



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R07-RCRA-2013-0447; FRL-9833-7]

**State of Kansas; Authorization of State Hazardous Waste
Management Program**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Kansas has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because EPA believes this action is not controversial and does not expect comments that oppose it. Unless EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Kansas' changes to its hazardous waste program will take effect.

DATES: This regulation is effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], unless EPA receives adverse written comment by the close of business [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. If EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Follow the on-line instructions for submitting comments.

2. *Email:* haugen.lisa@epa.gov.

3. *Mail:* Lisa Haugen, Environmental Protection Agency, Region 7, Enforcement Coordination Office, 11201 Renner Boulevard, Lenexa, Kansas 66219.

4. *Hand Delivery or Courier:* Deliver your comments to Lisa Haugen, Environmental Protection Agency, Region 7, Enforcement Coordination Office, 11201 Renner Boulevard, Lenexa, Kansas 66219. Such deliveries are only accepted during the Regional Office's normal hours of operation of Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R07-RCRA-2013-0447. EPA's policy is that all comments received will be included in the public docket without change, including personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or email. The Federal <http://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made

available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>).

You can view and copy the documents that form the basis for this authorization and codification and associated publicly available materials from 8:00 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, phone number: (913) 551-7877. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lisa Haugen, Region 7, Enforcement Coordination Office, 11201 Renner Boulevard, Lenexa, Kansas 66219, Phone number: (913) 551-7877, and Email address: haugen.lisa@epa.gov .

SUPPLEMENTARY INFORMATION:

Authorization of State-Initiated Changes

A. Why are revisions to State programs necessary?

States which have received Final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal program changes, the States must change their programs and ask the EPA to authorize the changes. Changes to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. States can also initiate their own changes to their hazardous waste program and these changes must then be authorized.

B. What decisions have we made in this rule?

EPA concludes that Kansas' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, EPA grants Kansas final authorization to operate its hazardous waste program with

the changes described in the authorization application. Kansas has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian Country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Kansas, including issuing permits, until Kansas is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in Kansas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Kansas has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Do inspections, and require monitoring, tests, analyses, or reports; and (2) Enforce

RCRA requirements and suspend or revoke permits. This action does not impose additional requirements on the regulated community because the statutes and regulations for which Kansas is being authorized by this direct action are already effective and are not changed by this action.

D. Why wasn't there a proposed rule before this rule?

EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to

comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we may withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn.

F. For what has Kansas previously been authorized?

Kansas initially received final authorization on October 17, 1985 (50 FR 40377), to implement its Base Hazardous Waste Management program. Kansas received authorization for revisions to its program on April 24, 1990 (55 FR 17273), effective June 25, 1990; June 14, 1994, (59 FR 30528), effective August 15, 1994; July 29, 1996 (61 FR 39353), effective September 27, 1996.

G. What changes are we authorizing with this action?

The State has made amendments to the provisions listed in the table which follows. These State-initiated changes satisfy the requirements of 40 CFR 271.21(a). These amendments clarify the State's regulations and make the State's regulations more internally consistent. The State's laws and regulations, amended by these provisions, provide authority which remains equivalent

to, no less stringent than, and not broader in scope than the Federal laws and regulations. We are granting Kansas final authorization to carry out the following provisions of the

State’s program in lieu of the Federal program. These State-initiated changes satisfy the requirements of 40 CFR 271.21(a). These provisions are analogous to the indicated RCRA statutory provisions or RCRA regulations found at 40 CFR as of July 1, 2006. The Kansas provisions are from the Kansas Administrative Regulations, Article 31 - Hazardous Waste Management, effective May 10, 2013.

The State’s authorization package includes an updated Program Description, a General Memorandum of Agreement (MOA), and a Corrective Action MOA, between the EPA and the Kansas Department of Health and Environment (KDHE), a copy of the Kansas State Statutes Annotated, Chapter 65 - Public Health, Article 34 - Hazardous Waste, a copy of the KDHE Administrative Regulations, Article 31 - Hazardous Waste Management effective on May 10, 2013, and an Attorney General’s Statement.

