts or omissions at the scene of the emergency or accident in mitigating or attempting to mitigate the actual or threatened discharge of hazardous materials or cleanup thereof.

(b) The immunity provided in subsection (a) shall not apply to any person (1) whose act or omission caused in whole or in part such actual or threatening discharge and who would otherwise be liable therefor; or (2) who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

(c) Nothing in this section shall be construed to limit or otherwise affect the liability of any person for damages resulting from such person's gross negligence or from such person's reckless, wanton or intentional misconduct.

History: L. 1984, ch. 220, § 2; July 1.

65-3491. Hazardous waste management fund. (a) There is hereby created in the state treasury the hazardous waste management fund.

(b) Subject to the provisions of subsection (c), moneys credited to the hazardous waste management fund may be expended for the following purposes:

(1) Technical reviews of applications for permits pursuant to K.S.A. 65-3430 through 65-3460, and amendments thereto, including permit modifications and permit renewals for hazardous waste facilities;

(2) evaluating options available for minimizing the generation of hazardous wastes;

(3) completing background investigations of applicants pursuant to subsection (c) of K.S.A. 65-3437 and amendments thereto;

(4) completing site investigations pursuant to subsection (d) of K.S.A. 65-3437 and amendments thereto;

(5) assuring that a permittee pursuant to K.S.A. 65-3430 through 65-3460, and amendments thereto, fulfills all permit conditions during the effective period of the permit; and

(6) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of K.S.A. 65-3430 through 65-3460, and amendments thereto, including the cost of any additional employees or increased operating costs of the department attributable thereto.

(c) Moneys credited to the hazardous waste management fund from fees established pursuant to subsection (v)(1) of K.S.A. 65-3431 and amendments thereto shall be expended only to recover costs associated with the review and processing of the permit application for which the fee was paid.

(d) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the hazardous waste management fund interest earnings based on:

(1) The average daily balance of moneys in the hazardous waste management fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(e) All expenditures from the hazardous waste management fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

(f) The hazardous waste management fund shall be used for the purposes set forth in this section and for no other governmental purposes. It is the intent of the legislature that the fund shall remain intact and inviolate for the purposes set forth in this section and moneys in the fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.

(g) On the effective date of this act, the director of accounts and reports shall transfer all moneys in the hazardous waste perpetual care trust fund and the environmental permit fund, created pursuant to K.S.A. 65-3431 as it existed immediately before the effective date of this act, to the hazardous waste management fund. On the effective date of this act, all liabilities of the hazardous waste perpetual care trust fund and the environmental permit fund are hereby transferred to and imposed upon the hazardous waste management fund. On the effective date of this act, the hazardous waste perpetual care trust fund and the environmental permit fund are hereby abolished.

History: L. 1999, ch. 44, § 3; July 1.

Kansas Administrative Regulations

ARTICLE 31. HAZARDOUS WASTE MANAGEMENT STANDARDS AND REGULATIONS

28-31-1. Revoked. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-2. Revoked. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-3. Revoked. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-4. EPA identification numbers; notification requirement for hazardous waste, universal waste, and used oil activities. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

- (a) Each person who is required to obtain an EPA identification number by 40 CFR part 124 or 40 CFR parts 260 through 279 and each Kansas small quantity generator shall notify the department of their hazardous waste, universal waste, and used oil activities and shall obtain an EPA identification number by submitting to the department KDHE form 8700-12 or another form approved by the secretary.
- (b) Each person that is newly subject to these notification requirements due to promulgation of a statute or regulation shall notify the department of that person's hazardous waste, universal waste, and used oil activities within 60 days of the effective date of the statute or regulation, unless a different date is specified in that statute or regulation.
- (c) Each person shall update the information associated with that person's EPA identification number if there is a change in the information. The person shall submit these changes to the department on KDHE form 8700-12 or another form approved by the secretary, no more than 60 days after the change occurs. (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended March 22, 1996; amended June 4, 1999; amended Sept. 20, 2002; amended April 29, 2011.)

28-31-5. Revoked. (Authorized by and implementing K.S.A. 65-3431; and K.S.A. 65-3458; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-86-6, March 22, 1985; amended, T-86-32, Sept. 24, 1985; amended, May 1, 1986; amended May 1, 1987; amended Feb. 5, 1990; amended April 25, 1994; revoked April 29, 2011.)

28-31-6. Registration and insurance requirements for transporters of hazardous waste and used oil. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

(a) Applicability. This regulation shall apply to the following:

- (1) Each person that transports hazardous waste and is subject to the requirements of K.A.R. 28-31-263a; and
- (2) each person that transports used oil and is subject to the requirements of 40 CFR part 279, subpart E.

(b) Registration. Each transporter shall register with the secretary according to the following requirements:

- (1) The transporter shall submit the registration application on forms provided by the department.
- (2) The transporter shall obtain written acknowledgment from the secretary that registration is complete before transporting hazardous waste or used oil within, into, out of, or through Kansas.
- (3) The transporter shall carry a copy of the written acknowledgment in all vehicles transporting hazardous waste or used oil and shall provide the written acknowledgment or review upon request.
- (4) The transporter shall update the registration information if there is a change in that information. The transporter shall submit these changes on forms provided by the department within 60 days of the date of the change.

(c) Insurance requirements. Each transporter shall secure and maintain liability insurance on each of the transporter's vehicles transporting hazardous waste or used oil in Kansas.

- (1) The limits of insurance shall not be less than \$1 million per person and \$1 million per occurrence for bodily injury or death and \$1 million for all damage to the property of others. When combined bodily injury or death and property damage coverage are provided, the total limits shall not be less than \$1 million.
- (2) If any coverage is reduced or canceled, the transporter shall notify the secretary in writing at least 35 days before the effective date of the reduction or cancellation.
- (3) The transporter shall, before the expiration date of the insurance policy, provide the secretary with proof of periodic renewal in the form of a certificate of insurance showing the monetary coverage and the expiration date.

(d) Denial or suspension of registration.

- (1) Any application may be denied and any transporter's registration may be suspended if the secretary determines that one or more of the following apply:
 - (A) The transporter failed or continues to fail to comply with any of the following:
 - (i) Provisions of the air, water, or waste statutes relating to environmental protection or to the protection of public health or safety, including regulations issued by Kansas or by the federal government; or
 - (ii) any condition of any permit or order issued to the transporter by the secretary.
 - (B) Any state or territory or the District of Columbia has found that the applicant or transporter has violated that government's hazardous waste or used oil transporter laws or regulations.
 - (C) One or more of the following is a principal of another corporation that would not be eligible for registration:
 - (i) The transporter;
 - (ii) a person who holds an interest in the transporter;
 - (iii) a person who exercises total or partial control of the transporter; or
 - (iv) a person who is a principal of the parent corporation.
- (2) Each notice of denial or suspension shall be issued in writing by the secretary and shall inform the applicant or transporter of the procedures for requesting a hearing pursuant to K.S.A. 65-3456a and

amendments thereto. (Authorized by and implementing K.S.A3431; effective, E-82-20, Nov. 4, 1981; effective May 1,1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; amended April 29, 2011.)

28-31-7. Revoked. (Authorized by and implementing K.S.A. 1984 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; revoked April 29, 2011.)

28-31-8. Revoked. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-8a. Revoked. (Authorized by and implementing K.S.A. 65-3431, as amended by L. 1987, Ch. 295, Sec. 6; effective, T-85-42, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; revoked April 6, 1992.)

28-31-8b. Revoked. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-9. Revoked. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-10. Hazardous waste monitoring fees. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

(a) Fee requirement. Each of the following persons shall pay an annual monitoring fee to the department according to the requirements of subsections (b) through (e):

- (1) Each owner or operator of a hazardous waste treatment, storage, or disposal facility;
- (2) Each hazardous waste transporter; and
- (3) Each hazardous waste generator.

(b) Hazardous waste treatment, storage, or disposal facilities. The owner or operator of each facility shall pay the annual monitoring fee before January 1 of each year.

(1) The fee for each active facility shall be based on the following schedule:

(A) On-site storage facility	\$10,000
(B) Off-site storage facility	\$10,000
(C) On-site nonthermal treatment facility	\$10,000
(D) Off-site nonthermal treatment facility	\$12,000
(E) On-site thermal treatment facility	\$12,000
(F) Off-site thermal treatment facility.....	\$18,000
(G) On-site landfill or underground injection well	\$14,000
(H) Off-site landfill or underground injection well	\$18,000

(2) The fee for each facility subject to postclosure care shall apply upon receipt by the department of the certification of closure specified in 40 CFR 264.115 or 40 CFR 265.115. This fee shall be \$14,000.

(3) The owner or operator of each facility conducting more than one of the hazardous waste activities specified in paragraphs (b)(1) and (2) shall pay a single fee. This fee shall be in the amount specified for the activity having the highest fee of those conducted.

(c) **Hazardous waste transporters.** Each hazardous waste transporter shall pay the annual monitoring fee when the transporter registers with the department in accordance with K.A.R. 28-31-6, and before January 1 of each subsequent year. This fee shall be \$200.

(d) **Hazardous waste generators.**

(1) Each large quantity generator shall pay the annual monitoring fee before March 1 of each year.

(A) The fee shall be based on all hazardous waste generated during the previous calendar year according to the following schedule:

Total Yearly Quantity Generated	Monitoring Fee
Less than or equal to 5 tons	\$300
Greater than 5 tons but less than or equal to 50 tons	\$900
Greater than 50 tons but less than or equal to 500 tons	\$2,800
Greater than 500 tons	\$8,000

(B) Each large quantity generator that reclaims hazardous waste on-site to recover substantial amounts of energy or materials shall be exempt from payment of monitoring fees for the amount of hazardous waste reclaimed. This exemption shall not apply to hazardous waste residues produced during reclamation.

(2) Each small quantity generator and each Kansas small quantity generator shall pay the annual monitoring fee of \$150 before April 1 of each year.

(e) **Monitoring fee payments.** Each monitoring fee payment that is made by check or money order shall be made payable to the "hazardous waste management fund - Kansas department of health and environment."

This regulation shall be effective on and after July 1, 2012. (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-2, Jan. 13, 1984; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended, T-87-49, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended April 25, 1994; amended March 22, 1996; amended June 4, 1999; amended Sept. 20, 2002; amended Oct. 29, 2004; amended April 29, 2011; amended July 1, 2012.)

28-31-10a. Off-site hazardous waste treatment fees.

(a) Each off-site hazardous waste treatment facility shall pay fees proportionate to the quantity of hazardous waste treated, subject to the caps set forth in K.S.A. 65-3431, and amendments thereto. These fees shall be based upon the following schedule:

Hazardous Waste Category	Fee
Dioxin	\$20 per ton
Fewer than 5,000 British Thermal Units (BTUs) per pound	\$10 per ton
Equal to or greater than 5,000 BTUs per pound	\$2 per ton

For the purpose of calculating these fees, "dioxin" shall mean hazardous wastes carrying EPA hazardous waste numbers F020, F021, F022, F023, F026, F027, or F028, or any combination of these hazardous waste numbers. "Ton" shall mean 2,000 pounds.

(b) Payment of the treatment fees assessed under subsection (a) of this regulation shall be made quarterly. The quarterly fee shall be paid on or before the last day of April, July, October, and January for the preceding three-month period ending the last day of March, June, September, and December.

(c) Each treatment fee payment shall meet these requirements:

(1) Be made by check or money order made payable to the "Kansas department of health and

environment--attention: hazardous waste management fund"; and

- (2) be accompanied by a form, furnished by the department and completed by the facility operator. The form shall state the total weight of hazardous wastes treated during the reporting period and shall provide sufficient information to verify findings that a treatment process qualified as material or energy recovery. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective April 6, 1992; amended July 7, 1997; amended Sept. 20, 2002.)

28-31-11. Revoked. (Authorized by and implementing K.S.A. 65-3431; effective E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended April 25, 1994; revoked Sept. 20, 2002.)

28-31-12. Inspections.

- (a) Upon presentation of credentials and stating the purpose of the visit, the following actions may be performed during the regular business hours of the facility by the secretary or the secretary's designee:
 - (1) Entering any factory, plant, construction site, hazardous waste storage, treatment, or disposal facility, or other location where hazardous wastes could potentially be generated, stored, treated, or disposed of, and inspecting the premises to gather information regarding existing conditions and procedures;
 - (2) obtaining samples of actual or potential hazardous waste from any person or from the property of any person, including samples from any vehicle in which hazardous wastes are being transported;
 - (3) stopping and inspecting any vehicle, if there is reasonable cause to believe that the vehicle is transporting hazardous wastes;
 - (4) conducting tests, analyses, and evaluations of wastes and waste-like materials to determine whether or not the wastes or materials are hazardous and whether or not the requirements of these regulations are being met;
 - (5) obtaining samples from any containers;
 - (6) making reproductions of container labels;
 - (7) inspecting and copying any records, reports, information, or test results relating to wastes generated, stored, transported, treated, or disposed of;
 - (8) photographing or videotaping any hazardous waste management facility, device, structure, or equipment;
 - (9) drilling test wells or groundwater monitoring wells on the property of any person where hazardous wastes are generated, stored, transported, treated, disposed of, discharged, or migrating off-site and obtaining samples from the wells; and
 - (10) conducting tests, analyses, and evaluations of soil, groundwater, surface water, and air to determine whether the requirements of these regulations are being met.
- (b) If, during the inspection, unsafe or unpermitted hazardous waste management procedures are discovered, the operator of the facility may be instructed by the secretary or the secretary's designee to retain and properly store hazardous wastes, pertinent records, samples, and other items. These materials shall be retained by the operator until the waste has been identified and the secretary determines the proper procedures to be used in handling the waste.
- (c) When obtaining samples, the facility operator shall be allowed to collect duplicate samples for separate analyses.
- (d) During the inspection, all reasonable security, safety, and sanitation measures employed at the facility shall be followed by the secretary or the secretary's designee.
- (e) A written report listing all deficiencies found during the inspection and stating the measures required to correct the deficiencies shall be prepared and sent to the operator. (Authorized by and implementing K.S.A. 65-3431; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended May 1,

1987; amended June 4, 1999; amended April 29, 2011.)

28-31-13. Variances.

- (a) Application.** Any person may apply for a variance from one or more specific provisions of these regulations according to the following criteria:
- (1) An application for a variance may be submitted for any provision that is determined by the U.S. environmental protection agency to be more stringent or broader in scope than the federal hazardous waste regulations.
 - (2) The application shall be submitted to the department on a form provided by the department.
 - (3) The applicant shall state the reasons and circumstances that support the application and shall submit all other pertinent data to support the application.
- (b) Review and public comment.** A tentative decision to grant or deny a variance shall be made by the secretary according to the following criteria:
- (1) A tentative decision shall be made within 60 days of receipt of the application by the department.
 - (2) A notice of the tentative decision and the opportunity for written public comment shall be published by the department in the following publications:
 - (A) The Kansas register; and
 - (B) the official county newspaper of the county in which the variance is requested or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101, and amendments thereto.
 - (3) Upon the written request of any person, a public meeting may be held to consider comments on the tentative decision. The person requesting a public meeting shall state the issues to be raised and shall explain why written comments would not suffice to communicate the person's views.
- (c) Final decision.** After all public comments have been evaluated, a final decision shall be made by the secretary according to the following criteria:
- (1) A variance may be granted by the secretary if the variance meets the following requirements:
 - (A) The variance shall not be any less stringent than the federal hazardous waste regulations.
 - (B) The variance shall be protective of public health and safety and the environment.
 - (2) A notice of the final decision shall be published by the department in the Kansas register.
 - (A) If the variance is granted, all conditions and time limitations needed to comply with state or federal laws or to protect public health or safety or the environment shall be specified by the secretary.
 - (B) The date the variance expires shall be provided in the final decision.
- (d) Extension of a prior or existing variance.** Any person may submit a request in writing to extend a prior or existing variance that meets the requirements of this regulation, according to the following criteria:
- (1) The person shall demonstrate the need for continuation of the variance.
 - (2) The variance may be reissued or extended for another period upon a finding by the secretary that the reissuance or extension of the variance would not endanger public health or safety or the environment.
 - (3) The review, public comment, and the final decision procedures shall be the same as those specified in subsections (b) and (c).
- (e) Termination of a variance.** Any variance granted pursuant to this regulation may be terminated if the secretary finds one or more of the following conditions:
- (1) Violation of any requirement, condition, schedule, or limitation of the variance;
 - (2) operation under the variance that fails to meet the minimum requirements established by state or federal law or regulations; or
 - (3) operation under the variance that is unreasonably threatening public health or safety or the environment.
- Written notice of termination shall be provided by the secretary to the person granted the variance.

(Authorized by and implementing K.S.A. 65-3431; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended June 4, 1999; amended April 29, 2011.)

28-31-14. Revoked. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-15. Revoked. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-16. Revoked. (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

28-31-100. Substitution of state terms for federal terms; internal references to federal regulations. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) References to federal regulations that are adopted by reference. Each reference to 40 CFR parts 124, 260 through 268, 270, 273, and 279 shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through K.A.R. 28-31-279.

(b) References to federal regulations that are not adopted by reference.

(1) 40 CFR part 124.

(A) Each reference to 40 CFR part 124 in its entirety shall be replaced with “K.A.R. 28-31-124 through 28-31-124e.”

(B) Each reference to 40 CFR 124, subpart A in its entirety shall be replaced with “K.A.R. 28-31-124 through 28-31-124e.”

(C) Each reference to 40 CFR 124.2 or any portion of 40 CFR 124.2 shall be replaced with “40 CFR 270.2.”

(D) Each reference to 40 CFR 124.3 or any portion of 40 CFR 124.3 shall be replaced with “K.A.R. 28-31-124a.”

(E) Each reference to 40 CFR 124.5 or any portion of 40 CFR 124.5 shall be replaced with “K.A.R. 28-31-124b.”

(F) Each reference to 40 CFR 124.6 or any portion of 40 CFR 124.6 shall be replaced with “K.A.R. 28-31-124c.”

(G) Each reference to 40 CFR 124.8 or any portion of 40 CFR 124.8 shall be replaced with “K.A.R. 28-31-124d.”

(H) Each reference to 40 CFR 124.10 or any portion of 40 CFR 124.10 shall be replaced with “K.A.R. 28-31-124e,” except in 40 CFR 124.204(d)(10), where the phrase “§§ 124.10(c)(1)(ix) and (c)(1)(x)(A)” shall be replaced with “K.A.R. 28-31-124e(e)(1)(D) and (E).”

(I) The following phrases shall be replaced with “in accordance with K.S.A. 65-3440, and amendments thereto,”:

(i) “[A]ccording to the procedures of § 124.19”;

(ii) “pursuant to 40 CFR 124.19”;

(iii) “under § 124.19”;

(iv) “under § 124.19 of this chapter”;

(v) “under § 124.19 of this part”; and

- (vi) “under the permit appeal procedures of 40 CFR 124.19.”
- (2) 40 CFR 260.20 through 260.23. Each reference to 40 CFR 260.20, 260.21, 260.22, or 260.23, or any combination of these references, shall be replaced with the phrase “EPA’s rulemaking petition program.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100a. Substitution of state terms for federal terms; administrator. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

- (a) The following terms and phrases shall be replaced with “secretary,” except as noted in subsection (b):
- (1) “Administrator”;
 - (2) “[a]dministrator or State Director”;
 - (3) “applicable EPA Regional Administrator”;
 - (4) “appropriate Regional Administrator or state Director”;
 - (5) “[a]ssistant Administrator”;
 - (6) “[a]ssistant Administrator for Solid Waste and Emergency Response”;
 - (7) “EPA Regional Administrator”;
 - (8) “EPA Regional Administrator(s)”;
 - (9) “EPA Regional Administrator (or his designated representative) or State authorized to implement part 268 requirements”;
 - (10) “EPA Regional Administrator for the Region in which the generator is located”;
 - (11) “EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located”;
 - (12) “EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located”;
 - (13) “EPA Regional Administrators of the Regions in which the facilities are located, or their designees”;
 - (14) “[r]egional Administrator”;
 - (15) “[r]egional Administrator(s)”;
 - (16) “[r]egional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located”;
 - (17) “[r]egional Administrator or state Director”;
 - (18) “[r]egional Administrator, or State Director, as the context requires, or an authorized representative (‘director’ as defined in 40 CFR 270.2)”;
 - (19) “[r]egional Administrator, or State Director (if located in an authorized state)”;
 - (20) “[r]egional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located”;
 - (21) “USEPA Regional Administrator for Region [Region #].”
- (b) The terms listed in subsection (a) shall not be replaced with “secretary” in the following federal regulations:
- (1) 40 CFR 260.10, in the following definitions:
 - (A) “Administrator”;
 - (B) “equivalent method”;
 - (C) “hazardous waste constituent”;
 - (D) “industrial furnace”; and
 - (E) “regional administrator”;
 - (2) 40 CFR part 261, in the following locations:
 - (A) 40 CFR 261.10;
 - (B) 40 CFR 261.11; and
 - (C) 40 CFR 261.21;

- (3) 40 CFR part 262, subparts E and H and the appendix;
- (4) 40 CFR part 264, in the following locations:
 - (A) 40 CFR 264.12(a);
 - (B) 40 CFR 264.151(b), in the first paragraph of the financial guarantee bond;
 - (C) 40 CFR 264.151(c), in the first paragraph of the performance bond; and
 - (D) 40 CFR 265.12(a);
- (5) 40 CFR part 268, in the following locations:
 - (A) 40 CFR 268.5;
 - (B) 40 CFR 268.6;
 - (C) 40 CFR 268.40(b);
 - (D) 40 CFR 268.42(b); and
 - (E) 40 CFR 268.44; and
- (6) 40 CFR part 270, in the following locations:
 - (A) 40 CFR 270.2, in the following definitions:
 - (i) “Administrator”;
 - (ii) “corrective action management unit or CAMU”;
 - (iii) “director”;
 - (iv) “major facility”;
 - (v) “regional administrator”; and
 - (vi) “state/EPA agreement”;
 - (B) 270.5;
 - (C) 270.10(e)(2) and (3);
 - (D) 270.10(f)(3); and
 - (E) 270.11(a)(3). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100d. Substitution of state terms for federal terms; DOT, director. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

- (a) Department of transportation.** The terms “Department of Transportation” and “DOT” shall be replaced with “U.S. department of transportation,” except in the following instances:
 - (1) In an address;
 - (2) in the term “DOT hazard class”;
 - (3) in the term “U.S. Department of Transportation (DOT)”;
 - (4) in the term “U.S. DOT.”
- (b) Director.**
 - (1) The following terms shall be replaced with “secretary” except as noted in paragraphs (b)(2) through (4):
 - (A) “Director” and “Directors”;
 - (B) “[d]irector of an EPA permitting agency”;
 - (C) “[r]egional or State Directors to whom the claim was submitted”;
 - (D) “[r]egional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the comparable/syngas fuel will be burned”;
 - (E) “[s]tate and Regional Directors”;
 - (F) “[s]tate Director.”
 - (2) The term “Director” shall not be replaced with “secretary” when used in the following terms:
 - (A) “Director of the Federal Register”;

- (B) “[d]irector, Office of Hazardous Materials Regulations”; and
- (C) “EPA Director of the Office of Solid Waste.”
- (3) The term “directors” shall not be replaced with “secretary” in the term “Board of Directors.”
- (4) The terms “Director,” “Directors,” and “State Director” shall not be replaced with “secretary” in the following locations:
 - (A) 40 CFR part 262, in the appendix;
 - (B) 40 CFR 266.201 and 266.210, in the definition of “director”; and
 - (C) 40 CFR 270.2, in the following definitions:
 - (i) “Director”; and
 - (ii) “state director.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100e. Substitution of state terms for federal terms; engineer, environmental appeals board, EPA.

When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) Engineer. The following terms shall be replaced with “Kansas professional engineer”:

- (1) “[G]eotechnical engineer”;
- (2) “PE”;
- (3) “professional engineer”;
- (4) “qualified engineer”;
- (5) “qualified Professional Engineer”;
- (6) “qualified registered professional engineer”;
- (7) “qualified, registered professional engineer”; and
- (8) “registered professional engineer.”

(b) Environmental appeals board.

- (1) The term “Environmental Appeals Board” shall be replaced with “secretary.” (2) The term “EPA’s Environmental Appeals Board” shall be replaced with “the secretary.”

(c) Environmental protection agency.

- (1) The following terms shall be replaced with “department” or “the department” except as noted in paragraphs (2) through (6) of this subsection:

- (A) “Agency”;
- (B) “applicable EPA Regional Office, Hazardous Waste Division”;
- (C) “appropriate regional EPA office”;
- (D) “[e]nvironmental Protection Agency”;
- (E) “[e]nvironmental Protection Agency (EPA)”;
- (F) “EPA”;
- (G) “EPA Headquarters”;
- (H) “EPA region”;
- (I) “EPA region or authorized state”;
- (J) “EPA regional office”;
- (K) “regulatory agency”;
- (L) “United States Environmental Protection Agency”;
- (M) “United States Environmental Protection Agency (EPA)”;
- (N) “U.S. Environmental Protection Agency”; and
- (O) “U.S. Environmental Protection Agency (EPA).”

- (2) The terms listed in paragraph (1) of this subsection shall not be replaced with “the department” in the

following instances:

- (A) Where the term is used in an address; and
 - B) where the term is part of an EPA document name or number.
- (3) The term “Agency” shall not be replaced with “the department” when used as part of the following terms in the singular or plural:
- (A) “Agency of the Federal government”;
 - (B) “agency of the Federal or State government”;
 - (C) “[f]ederal Agency”;
 - (D) “oversight agency”; and
 - (E) “[s]tate agency.”
- (4) The term “Environmental Protection Agency” shall not be replaced with “the department” when used as part of the term “Environmental Protection Agency identification number.”
- (5) The term “EPA” shall not be replaced with “the department” when used as part of the following terms in the singular or plural:
- (A) “EPA Acknowledgment of Consent”;
 - (B) “EPA Director of the Office of Solid Waste”;
 - (C) “EPA facility ID number”;
 - (D) “EPA Form”;
 - (E) “EPA guidance”;
 - (F) “EPA Hazardous Waste”;
 - (G) “EPA Hazardous Waste Code”;
 - (H) “EPA Hazardous Waste No.”;
 - (I) “EPA Hazardous Waste Number”;
 - (J) “EPA identification number”;
 - (K) “EPA Manual”;
 - (L) “EPA Publication”;
 - (M) “EPA Protocol”;
 - (N) “EPA standard method”;
 - (O) “EPA test method”;
 - (P) “EPA waste code”; and
 - (Q) “U.S. EPA Identification Number.”
- (6) The terms listed in paragraph (c)(1) shall not be replaced with “the department” in the following locations:
- (A) 40 CFR part 124, in the following locations:
 - (i) 124.200; and
 - (ii) 124.207;
 - (B) 40 CFR 260.10, in the following definitions:
 - (i) “Administrator”;
 - (ii) “EPA hazardous waste number”;
 - (iii) “EPA identification number”;
 - (iv) “EPA region”;
 - (v) “federal agency”;
 - (vi) “regional administrator”; and
 - (vii) “replacement unit”;
 - (C) 40 CFR part 261, appendix I;
 - (D) 40 CFR part 262, in the following locations:

- (i) 40 CFR 262.21;
- (ii) 40 CFR 262.32(b); and
- (iii) 40 CFR part 262, subparts E, F, and H and the appendix;
- (E) 40 CFR part 264, in the following locations:
 - (i) In 40 CFR 264.151, where only the term “agency” shall not be replaced; and
 - (ii) in 40 CFR 264.1082(c)(4)(ii), the second occurrence of “EPA”;
- (F) in 40 CFR 265.1083(c)(4)(ii), the second occurrence of “EPA”;
- (G) 40 CFR part 266, appendix IX, sections 4 through 9, except that the first occurrence of the term “EPA” in section 8.0 shall be replaced with “the department”;
- (H) 40 CFR 267.143;
- (I) 40 CFR part 268, in the following locations:
 - (i) 40 CFR 268.1(e)(3);
 - (ii) 40 CFR 268.2(j);
 - (iii) 40 CFR 268.5;
 - (iv) 40 CFR 268.7(e); and
 - (v) 40 CFR 268.44;
- (J) 40 CFR part 270, in the following locations:
 - (i) 40 CFR 270.2, in the definitions of “administrator,” “application,” “approved program or approved state,” “director,” “environmental protection agency (EPA),” “EPA,” “final authorization,” “interim authorization,” “permit,” “regional administrator,” and “state/EPA agreement”;
 - (ii) 40 CFR 270.5;
 - (iii) 40 CFR 270.10(e)(2);
 - (iv) 40 CFR 270.11(a)(3);
 - (v) 40 CFR 270.51(d);
 - (vi) 40 CFR 270.72(a)(5) and (b)(5); and
 - (vii) 40 CFR 270.225; and
- (K) 40 CFR part 273, in the following locations:
 - (i) 40 CFR 273.32(a)(3); and
 - (ii) 40 CFR 273.52.

(d) EPA form 8700-12. The term “EPA Form 8700-12” shall be replaced with “KDHE form 8700-12.”

(e) EPA form 8700-13B. The term “EPA form 8700-13B” shall be replaced with “KDHE form 8700-13b.”
 (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100f. Substitution of state terms for federal terms; federal register. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the substitutions specified in this regulation shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279. The term “Federal Register” shall be replaced with “Kansas register” except in the following locations:

- (a) 40 CFR 266.203(c) and 266.205(e);
- (b) 40 CFR 268.5(e);
- (c) 40 CFR 268.6(j);
- (d) 40 CFR part 268, subpart D; and
- (e) 40 CFR 270.10(e)(2). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100p. Substitution of state terms for federal terms; part B, permitting agency or authority. When

used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) Part B. The following phrases shall be replaced with “part B application”:

- (1) “[P]art B of the RCRA application”; and
- (2) “RCRA part B application.”

(b) Permitting agency or authority. The following terms shall be replaced with “department” or “the department”:

- (1) “[P]ermitting agency”;
- (2) “permitting authority”;
- (3) “permitting authority for the facility”;
- (4) “permitting authority of the state or territory where the facility is located”; and
- (5) “permitting authority of the state or territory where the facility(ies) is(are) located.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100q. Substitution of state terms for federal terms; qualified geologist, qualified soil scientist. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) Qualified geologist. The term “qualified geologist” shall be replaced with “Kansas licensed geologist.”

(b) Qualified soil scientist. The term “qualified soil scientist” shall be replaced with “Kansas licensed geologist.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100r. Substitution of state terms for federal terms; RCRA. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) General references to the RCRA program and subtitle C.

- (1) The following terms shall be replaced with “Kansas hazardous waste program” or “the Kansas hazardous waste program” except as noted in paragraphs (2) and (3) and subsections (o) through (q):
 - (A) “RCRA”;
 - (B) “RCRA hazardous waste”;
 - (C) “RCRA hazardous waste management”;
 - (D) “RCRA program”;
 - (E) “RCRA subtitle C”;
 - (F) “[r]esource Conservation and Recovery Act”;
 - (G) “[r]esource Conservation and Recovery Act as amended (RCRA)”;
 - (H) “[r]esource Conservation and Recovery Act of 1976 as amended”;
 - (I) “[s]ubtitle C”;
 - (J) “subtitle C of RCRA”;
 - (K) “subtitle C of the Resource Conservation and Recovery Act (RCRA).”
- (2) The term “RCRA” shall not be replaced with “Kansas hazardous waste program” when used in the following terms, in the singular or plural:
 - (A) “RCRA facility ID number”;
 - (B) “RCRA hazardous waste code”;
 - (C) “RCRA ID number”;

- (D) “RCRA identification number”;
- (E) “non-RCRA tank”;
- (F) “RCRA/Superfund Hotline”;
- (G) “RCRA waste code”; and
- (H) “RCRA Subtitle D.”

(3) The terms listed in paragraph (1) of this subsection shall not be replaced with “Kansas hazardous waste program” when used in the following locations:

- (A) The parenthetical authority cited at the end of a section;
- (B) 40 CFR 260.10, in the definition of “ ‘act’ or ‘RCRA’ ”;
- (C) 40 CFR part 261, in the following locations:
 - (i) 40 CFR 261.4(e)(2)(iv); and
 - (ii) 40 CFR 261.38(c)(1)(ii);
- (D) 40 CFR part 262, in the following locations:
 - (i) Subpart H; and
 - (ii) the appendix;
- (E) 40 CFR part 266, in the following locations:
 - (i) 40 CFR 266.202(d); and
 - (ii) 40 CFR 266.210 and 266.240, where “RCRA hazardous waste” shall be replaced with “hazardous waste”; and
- (F) 40 CFR 270.2, in the definition of “RCRA.”

(b) References to specific sections, subsections, or paragraphs of RCRA.

(1) Section 3010. The following phrases shall be replaced with “K.A.R. 28-31-4”:

- (A) “RCRA section 3010”;
- (B) “section 3010 of RCRA”;
- (C) “section 3010 of the Act”; and
- (D) “section 3010(a) of RCRA.”

(2) Section 7003. The following terms shall be replaced with “K.S.A. 65-3443 and 65-3445”:

- (A) “[S]ection 7003”; and
- (B) “section 7003 of RCRA.”

(c) References to RCRA and subtitle C facilities and disposal units.

(1) The term “RCRA hazardous waste land disposal unit” shall be replaced with “Kansas hazardous waste land disposal unit.”

(2) The term “RCRA hazardous waste management facility” shall be replaced with “Kansas hazardous waste management facility.”

(3) The term “Subtitle C landfill cell” shall be replaced with “Kansas hazardous waste landfill cell.”

(4) The term “Subtitle C monofill” shall be replaced with “Kansas hazardous waste monofill.”

(d) References to permits. The following substitutions shall apply in the singular and plural:

(1) The following phrases shall be replaced with “Kansas hazardous waste facility permit” except as noted in paragraph (d)(2):

- (A) “Permit issued under section 3005 of this act”;
- (B) “permit under RCRA 3005(c)”;
- (C) “permit under RCRA section 3005(c)”;
- (D) “permit under section 3005 of this act”;
- (E) “RCRA hazardous waste permit”;
- (F) “RCRA operating permit”;
- (G) “RCRA permit”;

- (H) “RCRA permit under RCRA section 3005(c)”;
 - (I) “RCRA, UIC, or NPDES permit”;
 - (J) “RCRA, UIC, PSD, or NPDES permit”; and
 - (K) “[s]tate RCRA permit.”
- (2) In 40 CFR 270.51(d), the first occurrence of the phrase “RCRA permit” shall not be replaced with “Kansas hazardous waste facility permit.”
- (3) The phrase “RCRA-permitted” shall be replaced with “Kansas-permitted.”
- (4) The following phrases shall be replaced with “Kansas hazardous waste facility standardized permit”:
- (A) “RCRA standardized permit”; and
 - (B) “RCRA standardized permit (RCRA).”
- (5) The phrase “a final permit under RCRA section 3005” shall be replaced with “a final permit issued by EPA under RCRA section 3005 or a Kansas hazardous waste facility permit” in the following locations:
- (A) 40 CFR 264.1030(c);
 - (B) 40 CFR 264.1050(c);
 - (C) 40 CFR 264.1080(c); and
 - (D) 40 CFR 265.1080(c). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-100s. Substitution of state terms for federal terms; state. When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279

- (a) The following terms when used in the singular shall be replaced with “state of Kansas” or “the state of Kansas” except as noted in subsections (b) and (c):
- (1) “State” and “a State” when referring to a political entity;
 - (2) “approved State” and “an approved State”; and
 - (3) “authorized State” and “an authorized State.”
- (b) The term “State” shall not be replaced when used in the following terms in the singular or plural:
- (1) “Agreement State”; and
 - (2) “[s]tate agency.”
- (c) The terms listed in subsection (a) shall not be replaced in the following locations:
- (1) 40 CFR 124.207(a)(3);
 - (2) 40 CFR 260.10, in the following definitions:
 - (A) “Designated facility”;
 - (B) “explosives or munitions emergency response specialist”;
 - (C) “person”;
 - (D) “publicly owned treatment works”; and
 - (E) “state”;
 - (3) 40 CFR part 261, in the following locations:
 - (A) 40 CFR 261.4(g)(2)(i); and
 - (B) 40 CFR 261.5;
 - (4) 40 CFR part 262;
 - (5) 40 CFR part 264, in the following locations:
 - (A) 40 CFR part 264, subparts C and D;
 - (B) 40 CFR 264.71(e); and
 - (C) 40 CFR part 264, subpart H;
 - (6) 40 CFR part 265, in the following locations:

- (A) 40 CFR part 265, subparts C and D;
- (B) 40 CFR 265.71(e); and
- (C) 40 CFR 265.147;
- (7) 40 CFR 266.210, in the following definitions:
 - (A) “Agreement state”; and
 - (B) “naturally occurring and/or accelerator-produced radioactive material (NARM)”;
- (8) 40 CFR part 267, subparts C, D, and H;
- (9) 40 CFR part 270, in the following locations:
 - (A) 40 CFR 270.2, in the following definitions:
 - (i) “Approved program or approved state”;
 - (ii) “director”;
 - (iii) “final authorization”;
 - (iv) “interim authorization”;
 - (v) “person”;
 - (vi) “POTW”;
 - (vii) “state”;
 - (viii) “state director”; and
 - (ix) “state/EPA agreement”;
 - (B) 40 CFR 270.10(g)(1)(ii), where only the term “approved State” shall not be replaced;
 - (C) 40 CFR 270.11(a)(3); and
 - (D) 40 CFR 270.13;
- (10) 40 CFR 273.14(c)(1)(iii); and
- (11) 40 CFR 279.24(a)(3). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-124. Procedures for permitting; adoption and modification of federal regulations.

- (a) Adoption.** The provisions of 40 CFR 124.11 through 124.17 and 40 CFR part 124, subparts B and G, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:
 - (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
 - (2) the exclusions from adoption listed in subsection (b); and
 - (3) the modifications listed in subsection (c).
- (b) Exclusions.** The following portions of 40 CFR 124.12 through 124.17 and 40 CFR part 124, subpart G shall be excluded from adoption:
 - (1) 40 CFR 124.12(b);
 - (2) 40 CFR 124.16(b)(2);
 - (3) 40 CFR 124.17(b);
 - (4) 40 CFR 124.204(d)(1), (4) through (7), and (9); and
 - (5) 40 CFR 124.205(a), (c), and (i) through (l).
- (c) Modifications.** The following modifications shall be made to 40 CFR 124.11 through 124.17 and 40 CFR part 124, subparts B and G:
 - (1) Each occurrence of the term “decisionmaking” shall be replaced with “permitting.”
 - (2) Each parenthetical statement starting with “Applicable to State programs” shall be deleted.
 - (3) In 40 CFR 124.11, the text “or the permit application for 404 permits when no draft permit is required (see § 233.39)” shall be deleted.
 - (4) In 40 CFR 124.12(a)(3), the phrase “For RCRA permits only,” shall be deleted.
 - (5) In 40 CFR 124.13, the term “EPA documents” shall be replaced with “EPA or department documents.”
 - (6) The first sentence of 40 CFR 124.14(a)(4) shall be deleted.

- (7) In 40 CFR 124.14(b)(2), the phrase “a revised statement of basis under § 124.7,” shall be deleted.
- (8) The following text shall be added to the end of 40 CFR 124.15(b)(2): “by a person who filed comments on the draft permit or participated in the public hearing through written or oral comments. Stays of contested permit conditions are subject to § 124.16.”
- (9) In 40 CFR 124.16(a)(1), the following text shall be deleted:
- (A) “(No stay of a PSD permit is available under this section.)”;
 - (B) “or new injection well, new source, new discharger or a recommencing discharger”; and
 - (C) “, injection well, source or discharger pending final agency action. See also § 124.60.”
- (10) In 40 CFR 124.16(a)(2)(i), the following text shall be deleted:
- (A) “, injection wells, and sources”; and
 - (B) “, injection well, or source.”
- (11) In 40 CFR 124.16(a)(2)(ii), the following text shall be deleted:
- (A) “[R]eceiving notification from the EAB of”;
 - (B) “the EAB,”; and
 - (C) “[f]or NPDES permits only, the notice shall comply with the requirements of § 124.60(b).”
- (12) In 40 CFR 124.16(b), the text “and he or she has accepted each appeal” shall be deleted.
- (13) In 40 CFR 124.17(a), the text “States are” shall be replaced with “The department is.”
- (14) In 40 CFR 124.17(a)(2), the phrase “or the permit application (for section 404 permits only)” shall be deleted.
- (15) In 40 CFR 124.31(a), 124.32(a), and 124.33(a), the following sentence shall be deleted: “For the purposes of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.”
- (16) In 40 CFR 124.204(d)(3), the sentence shall be replaced with “All subsections shall apply.”
- (17) In 40 CFR 124.205(d), the text “(b),” shall be deleted.
- (18) In 40 CFR 124.208(e), the phrase “§ 124.12(b), (c), and (d)” shall be replaced with “§ 124.12(c) and (d).” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3440; effective April 29, 2011.)

28-31-124a. Procedures for permitting; application for a permit. Each reference in this regulation to 40 CFR part 270 shall mean 40 CFR part 270 as adopted by reference in K.A.R. 28-31-270.

- (a) Each person that is required to have a Kansas hazardous waste facility permit, as specified in 40 CFR part 270, K.S.A. 65-3433 and amendments thereto, or K.S.A. 65-3437 and amendments thereto, shall submit a completed, signed application to the department.
- (b) Before submitting the application, the applicant shall submit to the department a disclosure statement that contains all information necessary for the secretary to conduct the background investigation required by K.S.A. 65-3437, and amendments thereto.
 - (1) The disclosure statement shall be submitted on forms provided by the department.
 - (2) If there is a parent company, the parent company shall submit a separate disclosure statement to the department on forms provided by the department.
- (c) The application shall be reviewed by the department after the applicant has fully complied with the requirements of 40 CFR 270.10 and 270.13.
- (d) The application signature and certification shall meet the requirements of 40 CFR 270.11.
- (e) Applications shall not be required for permits by rule. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3433, and 65-3437; effective April 29, 2011.)

28-31-124b. Procedures for permitting; modification, revocation and reissuance, or termination of permits. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

- (a) Reasons for modification, revocation and reissuance, or termination of a permit. A permit may be modified, revoked and reissued, or terminated by the secretary only for the reasons specified in 40 CFR 270.41, 40 CFR 270.43, and K.S.A. 65-3439 and amendments thereto.
- (b) Request for modification, revocation and reissuance, or termination of a permit. Any person, including the permittee or the secretary, may request that a permit be modified, revoked and reissued, or terminated. Each request shall be submitted to the department in writing and shall contain the facts and reasons supporting the request.
- (c) Procedures for modification or for revocation and reissuance of a permit. Modification of a permit, and revocation and reissuance of a permit, shall be subject to the following requirements:
 - (1) A draft permit shall be prepared by the department if either of the following occurs:
 - (A) The secretary tentatively decides to modify or to revoke and reissue a permit according to the criteria specified in 40 CFR 270.41, other than 40 CFR 270.41(b)(3).
 - (B) The permittee requests a modification in accordance with 40 CFR 270.42(c).
 - (2) The draft permit shall be prepared by the department according to the following criteria:
 - (A) The draft permit shall incorporate the proposed changes.
 - (B) Additional information from the permittee may be requested by the secretary.
 - (C) If a permit is modified, the permittee may be required by the secretary to submit an updated application.
 - (D) If a permit is revoked and reissued for a cause not listed in 40 CFR 270.41(b)(3), the permittee shall submit a new application to the department.
 - (E) If a permit is revoked and reissued in accordance with 40 CFR 270.41(b)(3), the requirements in 40 CFR part 124, subpart G for standardized permits shall be met by the secretary and the permittee.
 - (3) If a permit is modified, only those conditions to be modified shall be reopened by the department when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.
 - (4) If a permit is revoked and reissued, the entire permit shall be reopened by the department as if the permit had expired and was being reissued. During the revocation and reissuance proceedings, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
 - (5) "Class 1 modifications" and "Class 2 modifications," as defined in 40 CFR 270.42 (a) and (b), shall not be subject to the requirements of this regulation.
- (d) Termination of permit. If the secretary tentatively decides to terminate a permit in accordance with 40 CFR 270.43 and the permittee objects, a notice of intent to terminate shall be issued by the secretary. Each notice of intent to terminate shall be deemed a type of draft permit and shall be subject to the procedures specified in K.A.R. 28-31-124c and in K.S.A. 65-3440 and amendments thereto. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3437, and 65-3439; effective April 29, 2011.)

28-31-124c. Procedures for permitting; draft permits. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

- (a) Each permit application shall be reviewed by the secretary to determine compliance with the requirements of the hazardous waste regulations.
- (b) If the permit application does not meet the requirements of this article, the application shall be denied by the secretary.
- (c) If the application meets the requirements of this article, a draft permit shall be prepared by the secretary

according to the following criteria:

- (1) The draft permit shall contain the following information:
 - (A) All conditions specified in 40 CFR 270.30 and 270.32;
 - (B) all compliance schedules specified in 40 CFR 270.33;
 - (C) all monitoring requirements specified in 40 CFR 270.31; and
 - (D) standards for treatment, storage, or disposal, or any combination of these activities, and other permit conditions under 40 CFR 270.30.
- (2) The draft permit shall be accompanied by a fact sheet that meets the requirements of K.A.R. 28-31-124d.
- (3) Public notice shall be given as specified in K.A.R. 28-31-124e.
- (4) The draft permit shall be made available for public comment as specified in 40 CFR 124.11.
- (5) Notice of opportunity for a public hearing shall be given as specified in 40 CFR 124.12.
- (d) A final decision to issue the permit shall be issued by the secretary if the findings of fact show that the facility or activity will be protective of human health and safety and the environment. A final decision to deny the permit shall be issued by the secretary if the findings of fact show that the facility or activity will not be protective of human health and safety and the environment.
- (e) A response to comments shall be issued by the secretary in accordance with 40 CFR 124.17.
- (f) Any person may appeal the decision in accordance with K.S.A. 65-3440 and K.S.A. 65-3456a(b), and amendments thereto. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3433, 65-3437, and 65-3439; effective April 29, 2011.)

28-31-124d. Procedures for permitting; fact sheet. A fact sheet for each draft permit shall be prepared and distributed by the department according to the following requirements:

- (a) The fact sheet shall be sent by the department to the applicant and to each person who requests the fact sheet.
- (b) The fact sheet shall briefly describe the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit.
- (c) The fact sheet shall include the following information:
 - (1) A brief description of the type of facility or activity that is the subject of the draft permit;
 - (2) the type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
 - (3) the reasons why each requested variance or alternative to required standards do or do not appear justified;
 - (4) a description of the procedures for reaching a final decision on the draft permit, including the following information:
 - (A) The beginning and ending dates of the comment period as specified in K.A.R. 28-31-124e and the address where comments will be received;
 - (B) the procedures for requesting a hearing and the nature of that hearing; and
 - (C) all other procedures by which the public may participate in the final decision; and
 - (5) the name and telephone number of a person to contact for additional information. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-124e. Procedures for permitting; public notice of permit actions and public comment period. Public notices shall be given by the department according to the following criteria:

- (a) A public notice shall be given if one or more of the following actions have occurred:
 - (1) A permit application has been tentatively denied under K.A.R. 28-31-124c.
 - (2) A draft permit has been prepared under K.A.R. 28-31-124c.

- (3) A hearing has been scheduled under 40 CFR 124.12, as adopted by reference in K.A.R. 28-31-124.
- (b)** No public notice shall be required if a request for permit modification, revocation and reissuance, or termination is denied under K.A.R. 28-31-124b. Written notice of the denial shall be provided by the department to the person who made the request and to the permittee.
- (c)** The public notice may describe more than one permit or permit action.
- (d)** The public notice shall be given in accordance with the following time frames:
- (1) The public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (a) shall allow at least 45 days for public comment.
 - (2) The public notice of the public hearing shall be given at least 30 days before the hearing.
 - (3) The public notice of the hearing may be given at the same time as the public notice of the draft permit and the two notices may be combined.
- (e)** Public notice of the activities described in subsection (a) shall be given using the following methods:
- (1) Mailing a copy of the notice to the following persons, except to any person that has waived the right to receive notices for the class or category of the permit described in the notice:
 - (A) The applicant;
 - (B) each agency that has issued or is required to issue a permit for the same facility or activity, including EPA;
 - (C) all federal and state agencies with jurisdiction over fish, shellfish, or wildlife resources, the advisory council on historic preservation, state historic preservation officers, and all affected states and Indian tribes;
 - (D) each person on the mailing list, which shall be developed by the department using the following methods:
 - (i) Each person who requests in writing to be on the mailing list shall be added to the mailing list;
 - (ii) participants in past proceedings in that area shall be solicited for inclusion on the mailing list;
 - (iii) the public shall be notified of the opportunity to be put on the mailing list through periodic publication in the public press and in publications which may include regional and state- funded newsletters, environmental bulletins, and state law journals; and
 - (iv) the mailing list may be updated by the department by requesting written indication of continued interest from persons on the list. The name of any person who fails to respond to such a request may be deleted from the list by the department;
 - (E) each unit of local government having jurisdiction over the area where the facility is proposed to be located; and
 - (F) each state agency having any authority under state law with respect to the construction or operation of the facility,
 - (2) publishing a notice in the official newspaper of the county in which the facility is located or proposed to be located or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101, and amendments thereto;
 - (3) broadcasting over local radio stations;
 - (4) giving notice in a manner constituting legal notice to the public under state of Kansas law; and
 - (5) using any other method chosen by the department to give notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- (f)** Each public notice shall contain the following information:
- (1) The name and address of the office processing the permit;
 - (2) the name and address of the permittee or the permit applicant and, if different, of the facility or activity regulated by the permit;

- (3) a brief description of the business conducted at the facility or the activities described in the permit application or the draft permit;
 - (4) the name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, the fact sheet, and the application;
 - (5) a brief description of the comment procedures required by 40 CFR 124.11 and 124.12, as adopted by reference in K.A.R. 28-31-124;
 - (6) the time and place of each hearing that has been scheduled;
 - (7) a statement of the procedures to request a hearing, unless a hearing has already been scheduled;
 - (8) all other procedures required for public participation in the final permit decision;
 - (9) the times when the record will be open for public inspection and a statement that all data submitted by the applicant is available as part of the administrative record; and
 - (10) any additional information necessary to allow full public participation in the final permit decision.
- (g)** The public notice of each hearing held pursuant to 40 CFR 124.12, as adopted by reference in K.A.R. 28-31-124, shall contain all of the information described in subsection (f) of this regulation plus the following information:
- (1) Reference to the date of previous public notices relating to the permit;
 - (2) the date, time, and place of the hearing; and
 - (3) a brief description of the nature and purpose of the hearing, including the rules and procedures.
- (h)** In addition to the general public notice described in subsection (f), a copy of each of the following documents shall be mailed by the department to all persons identified in paragraphs (e)(1)(A) through (D):
- (1) The fact sheet; and
 - (2) the permit application or the draft permit. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3433; effective April 29, 2011.)

28-31-260. General provisions and definitions; adoption and modification of federal regulations.

- (a) Adoption.** The provisions of 40 CFR part 260, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:
- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
 - (2) the exclusions from adoption listed in subsection (b); and
 - (3) the modifications listed in subsection (c)
- (b) Exclusions.** The following portions of 40 CFR part 260 shall be excluded from adoption:
- (1) All comments and all notes;
 - (2) 40 CFR 260.1;
 - (3) in 40 CFR 260.10, the definition of “performance track member facility”;
 - (4) 40 CFR 260.11;
 - (5) 40 CFR 260.20 through 260.23;
 - (6) 40 CFR 260.40 and 260.41; and
 - (7) appendix I.
- (c) Modifications.** The following modifications shall be made to 40 CFR part 260:
- (1) The text of 40 CFR 260.2 shall be replaced with the following: “The Kansas open records act and K.S.A. 65-3447 shall apply to all information provided to the department.”
 - (2) The following definitions in 40 CFR 260.10 shall be modified as follows:
 - (A) The definition of “existing tank system or existing component” shall be modified by replacing “on or prior to July 14, 1986” with “on or before July 14, 1986 for HSWA tanks and on or before May 1, 1987 for non-HSWA tanks.”
 - (B) The definition of “facility” shall be modified by deleting the phrase “under RCRA Section 3008(h).”

- (C) The definition of “new tank system or new tank component” shall be modified by replacing both occurrences of “July 14, 1986” with “July 14, 1986 for HSWA tanks and May 1, 1987 for non-HSWA tanks.”
- (D) The definition of “qualified ground-water scientist” shall be replaced with the following definition: “ ‘qualified ground-water scientist’ means a licensed geologist or professional engineer who has sufficient training and experience in groundwater hydrology and related fields. Sufficient training may be demonstrated by a professional certification or by the completion of an accredited university program that enables the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.”
- (E) The definition of “small quantity generator” shall be replaced by the following definition: “ ‘Small quantity generator’ means a generator who meets all of the following criteria:
 - “(i) Generates more than 100 kilograms (220 pounds) of hazardous waste in any single calendar month;
 - “(ii) generates less than 1,000 kilograms (2,200 pounds) of hazardous waste in any single calendar month; and
 - “(iii) generates and accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities less than the generation limits listed in 40 CFR 261.5(e).”

(d) Differences between state and federal definitions. If the same term is defined differently both in K.S.A. 65-3430 et seq. and amendments thereto or this article and in any federal regulation adopted by reference in this article, the definition prescribed in the Kansas statutes or regulations shall control, except for the term “solid waste.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-260a. General provisions and definitions; additional state definitions. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

(a) State definitions. The following definitions shall apply to K.A.R. 28-31-4 through 28-31-279:

- (1) “Conditionally exempt small quantity generator” means a generator who meets both of the following criteria:
 - (A) Generates less than 25 kilograms (55 pounds) of hazardous waste in any single calendar month; and
 - (B) generates and accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities less than the generation limits listed in 40 CFR 261.5(e).
- (2) “HSWA drip pad” means a drip pad associated with the handling of waste designated as F032 waste in 40 CFR 261.31.
- (3) “HSWA tank” means any of the following tanks:
 - (A) A tank owned or operated by a generator of less than 1,000 kilograms (2,200 pounds) of hazardous waste in any single calendar month;
 - (B) a new underground tank; or
 - (C) an existing underground tank that cannot be entered for inspection.
- (4) “Kansas hazardous waste facility permit” means a permit issued under the Kansas hazardous waste program.
- (5) “Kansas hazardous waste program” means the hazardous waste management program operated by the state of Kansas in lieu of the U.S. environmental protection agency, authorized by and implementing K.S.A. 65-3430 et seq. and amendments thereto.
- (6) “Kansas licensed geologist” means a person who has a current license to practice geology from the state board of technical professions pursuant to K.S.A. 74-7001 et seq., and amendments thereto.
- (7) “Kansas professional engineer” means a person who has a current license to practice engineering from

the state board of technical professions pursuant to K.S.A. 74-7001 et seq., and amendments thereto.

- (8) “Kansas small quantity generator” means a generator that meets all of the following criteria:
 - (A) Generates 25 kilograms (55 pounds) or more of hazardous waste in any single calendar month;
 - (B) generates no more than 100 kilograms (220 pounds) of hazardous waste in any single calendar month; and
 - (C) generates and accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities less than the generation limits listed in 40 CFR 261.5(e).
- (9) “Large quantity generator” means a generator who meets either or both of the following criteria:
 - (A) Generates 1,000 kilograms (2,200 pounds) or more of hazardous waste in any single calendar month; or
 - (B) generates or accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities equal to or greater than the generation limits listed in 40 CFR 261.5(e).
- (10) “Non-HSWA drip pad” means a drip pad for handling wastes designated as F034 and F035 wastes in 40 CFR 261.31.
- (11) “Non-HSWA tank” means any tank except the following tanks:
 - (A) Tanks owned or operated by a generator of less than 1,000 kilograms (2,200 pounds) of hazardous waste in any single calendar month;
 - (B) new underground tanks; and
 - (C) existing underground tanks that cannot be entered for inspection.

(b) Differences between state and federal definitions. If the same term is defined differently both in K.S.A. 65-3430 et seq. and amendments thereto or this article and in any federal regulation adopted by reference in this article, the definition prescribed in the Kansas statutes or regulations shall control, except for the term “solid waste.” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

28-31-260b. General provisions and definitions; adoption of technical documents. In any federal regulation adopted by reference in K.A.R. 28-31-260 through 28-31-279, each reference to any of the following documents shall mean that document as hereby adopted by reference:

- (a) ASTM.** The following documents published by the American society for testing and materials:
 - (1) ANSI/ASTM D 93-79, “standard test methods for flash point by Pensky-Martens closed tester,” published October 1979;
 - (2) D 93-80, “standard test methods for flash point by Pensky-Martens closed tester,” published October 1980 and updated July 1981;
 - (3) D 1946-82, “standard method for analysis of reformed gas by gas chromatography,” published August 1982;
 - (4) D 2267-88, “standard test method for aromatics in light naphthas and aviation gasolines by gas chromatography,” published December 1988;
 - (5) D 2382-83, “standard test method for heat of combustion of hydrocarbon fuels by bomb calorimeter (high-precision method),” published January 1984;
 - (6) D 2879-92, “standard test method for vapor pressure-temperature relationship and initial decomposition temperature of liquids by isoteniscope,” published December 1992;
 - (7) ASTM D 3278-78, “standard test methods for flashpoint of liquids by setaflash closed tester,” published March 1979;
 - (8) E 168-88, “standard practices for general techniques of infrared quantitative analysis,” published July 1988;

- (9) E 169-87, “standard practices for general techniques of ultraviolet-visible quantitative analysis,” published April 1987;
- (10) E 260-85, “standard practice for packed column gas chromatography,” published November 1985; and
- (11) in E 926-88, “standard test methods of preparing refuse-derived fuel (RDF) samples for analyses of metals,” published May 1988, “test method C — bomb, acid digestion method” on pages 3 and 4;
- (b) EPA.** The following documents published by the United States environmental protection agency (EPA):
- (1) EPA 450/2-81-005, APTI course 415, “control of gaseous emissions: student manual,” published December 1981, except pages ii and I-4;
- (2) EPA 454/R-92-019, previously designated as EPA 450/R-92-019, “screening procedures for estimating the air quality impact of stationary sources, revised,” published October 1992, except the preface on page iii, the acknowledgments on page iv, and the references in section 5; and
- (3) the following methods published in the following updates to EPA publication SW-846, “test methods for evaluating solid waste,” third edition, published November 1986:
- (A) In “update III,” dated December 1996, the following:
- (i) Method 0011, “sampling for selected aldehyde and ketone emissions from stationary sources,” dated December 1996;
- (ii) method 0023A, “sampling method for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofuran emissions from stationary sources,” dated December 1996;
- (iii) method 0050, “isokinetic HCl/Cl₂ emission sampling train,” dated December 1996;
- (iv) method 0051, “midget impinger HCl/Cl₂ emission sampling train,” dated December 1996;
- (v) method 0060, “determination of metals in stack emissions,” dated December 1996; and
- (vi) method 0061, “determination of hexavalent chromium emissions from stationary sources,” dated December 1996; and (continued) Kansas Secretary of State 2013 Vol. 32, No. 17, April 25, 2013 Regulations/New 416 Kansas Register State Laws
- (B) in “final update for IIIB to the SW-846: test methods for evaluating solid waste physical/chemical methods,” published February 2007, the following:
- (i) Method 1110A, “corrosivity toward steel,” dated November 2004;
- (ii) method 1310B, “extraction procedure (EP) toxicity test method and structural integrity test,” dated November 2004;
- (iii) method 1311, “toxicity characteristic leaching procedure,” dated July 1992;
- (iv) method 9010C, “total and amenable cyanide: distillation,” dated November 2004;
- (v) method 9012B, “total and amenable cyanide (automated colorimetric, with off-line distillation),” dated November 2004;
- (vi) method 9040C, “pH electronic measurement,” dated November 2004;
- (vii) method 9060A, “total organic carbon,” dated November 2004; and
- (viii) method 9095B, “paint filter liquids test,” dated November 2004;
- (c) NFPA.** Tables 2-1 through 2-6 in chapter 2 in the following documents published by the national fire protection association (NFPA):
- (1) NFPA 30, “flammable and combustible liquids code 1977,” 1977 edition; and
- (2) NFPA 30, “flammable and combustible liquids code 1981,” 1981 edition; and
- (d) API.** In API publication 2517, “evaporative loss from external floating-roof tanks,” third edition, published February 1989 by the American petroleum institute, pages vii through ix and pages 1 through 61. (Authorized by and implementing K.S.A. 65-3431; effective May 10, 2013.)

28-31-261. Identification and listing of hazardous waste; adoption and modification of federal regulations.

- (a) Adoption.** The provisions of 40 CFR part 261, including appendices I, VII, and VIII, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:
- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
 - (2) the exclusions from adoption listed in subsection (b); and
 - (3) the modifications listed in subsection (c).
- (b) Exclusions.** The following portions of 40 CFR part 261 shall be excluded from adoption:
- (1) All comments and all notes;
 - (2) 40 CFR 261.4(b)(16) through (18); and
 - (3) 40 CFR 261.6(a)(2)(v).
- (c) Modifications.** The following modifications shall be made to 40 CFR part 261:
- (1) Each occurrence of the following phrases shall be deleted:
 - (A) “(incorporated by reference, see § 260.11)”;
 - (B) “, and as incorporated by reference in § 260.11 of this chapter”; and
 - (C) “, as incorporated by reference in § 260.11 of this chapter.”
 - (2) In 40 CFR 261.1(b)(2), the phrase “under sections 3007, 3013, and 7003 of RCRA” shall be deleted.
 - (3) In 40 CFR 261.1(b)(2)(i), the following replacements shall be made:
 - (A) The phrase “sections 3007 and 3013” shall be replaced with “K.S.A. 65-3431, 65-3437 and 65-3441, and K.A.R. 28-31-12.”
 - (B) The phrase “section 1004(27) of RCRA” shall be replaced with “40 CFR 261.2.”
 - (C) The phrase “section 1004(5) of RCRA” shall be replaced with “K.S.A. 65-3430.”
 - (4) In 40 CFR 261.4(e)(3)(iii), the text “in the Region where the sample is collected” shall be deleted.
 - (5) 40 CFR 261.5(a) shall be replaced by the definition of “conditionally exempt small quantity generator” in K.A.R. 28-31-260a.
 - (6) In 40 CFR 261.5(e), (f)(2), and (g)(2), the phrases “that acute hazardous waste” and “those accumulated wastes” shall be replaced with the phrase “the generator’s hazardous waste and acute hazardous waste.”
 - (7) In 40 CFR 261.5(g), the phrase “100 kilograms” shall be replaced with the phrase “25 kilograms (55 pounds).”
 - (8) In 40 CFR 261.5(g)(2), the phrase “generators of between 100 kg and 1000 kg of hazardous waste in a calendar month” shall be replaced with the phrase “small quantity generators.”
 - (9) In 40 CFR 261.5(g)(3), the phrase “or ensure delivery” shall be replaced with “or, subject to the restrictions of K.A.R. 28-31-262a, ensure delivery.”
 - (10) In 40 CFR 261.21(a)(3), the phrase “an ignitable compressed gas as defined in 49 CFR 173.300” shall be replaced with the phrase “a flammable gas as defined in 49 CFR 173.115(a).”
 - (11) In 40 CFR 261.21(a)(4), the phrase “49 CFR 173.151” shall be replaced with “49 CFR 173.127(a).”
 - (12) 40 CFR 261.23(a)(8) shall be replaced with the following: “It is a forbidden explosive as defined in 49 CFR 173.54, or it is a division 1.1, 1.2, or 1.3 explosive, as defined in 49 CFR 173.50 and 173.53.”
 - (13) In 40 CFR 261.33(e), the text “be the small quantity exclusion defined in” shall be deleted.
 - (14) In 40 CFR 261.33(f), the phrase “the small quantity generator exclusion defined in” shall be deleted.
 - (15) In 40 CFR 261.38(c)(1)(i), the introductory paragraph shall be replaced with “Notice to the secretary.”
 - (16) In 40 CFR part 261, appendix VII, the entries in both columns for “K064,” “K065,” “K066,” “K090,” and “K091” shall be deleted. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-261a. Identification and listing of hazardous waste; additional state requirements. Each conditionally exempt small quantity generator shall comply with K.A.R. 28-31-262a. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-262. Generators of hazardous waste; adoption and modification of federal regulations.

- (a) Adoption.** The provisions of 40 CFR part 262, including the appendix, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:
- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
 - (2) the exclusions from adoption listed in subsection (b); and
 - (3) the modifications listed in subsection (c).
- (b) Exclusions.** The following portions of 40 CFR part 262 shall be excluded from adoption:
- (1) All comments and all notes, except in the appendix;
 - (2) 40 CFR 262.10(j) and (k);
 - (3) 40 CFR 262.34(g) through (l);
 - (4) 40 CFR 262.89(e); and
 - (5) subparts I and J.
- (c) Modifications.** The following modifications shall be made to 40 CFR part 262:
- (1) In 40 CFR 262.10(g), the phrase “and K.S.A. 65-3441(b) and (c) and 65-3444 through 65-3446” shall be inserted after the phrase “section 3008 of the Act.”
 - (2) 40 CFR 262.11(c)(1) shall be replaced with the following text: “Submitting the waste for testing according to the methods in 40 CFR part 261, subpart C, by a laboratory that is certified for these analyses by the department; or.”
 - (3) The first paragraph in 40 CFR 262.20(e) shall be replaced with the following text: “The requirements of this subpart do not apply to hazardous waste produced by Kansas small quantity generators and small quantity generators if all of the following criteria are met:”.
 - (4) In 40 CFR 262.27(b), the phrase “or a Kansas small quantity generator” shall be inserted at the end of the first sentence.
 - (5) In 40 CFR 262.34(a)(2), the phrase “and tank” shall be inserted after the phrase “each container.”
 - (6) In 40 CFR 262.34(c)(1), the text “A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers” shall be replaced with the following text: “Any generator may accumulate 55 gallons or less, in no more than one container, of each type of hazardous waste and one quart or less, in no more than one container, of each type of acutely hazardous waste listed in § 261.33(e).”
 - (7) 40 CFR 262.34(c)(1)(ii) shall be replaced with the following text: “Marks the containers with the words ‘Hazardous Waste.’ ”
 - (8) At the end of 40 CFR 262.34(d)(5)(ii)(C), the following text shall be inserted as new subparagraph (D): “If the generator relies solely on cell phones, the generator shall meet the following requirements: (1) Post the information addressed by subparagraphs (A) through (C) on walls so that they can be readily seen by employees; (2) train all employees that manage hazardous waste on the locations of these postings; and (3) program the telephone numbers into the cell phones of management personnel.”
 - (9) In 40 CFR 262.42(b), the phrase “greater than 100 kilograms” shall be replaced with the phrase “25 kilograms or more.”
 - (10) In 40 CFR 262.43, the text “, as he deems necessary under sections 2002(a) and 3002(6) of the Act,” shall be deleted.
 - (11) In 40 CFR 262.44, the following modifications shall be made:
 - (A) In the title, the number “100” shall be replaced with the number “25.”
 - (B) In the first paragraph, the phrase “greater than 100 kilograms” shall be replaced with the phrase “25 kilograms or more.” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

28-31-262a. Generators of hazardous waste; additional state requirements. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

(a) Transportation requirements.

- (1) Each generator that transports hazardous waste shall comply with K.A.R. 28-31-263a.
- (2) Each generator that uses another person to transport hazardous waste shall use only a transporter who has registered with the department in accordance with K.A.R. 28-31-6.

(b) Reporting requirements. Each generator of hazardous waste, except conditionally exempt small quantity generators (CESQGs), shall submit a report to the department that indicates whether the generator is a large quantity generator (LQG), a small quantity generator (SQG), or a Kansas small quantity generator (KSQG). The generator shall comply with the following requirements:

- (1) Submit the report on a form provided by the department;
- (2) submit the monitoring fee required by K.A.R. 28-31-10 with the report;
- (3) submit the report according to the following schedule:
 - (A) Each LQG report shall be due on or before March 1 of each year that the biennial report is not required;
 - (B) each SQG report shall be due on or before April 1 of each year; and
 - (C) each KSQG report shall be due on or before April 1 of each year; and
- (4) keep a copy of each report for at least three years after the date of the signature on the report.

(c) Additional requirement for LQGs. Each LQG shall comply with 40 CFR 265.15(d).

(d) Additional requirements for SQGs.

- (1) In addition to meeting the requirements of 40 CFR 262.34(d)(5)(iii), each SQG shall meet the following requirements:
 - (A) Provide the training to each employee no more than six months after the employee is hired or transferred to a new position;
 - (B) repeat the training at least annually;
 - (C) record the name of each employee, the date of the training, and the topics covered in the training; and
 - (D) keep training records for each employee that has received the training for at least three years from the date of the training. Training records may accompany personnel transferred within the same company.
- (2) Each SQG shall comply with the following regulations:
 - (A) 40 CFR 265.15(d);
 - (B) 40 CFR 265.111(a) and (b); and
 - (C) 40 CFR 265.114.

(e) Additional requirements for KSQGs.

- (1) In the waste minimization certification found in item 15 of the uniform hazardous waste manifest, the phrase "small quantity generator" shall include KSQGs.
- (2) Each KSQG shall inspect each area where one or more hazardous waste containers are stored at least once every 31 days and shall look for deterioration and leaks.
- (3) Each KSQG shall comply with the following regulations:
 - (A) 40 CFR part 262, subpart A;
 - (B) 40 CFR part 262, subpart B, except KSQGs that are exempt from the transporter requirements of K.A.R. 28-31-263a;
 - (C) 40 CFR 262.30 through 262.33;
 - (D) 40 CFR 262.34(a)(2) and (3), (c), and (d)(5);

- (E) 40 CFR 262.44;
 - (F) 40 CFR part 262, subparts E through H;
 - (G) 40 CFR 265.15(d);
 - (H) 40 CFR part 265, subpart C;
 - (I) 40 CFR 265.171 through 265.173 and 265.177;
 - (J) 40 CFR 265.201; and
 - (K) 40 CFR 268.7(a)(5).
- (4) In addition to meeting the requirements of 40 CFR 262.34(d)(5)(iii), each KSQG shall meet the following requirements:
- (A) Provide the training to each employee no more than six months after the employee is hired or transferred to a new position;
 - (B) repeat the training at least annually;
 - (C) record the name of each employee, the date of the training, and the topics covered in the training; and
 - (D) keep training records for each employee that has received the training for at least three years from the date of the training. Training records may accompany personnel transferred within the same company.
- (5) Each KSQG that accumulates more than 1,000 kilograms (2,200 pounds) of hazardous waste shall comply with all of the requirements for SQGs.
- (f) Additional requirements for CESQGs.**
- (1) No person shall send CESQG hazardous waste to a construction and demolition landfill located in Kansas.
 - (2) Each CESQG that accumulates 25 kilograms (55 pounds) or more of hazardous waste shall comply with all of the following requirements:
 - (A) The CESQG shall inspect each area where one or more hazardous waste containers are stored at least once every 31 days looking for deterioration and leaks.
 - (B) If the CESQG sends 25 kilograms (55 pounds) or more of hazardous waste at any one time to an off-site facility in Kansas, that waste shall be sent only to one of the following facilities:
 - (i) A Kansas household hazardous waste facility that has a permit issued by the secretary and is approved by the secretary to accept CESQG waste; or
 - (ii) a disposal facility that meets the requirements of 40 CFR 261.5(g)(3)(i), (ii), (iii), or (vii).
 - (C) The CESQG shall comply with the following regulations:
 - (i) 40 CFR 262.30 through 262.33;
 - (ii) 40 CFR 262.34(a)(2) and (3);
 - (iii) 40 CFR 265.15(d);
 - (iv) 40 CFR 265.171 through 265.173 and 265.177; and
 - (v) 40 CFR 265.201, if 25 kilograms (55 pounds) or more of hazardous waste is accumulated in one or more tanks. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

28-31-263. Transporters of hazardous waste; adoption and modification of federal regulations.

- (a) Adoption.** The provisions of 40 CFR part 263, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:
- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
 - (2) the exclusions from adoption listed in subsection (b); and
 - (3) the modifications listed in subsection (c).

(b) Exclusions. All notes shall be excluded from adoption.

(c) Modifications. The following modifications shall be made to 40 CFR part 263:

(1) In 40 CFR 263.10(a), the following modifications shall be made:

(A) The phrase “the United States” shall be replaced with “Kansas.”

(B) The phrase “or K.A.R. 28-31-262a” shall be inserted at the end of the sentence.

(2) In 40 CFR 263.20(h), the phrase “greater than 100 kilograms” shall be replaced with “25 kilograms (55 pounds) or more.” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

28-31-263a. Transporters of hazardous waste; additional state requirements. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

(a) Applicability. Each person that transports hazardous waste within, into, out of, or through Kansas shall comply with this regulation, except Kansas small quantity generators (KSQGs) and conditionally exempt small quantity generators (CESQGs) that meet the following conditions:

(1) The generator is transporting the generator’s own hazardous waste to a household hazardous waste (HHW) facility that meets one of the following conditions:

(A) If the generator is a KSQG, the HHW facility is permitted to accept KSQG waste.

(B) If the generator is a CESQG, the HHW facility is permitted to accept CESQG waste.

(2) The generator obtains a receipt for each load of hazardous waste delivered to the HHW facility.

(3) The generator keeps a copy of each receipt for a minimum of three years after the date of delivery.

(b) Registration and insurance. Each transporter of hazardous waste shall comply with the requirements of K.A.R. 28-31-6.

(c) Transportation restrictions. Each transporter shall transport hazardous waste only for hazardous waste generators and facilities that are in compliance with the requirement to obtain an EPA identification number for the state in which the generator or facility is located.

(d) Routing restrictions.

(1) Each transporter of hazardous waste shall ensure that each vehicle containing hazardous waste is operated over a preferred route that minimizes risk to public health and safety and the environment. To select a preferred route, the transporter shall consider the following information, if available:

(A) Accident rates;

(B) the transit time;

(C) population density and activities; and

(D) the day of the week and the time of day during which transportation will occur.

(2) Each transporter shall confine the transportation of hazardous wastes to preferred routes. Unless notice to the contrary is published in the Kansas register, all portions of the major highway system may be used. For the purposes of this subsection, the major highway system shall be considered to be all interstate routes, U.S. highways, state highways, and temporary detours designated by the Kansas department of transportation. An interstate system bypass or beltway around a city shall be used when available.

(3) Any transporter of hazardous waste may deviate from a preferred route under any of the following circumstances:

(A) Emergency conditions that make continued use of the preferred route unsafe;

(B) rest, fuel, and vehicle repair stops; or

(C) deviations that are necessary to pick up, deliver, or transfer hazardous wastes. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

28-31-264. Hazardous waste treatment, storage, and disposal facilities; adoption and modification of federal regulations.

- (a) Adoption.** The provisions of 40 CFR part 264, including appendices I, IV, V, VI, and IX, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:
- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
 - (2) the exclusions from adoption listed in subsection (b); and
 - (3) the modifications listed in subsection (c).
- (b) Exclusions.** The following portions of 40 CFR part 264 shall be excluded from adoption:
- (1) All comments and all notes;
 - (2) 40 CFR 264.1(f) and (g)(12);
 - (3) 40 CFR 264.15(b)(5);
 - (4) 40 CFR 264.149 and 264.150;
 - (5) 40 CFR 264.195(e);
 - (6) 40 CFR 264.301(l);
 - (7) 40 CFR 264.1030(d);
 - (8) 40 CFR 264.1050(g); and
 - (9) 40 CFR 264.1080(e), (f), and (g).
- (c) Modifications.** The following modifications shall be made to 40 CFR part 264:
- (1) Each occurrence of the following text shall be deleted:
 - (A) “(incorporated by reference, see § 260.11)”;
 - (B) “(incorporated by reference as specified in § 260.11)”;
 - (C) “(incorporated by reference under 40 CFR 260.11)”;
 - (D) “40 CFR 260.11(11)”;
 - (E) “as incorporated by reference in § 260.11 of this chapter.”
 - (2) In 40 CFR 264.1(g)(8)(D)(iii), the phrase “and K.A.R. 28-31-124a through 28-31-124e” shall be inserted after the phrase “through 124 of this chapter.”
 - (3) In 40 CFR 264.15(b)(4), the following text shall be deleted: “, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section.”
 - (4) In 40 CFR 264.112(d)(3), the phrase “under section 3008 of RCRA” shall be deleted.
 - (5) In 40 CFR 264.113(d)(2), the phrase “required under RCRA section 3019” shall be deleted.
 - (6) The phrase “determination pursuant to section 3008 of RCRA” shall be replaced with “determination by EPA pursuant to section 3008 of RCRA or by the state of Kansas under K.S.A. 65-3441, 65-3443, 65-3445, or 65-3439(e)” in the following locations:
 - (A) 40 CFR 264.143(c)(5);
 - (B) 40 CFR 264.143(d)(8);
 - (C) 40 CFR 264.145(c)(5); and
 - (D) 40 CFR 264.145(d)(9).
 - (7) The phrase “licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States” shall be replaced with “licensed to transact the business of insurance in Kansas or eligible to provide insurance as an excess or surplus lines insurer in Kansas” in the following locations:
 - (A) 40 CFR 264.143(e)(1);
 - (B) 40 CFR 264.145(e)(1);
 - (C) 40 CFR 264.147(a)(1)(ii) and (b)(1)(ii); and
 - (D) 40 CFR 264.151(i) and (j).

- (8) In 40 CFR 264.143(h) and 264.145(h), the text “If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such regions” shall be replaced with the following: “If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance shall be submitted to and maintained with the state agency regulating hazardous waste, or with the appropriate regional administrator if the facility is located in an unauthorized state.”
- (9) In 40 CFR 264.144(b) and (c), the phrase “and the post-closure period” shall be inserted after the phrase “During the active life of the facility.”
- (10) In 40 CFR 264.144(b), the phrase “§ 264.145(b)(1) and (2)” shall be replaced with “paragraphs (b)(1) and (2) of this section.”
- (11) In 40 CFR 264.147(a)(1)(i) and (b)(1)(i), the phrase “Regional Administrator, or Regional Administrators” shall be replaced with “secretary, and regional administrators.”
- (12) In 40 CFR 264.151(a)(1), (m)(1), and (n)(1), the phrase “United States Environmental Protection Agency, ‘EPA,’ an agency of the United States Government,” shall be replaced with the phrase “Kansas department of health and environment, or ‘department.’ ”
- (13) In 40 CFR 264.151(b) and (c), the phrase “U.S. Environmental Protection Agency (hereinafter called EPA)” shall be replaced with “Kansas department of health and environment (hereinafter called ‘department’).”
- (14) In 40 CFR 264.151(d) and (k), the text between the title “Irrevocable Standby Letter of Credit” and “Dear Sir or Madam:” shall be replaced with the following:
 “Name and address of issuing institution: _____ “Secretary
 “Kansas department of health and environment.”
- (15) In 40 CFR 264.151(d), the following text shall be deleted: “[insert, if more than one Regional Administrator is a beneficiary, ‘by any one of you’].”
- (16) In 40 CFR 264.151(f) and (g), in section 3 of the “Letter From Chief Financial Officer,” the text “In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 264 or 265,” shall be deleted.
- (17) In 40 CFR 264.151(l), in paragraph (1) of the “Governing Provisions” of the “Payment Bond,” the phrase “Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended” shall be replaced with “40 CFR 264.147 and 265.147.”
- (18) In 40 CFR 264.174, the following text shall be deleted: “, except for Performance Track member facilities that may conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequencies, the Performance Track member facility must follow the procedures identified in § 264.15(b)(5) of this part.”
- (19) In 40 CFR 264.191(a), the phrase “January 12, 1988” shall be replaced with “January 12, 1988 for HSWA tanks or by May 1, 1988 for non-HSWA tanks.”
- (20) In 40 CFR 264.191(c), the text “July 14, 1986, must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste” shall be replaced with the following text: “July 14, 1986 for HSWA tanks, or May 1, 1987 for non-HSWA tanks, shall conduct this assessment within 12 months after the date that the waste becomes a hazardous waste regulated by the state.”
- (21) The phrase “or RCRA Section 3008(h)” shall be deleted from the following locations:
 (A) 40 CFR 264.551(a); and
 (B) 40 CFR 264.552(a).
- (22) In 40 CFR 264.553(a), the phrase “or RCRA 3008(h)” shall be deleted.
- (23) In 40 CFR 264.555(a), the term “RCRA” shall be deleted.
- (24) In 40 CFR 264.570(a), the following replacements shall be made:

- (A) Each occurrence of the text “December 6, 1990” shall be replaced with “December 6, 1990 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads.”
- (B) Each occurrence of the text “December 24, 1992” shall be replaced with “December 24, 1992 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads.”
- (25) In 40 CFR 264.570(c)(1)(iv), the term “Federal regulations” shall be replaced with “federal and state regulations.”
- (26) In 40 CFR 264.1033(a)(2)(iii) and 264.1060(b)(3), the term “EPA” shall be deleted.
- (27) In 40 CFR 264.1080(b)(5), the text “required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities” shall be replaced with the following: “required by EPA under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h) or under CERCLA authorities; required by the state under K.S.A. 65-3443, 65-3445, and 65-3453; or required under similar federal or state authorities.”
- (28) In 40 CFR 264.1101(c)(4), the following text shall be deleted:
 - (A) “, except for Performance Track member facilities that must inspect at least once each month, upon approval by the Director,”; and
 - (B) “[t]o apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-264a. Hazardous waste treatment, storage, and disposal facilities; additional state requirements.

Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

(a) Financial assurance.

- (1) For the purposes of this subsection, the following definitions shall apply:
 - (A) “Captive insurance company” shall mean an insurance company that is established with the specific objective of financing risks emanating from its parent group or groups and that could or could not also insure risks of the parent groups’ customers.
 - (B) “Financial institution” shall mean a bank, an insurance company, a surety company, or a trust company.
 - (C) “Purchased financial instrument” shall mean a trust fund, a letter of credit, a surety bond, or an insurance policy.
 - (D) “Unrelated” shall mean that neither party has any ownership of the other party, or any controlling interest in the other party.
- (2) Each financial institution that provides financial assurance for a hazardous waste facility in Kansas shall meet the following requirements, in addition to meeting the requirements of 40 CFR part 264, subpart H:
 - (A) Each bank and each trust company shall have the authority to issue letters of credit in Kansas or to act as trustee for the facility in Kansas, or both.
 - (B) Each insurance company shall meet the following criteria:
 - (i) Have a current minimum rating in the secure or investment grade category by the A.M. Best insurance rating agency; and
 - (ii) not be a captive insurance company.
 - (C) Each surety company shall meet the following criteria:
 - (i) Have a current minimum rating in the secure or investment grade category by the A.M. Best insurance rating agency; and
 - (ii) be licensed in Kansas.
- (3) If the financial assurance required by 40 CFR part 264, 265, or 267 is a purchased financial instrument,

the financial institution that provides the purchased financial instrument shall be unrelated to both the owner and the operator of the facility.

- (4) Each person that is required to submit the information listed in one or more of the following regulations shall also submit a copy of the most recent corporate annual report:
 - (A) 40 CFR 264.143(f)(3);
 - (B) 40 CFR 264.145(f)(3);
 - (C) 40 CFR 265.143(e)(3);
 - (D) 40 CFR 265.145(e)(3); or
 - (E) 40 CFR 267.143(f)(2).
- (5) The corporate annual report required by paragraph (a)(4) shall be submitted for both publicly and privately owned facilities and shall contain the following items:
 - (A) Financial statements;
 - (B) notes to financial statements; and
 - (C) a copy of the independent certified public accountant's report, including an unqualified opinion.
- (b) Notice in deed to property.** Each owner of property on which a hazardous waste treatment, storage, or disposal facility is located shall record, in accordance with Kansas law, a notice with the register of deeds in the county where the property is located. The notice shall include the following information:
 - (1) The land has been used to manage hazardous waste.
 - (2) All records regarding permits, closure, or both are available for review at the department.
- (c) Restrictive covenant and easement.** Any owner of property on which a hazardous waste treatment, storage, or disposal facility is or has been located may be required by the secretary to execute a restrictive covenant or easement, or both, according to the following requirements:
 - (1) The restrictive covenant shall be filed with the county register of deeds, shall specify the uses that may be made of the property after closure, and shall include the following requirements:
 - (A) All future uses of the property after closure shall be conducted in a manner that preserves the integrity of waste containment systems designed, installed, and used during operation of the disposal areas, or installed or used during the postclosure maintenance period.
 - (B) The owner or tenant and all subsequent owners or tenants shall preserve and protect all permanent survey markers and benchmarks installed at the facility.
 - (C) The owner or tenant and all subsequent owners or tenants shall preserve and protect all environmental monitoring stations installed at the facility.
 - (D) The owner or tenant, all subsequent property owners or tenants, and any person granted easement to the property shall provide written notice to the secretary during the planning of any improvement to the site and shall commence any of the following activities only after receiving approval from the secretary:
 - (i) Excavating or constructing any permanent structures or drainage ditches;
 - (ii) altering the contours;
 - (iii) removing any waste materials stored on the site;
 - (iv) changing the vegetation grown on areas used for waste disposal;
 - (v) growing food chain crops on land used for waste disposal; or
 - (vi) removing any security fencing, signs, or other devices installed to restrict public access to waste storage or disposal areas.
 - (2) The easement shall state that the department, its duly authorized agents, or contractors employed by or on behalf of the department may enter the premises to accomplish any of the following tasks:
 - (A) Complete items of work specified in the site closure plan;
 - (B) perform any item of work necessary to maintain or monitor the area during the postclosure period;

or

(C) sample, repair, or reconstruct environmental monitoring stations constructed as part of the site operating or postclosure requirements.

(3) Each offer or contract for the conveyance of easement, title, or other interest to real estate used for treatment, storage, or disposal of hazardous waste shall disclose all terms, conditions, and provisions for care and subsequent land uses that are imposed by these regulations or the site permit authorized and issued under K.S.A. 65-3431, and amendments thereto. Conveyance of title, easement, or other interest in the property shall contain provisions for the continued maintenance of waste containment and monitoring systems.

(4) All covenants, easements, and other documents related to this regulation shall be permanent, unless extinguished by agreement between the property owner and the secretary.

(5) The owner of the property shall pay all recording fees.

(d) Marking requirements. Each operator of a hazardous waste container storage facility or a tank storage facility shall mark all containers and tanks in accordance with 40 CFR 262.34(a)(2) and (3).

(e) Environmental monitoring. All samples analyzed in accordance with 40 CFR part 264, subpart F or G or 40 CFR part 265, subpart F or G shall be conducted by a laboratory certified for these analyses by the secretary, except that analyses of time-sensitive parameters, including pH, temperature, and specific conductivity, shall be conducted at the time of sampling if possible.

(f) Laboratory certification. For hazardous waste received at a treatment, storage, or disposal facility with the intent of burning for destruction or energy recovery, all quantification analyses performed for the purpose of complying with permit conditions shall be performed by a laboratory certified for these analyses by the secretary, if this certification is available.

(g) Hazardous waste injection wells. The owner or operator of each hazardous waste injection well shall comply with the requirements of article 46 of these regulations. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-265. Interim status hazardous waste treatment, storage, and disposal facilities; adoption and modification of federal regulations.

(a) Adoption. The provisions of 40 CFR part 265, including appendices I and III, IV, V, and VI, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
- (2) the exclusions from adoption listed in subsection (b); and
- (3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 265 shall be excluded from adoption:

- (1) All comments and all notes;
- (2) 40 CFR 265.1(c)(4) and (15);
- (3) 40 CFR 265.15(b)(5);
- (4) 40 CFR 265.149 and 265.150;
- (5) 40 CFR 265.195(d);
- (6) 40 CFR 265.201(e);
- (7) 40 CFR 265.1030(c);
- (8) 40 CFR 265.1050(f); and
- (9) 40 CFR 265.1080(e), (f), and (g).

(c) Modifications. The following modifications shall be made to 40 CFR part 265:

- (1) Each occurrence of the following phrases shall be deleted:
 - (A) “(incorporated by reference, see § 260.11)”;

- (B) “(incorporated by reference—refer to § 260.11 of this chapter)”;
 - (C) “(incorporated by reference as specified in § 260.11)”;
 - (D) “(incorporated by reference under § 260.11)”;
 - (E) “(incorporated by reference under § 260.11 of this chapter)”;
 - (F) “as incorporated by reference in § 260.11”; and
 - (G) “as incorporated by reference in § 260.11 of this chapter.”
- (2) In 40 CFR 265.1(b), the phrase “issued under section 3005 of RCRA” shall be replaced with “issued by EPA under section 3005 of RCRA or a Kansas hazardous waste facility permit is issued by the department.”
 - (3) In 40 CFR 265.1(c)(11)(iii), the phrase “and K.A.R. 28-31-124a through 28-31-124e” shall be inserted after the phrase “through 124 of this chapter.”
 - (4) In 40 CFR 265.15(b)(4), the following text shall be deleted: “, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section.”
 - (5) In 40 CFR 265.90(e), the term “qualified professional” shall be replaced with “Kansas professional engineer.”
 - (6) In 40 CFR 265.112(d)(3)(ii), the phrase “under section 3008 of RCRA” shall be deleted.
 - (7) In 40 CFR 265.113(d)(2), the phrase “required under RCRA section 3019” shall be deleted.
 - (8) In 40 CFR 265.118(e)(2), the phrase “under section 3008 of RCRA” shall be deleted.
 - (9) In 40 CFR 265.143(c)(8) and 265.145(c)(9), the phrase “determination pursuant to section 3008 of RCRA” shall be replaced by “determination by EPA pursuant to section 3008 of RCRA or by the state under K.S.A. 65-3441, 65-3443, 65-3445, or 65-3439(e).”
 - (10) In 40 CFR 265.143(g) and 265.145(g), the text “If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions” shall be replaced with the following: “If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance shall be submitted to and maintained with the state agency regulating hazardous waste, or with the appropriate regional administrator if the facility is located in an unauthorized state.”
 - (11) In 40 CFR 265.144(b) and (c), the phrase “and the post-closure period” shall be inserted after the phrase “During the active life of the facility.”
 - (12) In 40 CFR 265.144(b), the following replacements shall be made:
 - (A) The phrase “§ 265.145(d)(5)” shall be replaced with “§ 265.145(e)(5).”
 - (B) The phrase “§ 265.145(b)(1) and (2)” shall be replaced with “paragraphs (b)(1) and (2) of this section.”
 - (13) In 40 CFR 265.147(a)(1)(i), the text “Regional Administrator, or Regional Administrators” shall be replaced with “secretary, and regional administrators.”
 - (14) In 40 CFR 265.174, the following language shall be deleted: “, except for Performance Track member facilities that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5) of this part.”
 - (15) In 40 CFR 265.191(a), the text “January 12, 1988” shall be replaced with “January 12, 1988 for HSWA tanks, and May 1, 1988 for non-HSWA tanks.”
 - (16) In 40 CFR 265.191(c), the text “July 14, 1986 must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste” shall be replaced with the following: “July 14, 1986 for HSWA tanks, or May 1, 1987 for non-HSWA tanks, shall conduct this assessment within 12 months after the date that the waste becomes a hazardous waste regulated by the state.”

- (17) In 40 CFR 265.201, the following modifications shall be made:
- (A) In the title, the phrase “between 100 and 1,000 kg/mo” shall be replaced with “less than 1,000 kg/mo.”
 - (B) Paragraph (a) shall be replaced with the following: “The requirements of this section shall apply to each small quantity generator, and to each Kansas small quantity generator and conditionally exempt small quantity generator that accumulates 25 kg (55 pounds) or more of hazardous waste in one or more tanks.”
 - (C) In paragraphs (b), (f), (g), and (h), the phrases “generators of between 100 and 1,000 kg/mo hazardous waste” and “generators of between 100 and 1,000 kg/mo” shall be replaced with “generators identified in paragraph (a) of this section.”
 - (D) In paragraphs (c) and (d), the number “100” shall be replaced with “25.”
- (18) In 40 CFR 265.340(b)(2), the phrase “§ 264.351” shall be replaced with “§ 265.351.”
- (19) In 40 CFR 265.440(a), the following replacements shall be made:
- (A) Each occurrence of the text “December 6, 1990” shall be replaced with “December 6, 1990 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads.”
 - (B) Each occurrence of the text “December 24, 1992” shall be replaced with “December 24, 1992 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads.”
- (20) In 40 CFR 265.440(c)(1)(iv), the term “Federal regulations” shall be replaced with “federal and state regulations.”
- (21) In 40 CFR 265.1080(b)(5), the text “required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar federal or state authorities” shall be replaced by the following: “required by EPA under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h) or under CERCLA authorities; required by the state under K.S.A. 65-3443, 65-3445, and 65-3453; or required under similar Federal or State authorities.”
- (22) In 40 CFR 265.1101(c)(4), the following text shall be deleted:
- (A) “, except for Performance Track member facilities, that must inspect up to once each month, upon approval of the director,”; and
 - (B) “[t]o apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-265a. Interim status hazardous waste treatment, storage, and disposal facilities; additional state requirements. Each owner or operator of an interim status hazardous waste treatment, storage, or disposal facility shall comply with K.A.R. 28-31-264a. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-266. Specific hazardous wastes and specific types of hazardous waste management facilities; adoption and modification of federal regulations.

- (a) **Adoption.** The provisions of 40 CFR part 266, including appendices I through IX and XI through XIII, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:
- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
 - (2) the exclusions from adoption listed in subsection (b); and
 - (3) the modifications listed in subsection (c).
- (b) **Exclusions.** The following portions of 40 CFR part 266 shall be excluded from adoption:
- (1) All notes, except in appendix IX;
 - (2) 40 CFR 266.103;

- (3) in 40 CFR 266.210, the definition of “we or us”; and
- (4) subpart O.

(c) Modifications. The following modifications shall be made to 40 CFR part 266:

- (1) Each occurrence of the following phrases shall be deleted:
 - (A) “(incorporated by reference, see § 260.11)”;
 - (B) “(incorporated by reference, in § 260.11)”;
 - (C) “(incorporated by reference in § 260.11)”;
 - (D) “, as incorporated by reference in § 260.11 of this chapter”; and
 - (E) “, incorporated by reference in §260.11.”
- (2) In 40 CFR 266.23(a), the phrase “subparts A through N of parts 124, 264, 265, 268, and 270 of this chapter” shall be replaced with “subparts A through N of 40 CFR parts 264 and 265, 40 CFR parts 268 and 270, K.A.R. 28-31-124 through 124e.”
- (3) In 40 CFR 266.202(d), the following modifications shall be made:
 - (A) The phrase “For the purposes of RCRA section 1004(27),” shall be deleted.
 - (B) The text “or imminent and substantial endangerment authorities under section 7003” shall be replaced with “and the Kansas enforcement authorities at K.S.A. 65-3441(b) and (c), 65-3443, and 65-3445.”
- (4) In 40 CFR 266.210 in the definition of “naturally occurring and/or accelerator-produced radioactive material (NARM),” the phrase “by the States” shall be replaced with “by the state of Kansas.”
- (5) In 40 CFR part 266, subpart N, the following replacements shall be made:
 - (A) The term “us” shall be replaced with “the department.”
 - (B) The term “we” shall be replaced with “the secretary.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-267. Hazardous waste facilities operating under a standardized permit; adoption and modification of federal regulations.

(a) Adoption. The provisions of 40 CFR part 267, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
- (2) the exclusions from adoption listed in subsection (b); and
- (3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 267 shall be excluded from adoption:

- (1) All comments and all notes; and
- (2) 40 CFR 267.150.

(c) Modifications. The following modifications shall be made to 40 CFR part 267:

- (1) Each occurrence of the following phrases shall be deleted:
 - (A) “, as incorporated by reference in 40 CFR 260.11”; and
 - (B) “(incorporated by reference, see 40 CFR 260.11).”
- (2) In 40 CFR 267.12, the text “your state hazardous waste regulatory agency or from your EPA regional office” shall be replaced with “the department.”
- (3) In 40 CFR 267.112(d)(3), the phrase “under section 3008 of RCRA” shall be deleted.
- (4) In 40 CFR 267.151(a) and (b), the text “[insert ‘subpart H of 40 CFR part 267’ or the citation to the corresponding state regulation]” shall be replaced with “K.A.R. 28-31-267.” (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-267a. Hazardous waste facilities operating under a standardized permit; additional state requirements. Each owner or operator of hazardous waste management facility that has been issued a standardized permit shall comply with K.A.R. 28-31-264a. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

28-31-268. Land disposal restrictions; adoption and modification of federal regulations.

(a) Adoption. The provisions of 40 CFR part 268, including appendices III, IV, VI through VIII, and XI, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
- (2) the exclusions from adoption listed in subsection (b); and
- (3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 268 shall be excluded from adoption:

- (1) All comments and all notes;
- (2) 40 CFR 268.13; and
- (3) 40 CFR 268.44(o).

(c) Modifications. The following modifications shall be made to 40 CFR part 268:

- (1) Each occurrence of the following phrases shall be deleted:
 - (A) “(incorporated by reference, see § 260.11 of this chapter)”;
 - (B) “as incorporated by reference in § 260.11”;
 - (C) “as incorporated by reference in § 260.11 of this chapter”;
 - (D) “as incorporated by reference in 40 CFR 260.11”; and
 - (E) “as referenced in § 260.11 of this chapter.”
- (2) Paragraph 40 CFR 268.1(e)(1) shall be replaced with “Waste generated by conditionally exempt small quantity generators or Kansas small quantity generators (KSQGs), except KSQGs shall comply with 40 CFR 268.7(a)(5) and (10).”
- (3) In 40 CFR 268.3(a), the phrase “RCRA section 3004” shall be replaced with “40 CFR part 268.”
- (4) In 40 CFR 268.7(a)(9)(iii), the phrase “except for D009” shall be added to the end of the sentence.
- (5) In 40 CFR 268.7(a)(10), the phrase “and Kansas small quantity generators” shall be inserted after the term “Small quantity generators.”
- (6) In 40 CFR 268.7(d), the phrase “§ 261.3(e)” shall be replaced with “§ 261.3(f).”
- (7) 40 CFR 268.7(d)(1) shall be replaced with the following: “A one-time notification, including the following information, shall be submitted to the department:”
- (8) In 40 CFR 268.14(b) and (c), the phrase “section 3001” shall be replaced with “40 CFR part 261.”
- (9) In 40 CFR 268.44(i), the phrase “in § 260.20(b)(1)-(4)” shall be replaced with “required by EPA’s rulemaking petition program.”
- (10) In 40 CFR 268.50(a), the phrase “of RCRA section 3004” shall be deleted.
- (11) In 40 CFR 268.50(e), the phrase “or RCRA section 3004” shall be deleted. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011; amended May 10, 2013.)

28-31-270. Hazardous waste permits; adoption and modification of federal regulations.

(a) Adoption. The provisions of 40 CFR part 270, including appendix I to §270.42, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
- (2) the exclusions from adoption listed in subsection (b); and
- (3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 270 shall be excluded from adoption:

- (1) In 40 CFR 270.1, subsections (a) and (b) and paragraphs (c)(1)(iii) and (c)(2)(ix);
- (2) 40 CFR 270.3;
- (3) 40 CFR 270.6;
- (4) 40 CFR 270.10(g)(1)(i);
- (5) 40 CFR 270.14(b)(18);
- (6) 40 CFR 270.42(i) and (l);
- (7) 40 CFR 270.60(a); and
- (8) 40 CFR 270.64.

(c) Modifications. The following modifications shall be made to 40 CFR part 270:

- (1) In 40 CFR 270.1(c)(7), the following text shall be deleted: “including, but not limited to, a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure plan.”
- (2) In 40 CFR 270.2, the following definitions shall be modified as follows:
 - (A) Corrective action management unit.
 - (i) The phrase “or secretary” shall be inserted after the term “Regional Administrator.”
 - (ii) The word “and” shall be replaced with the term “or by the regional administrator under.”
 - (B) Emergency permit. The term “RCRA permit” shall be replaced with “RCRA or Kansas hazardous waste facility permit.”
 - (C) Permit.
 - (i) The reference to “124 of this chapter” shall be replaced with “124 of this chapter or K.A.R. 28-31-124 through 28-31-124e and 28-31-270.”
 - (ii) The term “RCRA” shall be deleted.
 - (iii) The term “agency” shall be replaced with the phrase “EPA or department.”
 - (D) Remedial action plan. The term “RCRA permit” shall be replaced with “RCRA or Kansas hazardous waste facility permit.”
 - (E) Standardized permit.
 - (i) The term “RCRA permit” shall be replaced with “RCRA or Kansas hazardous waste facility permit.”
 - (ii) The term “Director’s” shall be replaced with “director’s or secretary’s.”
- (3) In 40 CFR 270.10(a), the following language shall be inserted after the title “Applying for a permit.”: “Each person that wants to apply for a permit to dispose of hazardous waste shall first petition the secretary for an exception to the Kansas prohibition against underground land burial under the requirements of K.A.R. 28-31-5.”
- (4) In 40 CFR 270.10(e)(3), the text “, or the secretary may under the authority of K.S.A. 65-3445,” shall be inserted after the phrase “section 3008 of RCRA.”
- (5) In 40 CFR 270.10(e)(4), the second sentence shall be deleted.
- (6) In 40 CFR 270.10(f)(2), the second sentence shall be replaced with the following: “The application shall be filed with the secretary.”
- (7) In 40 CFR 270.10(g)(1)(ii), the text “if the facility is located in a State which has obtained interim authorization or final authorization,” shall be deleted.
- (8) In 40 CFR 270.10(g)(1)(iii), the text “if the State in which the facility in question is located does not have interim authorization or final authorization; otherwise it shall be filed with the State Director (if the State has an analogous provision)” shall be deleted.
- (9) 40 CFR 270.12 shall be replaced with “K.S.A. 65-3447 shall apply to all information claimed as confidential.”
- (10) In 40 CFR 270.13(k)(1), the term “RCRA” shall be replaced with “RCRA or the Kansas hazardous

waste program.”

- (11) In 40 CFR 270.14(b)(20), the phrase “Federal laws as required in § 270.3 of this part” shall be replaced with “laws.”
- (12) In 40 CFR 270.24(d)(3) and 270.25(e)(3), the phrase “(incorporated by reference as specified in § 270.6)” shall be deleted.
- (13) In 40 CFR 270.32(a) the text “, and for EPA issued permits only, 270.33(b) (alternate schedules of compliance) and 270.3 (considerations under Federal law)” shall be deleted.
- (14) In 40 CFR 270.32(c), the following language shall be deleted:
 - (A) The second sentence, which starts “For a permit issued by EPA”;
 - (B) the term “EPA”; and
 - (C) the phrase “and EPA administered programs.”
- (15) In 40 CFR 270.43(b), the phrase “or part 22” shall be deleted.
- (16) In 40 CFR 270.51(a), the title shall be replaced with “Kansas hazardous waste facility permits” and the phrase “under 5 U.S.C. 558(c)” shall be deleted.
- (17) In 40 CFR 270.51(d), the title shall be replaced with “State continuation of an EPA permit” and the phrase “In a State with a hazardous waste program authorized under 40 CFR part 271,” shall be deleted.
- (18) In 40 CFR 270.60, the phrase “facilities in Kansas” shall be inserted after the word “following” in the introductory paragraph.
- (19) In 40 CFR 270.70(a) and 270.73(d), the phrase “under the Act” shall be deleted.
- (20) 40 CFR 270.115 shall be replaced with the following: “K.S.A. 65-3447 shall apply to all information claimed as confidential.”
- (21) In 40 CFR 270.155(a), the following phrases shall be deleted:
 - (A) “[T]o EPA’s Environmental Appeals Board”;
 - (B) “[i]nstead of the notice required under §§ 124.19(c) and 124.10 of this chapter,”;
 - (C) “by the Environmental Appeals Board”;
 - (D) “as provided by the Board”; and
 - (E) “with the Board.”
- (22) In 40 CFR 270.195, the phrase “in RCRA sections 3004 and 3005” shall be deleted.
- (23) In 40 CFR 270.255(a)(3), each occurrence of the term “we” shall be replaced with “the secretary.”
- (24) In 40 CFR 270.310(d)(3), the phrase “(incorporated by reference as specified in 40 CFR 260.11)” shall be deleted. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3433, 65-3437, and 65-3439; effective April 29, 2011.)

28-31-270a. Hazardous waste permits; petition to be granted an exception to the prohibition against underground burial of hazardous waste. This regulation shall apply to each person that wants to apply for a permit for the underground burial of hazardous waste. For the purposes of this regulation, this person shall be called a “potential applicant.”

- (a) Exception petition.** Before applying for a permit according to the requirements of K.A.R. 28-31-124 through 28-31-124e and 28-31-270, each potential applicant shall submit to the secretary a petition for an exception to the prohibition against the underground burial of hazardous waste, as specified in K.S.A. 65-3458 and amendments thereto.
- (b) Contents of the exception petition.** Each exception petition shall include the following items:
 - (1) A complete chemical and physical analysis of the waste;
 - (2) a list and description of all technologically feasible methods that could be considered to treat, store, or dispose of the waste;
 - (3) for each method described in paragraph (b)(2), an economic analysis based upon a 30-year time period.

The analysis shall determine the costs associated with treating, storing, disposing of, and monitoring the waste during this time period; and

(4) a demonstration that underground burial is the only economically reasonable or technologically feasible methodology for the disposal of that specific hazardous waste.

(c) Review and public notice for exception petitions. The review and public notice shall be conducted according to the following requirements:

(1) The potential applicant shall submit the exception petition to the department. If the exception petition is not complete, the potential applicant shall be notified of the specific deficiencies by the department.

(2) Upon receipt of a complete exception petition, a public notice shall be published by the department once each week for three consecutive weeks according to the following requirements:

(A) The notice shall be published in the following publications:

(i) The Kansas register; and

(ii) the official county newspaper of the county in which the proposed underground burial would occur or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101 and amendments thereto.

(B) The public notice shall include the following information:

(i) The name of the potential applicant;

(ii) a description of the specific waste;

(iii) a description of the proposed disposal methods;

(iv) a map indicating the location of the proposed underground burial;

(v) the address of the location where the exception petition and related documents can be reviewed;

(vi) the address of the location where copies of the exception petition and related documents can be obtained;

(vii) a description of the procedure by which the exception petition will be reviewed; and

(viii) the date and location of the public hearing.

(3) A copy of the public notice shall be transmitted by the department to the clerk of each city that is located within three miles of the proposed underground burial site.

(d) Public hearing and public comment period. The public hearing and public comment period shall be conducted according to the following requirements:

(1) The public hearing shall be conducted in the same county as that of the proposed underground burial facility.

(2) The public hearing shall be scheduled no earlier than 30 days after the date of the first public notice.

(3) A hearing officer shall be designated by the secretary.

(4) At the hearing, any person may submit oral comments, written comments, or data concerning the exception petition. Reasonable limits may be set by the hearing officer on the time allowed for oral statements, and the submission of statements in writing may be required by the hearing officer.

(5) The public comment period shall end no earlier than the close of the public hearing. The hearing officer may extend the public comment period at the hearing.

(6) A recording or written transcript of the hearing shall be made available to the public by the department upon request.

(7) A report shall be submitted by the hearing officer to the secretary detailing all written and oral comments submitted during the public comment period. The hearing officer may also recommend findings and determinations.

(e) Approval or denial of the exception petition. The following procedures shall be followed by the secretary and the department:

(1) If the secretary determines, based on the criteria specified in K.S.A. 65-3458 and amendments thereto,

that the exception petition should be approved, an order shall be issued by the secretary. The order may require conditions that the secretary deems necessary to protect public health and safety and the environment.

- (2) If the secretary determines that there is not sufficient evidence to approve the exception petition, the potential applicant shall be notified by the department of the reasons why the exception petition is denied.
- (3) A public notice of the final decision to approve or deny the exception petition shall be published by the department in the following publications:
 - (A) The Kansas register; and
 - (B) the official county newspaper of the county in which the proposed underground burial would occur or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101 and amendments thereto.
- (4) A copy of the final decision shall be transmitted by the department to the clerk of each city that is located within three miles of the proposed underground burial site. (Authorized by K.S.A. 65-3431; implementing K.S.A. 2010 Supp. 65-3458; effective April 29, 2011.)

28-31-273. Universal waste; adoption and modification of federal regulations.

- (a) **Adoption.** The provisions of 40 CFR part 273, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:
- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s; and
 - (2) the exclusions from adoption listed in subsection (b).
- (b) **Exclusions.** The following portions of 40 CFR part 273 shall be excluded from adoption:
- (1) All comments and all notes; and
 - (2) subpart G. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-279. Used oil; adoption and modification of federal regulations.

- (a) **Adoption.** The provisions of 40 CFR part 279, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:
- (1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;
 - (2) the exclusions from adoption listed in subsection (b); and
 - (3) the modifications listed in subsection (c).
- (b) **Exclusions.** The following portions of 40 CFR part 279 shall be excluded from adoption:
- (1) All comments and all notes; and
 - (2) 40 CFR 279.82.
- (c) **Modifications.** The following modifications shall be made to 40 CFR part 279:
- (1) In 40 CFR 279.10(a), the text “EPA presumes” shall be replaced with “EPA and the department presume.”
 - (2) In 40 CFR 279.12(b), the text “, except when such activity takes place in one of the states listed in § 279.82(c)” shall be deleted.
 - (3) The text “and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located” shall be deleted in the following locations:
 - (A) 40 CFR 279.22(d);
 - (B) 40 CFR 279.45(h);
 - (C) 40 CFR 279.54(g); and
 - (D) 40 CFR 279.64(g).
 - (4) The parenthetical text in paragraph (b)(1) concerning the “RCRA/Superfund Hotline” and the sentence

in paragraph (b)(2) concerning the “RCRA/Superfund Hotline” shall be deleted in the following sections:

- (A) 40 CFR 279.42;
- (B) 40 CFR 279.51; and
- (C) 40 CFR 279.62.

- (5) In 40 CFR 279.81(b), the phrase “parts 257 and 258 of this chapter” shall be replaced with “K.S.A. 65-3401 et seq. and article 29.” (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

28-31-279a. Used oil; additional state prohibitions and requirements.

(a) Prohibitions.

- (1) No person shall dispose of used oil on or into any of the following:

- (A) Sewers;
- (B) storm drainage systems;
- (C) surface water;
- (D) groundwater; or
- (E) the ground.

- (2) No person shall apply used oil as any of the following:

- (A) A coating;
- (B) a sealant;
- (C) a dust suppressant;
- (D) a pesticide carrier; or
- (E) any other similar application.

- (b) Transporter registration and insurance.** Each transporter of used oil shall comply with the requirements of K.A.R. 28-31-6. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)