| State Requirement KAR | Analogous Federal Requirement 40 CFR |
|--|---|
| 28-31-124a(a) & (c)-(e) | 124.3(a) |
| 28-31-124b(a)-(d) | 124.5(a), (c)-(d) |
| 28-31-124c(a) | 124.6(a) |
| 28-31-124c(c)(1) | 124.6(d)(1) – (d)(4)(i) |
| 28-31-124c(c)(2)-(5) and 28-31-124c(d)-(f) | 124.6(e) |
| 28-31-124d intro. – 28-31-124d(b) | 124.8(a) |
| 28-31-124d(c)(1)-(2) | 124.8(b) intro. – (b)(2) |
| 28-31-124d(c)(3)-(5) | 124.8(b)(5) – (b)(7) |
| 28-31-124e intro. – 28-31-124e(a) | 124.10(a)(1)-(a)(1)(iii) |
| 28-31-124e(b)-(c) | 124.10(a)(2)-(3) |
| 28-124e(d) | 124.10(b), except last sentence |
| 28-31-124e(e) | 124.10(c) |

| State Requirement KAR | Analogous Federal Requirement 40 CFR |
|---|--|
| 28-31-124e(f) intro. – 28-31-124e(f)(9) | 124.10(d)(1) – (d)(1)(vi) |
| 28-31-124e(f)(10) | 124.10(d)(1)(x) |
| 28-31-124e(g) | 124.10(d)(2) intro. – (d)(2)(iii) |
| 28-31-124e(h) | 124.10(e) |
| 28-31-124(a) and 28-31-124(c)(3) | 124.11 |
| 28-31-124(a), 28-31-124(c)(4), and 28-31-124(b)(1) | 124.12 |
| 28-31-124(a) and 28-31-124(c)(5) | 124.13 |
| 28-31-124(a), and 28-31-124(c)(6)-(7) | 124.14 |
| 28-31-124(a) and 28-31-124(c)(8) | 124.15 |
| 28-31-124(a), 28-31-124(c)(9)-(12), and 28-31-124(b) | 124.16 |
| 28-31-124(a), and 28-31-124(c)(13)-(14) | 124.17 |
| 28-31-124(a), 28-31-124(c)(15) | 124.31 – 124.33 |
| 28-31-124(a), 28-31-124(b)(4)-(5), 28-31-124(c)(16), 28-31-124(e)(18) | 124.200 – 124.214 |
| 28-31-260(a), 28-31-260(b)(1), and 28-31-260(c)(1) | 260.1 -260.3 |
| 28-31-260(a), and 28-31-260(c)(2)(A)-(E) | 260.10 |
| 28-31-260b | 260.11 |
| 28-31-260(a) and 28-31-260(b)(6)-(7) | 260.30 – 260.33, 260.40-260.41, and Appendix I |
| 28-31-260(d) required in the event of a conflict between federal and state definitions | No analog in Part 260 |
| 28-31-261(a), 28-31-261(c)(2), 28-31-261(c)(3)(A)-(C), 28-31-261(c)(4), and 28-31-261(b)(2) | 261.1 – 261.4(e)(3)(iii) |
| 28-31-261(a) | 261.5 except 261.5(a), 261.5(e)(1), 261.5(f)(3), 261.5(g), and 261.5(g)(2)-(3) |
| 28-31-261(a) and 28-31-261(b)(3) | 261.6 – 261.11 |
| 28-31-261(a), 28-31-261(c)(10)-(12) | 261.20-261.24 |
| 28-31-261(a) and 28-31-261(c)(15) | 261.30 – 261.33 and (e) 261.35, and 261.38 except 261.33(e)-(f), |
| 28-31-261(a) and 28-31-261(c)(16) | Appendices I and VII – VIII |
| 28-31-262(a), 28-31-262(c)(1), and 28-31-262(b)(1) | 262.10 – 12 except 262.11(c)(1) |
| 28-31-262(a) | 262.20, 262.22-262.23 and 262.27 except 262.27(b) |
| 28-31-262(a), 28-31-262(c)(5)-(6) and (8), 28-31-262(b)(3) | 262.30 – 262.34 except 262.34(c)(1)(ii) and 262.34(g)-(i) |
| 28-31-262(a) | 262.40—43 except 262.42(b) |
| 28-31-262(a) | 262.70 |
| 28-31-262(b)(5) | 262.90 and 262-100-262-108 |
| 28-31-262(a) | Appendix to Part 262 |

| State Requirement KAR | Analogous Federal Requirement 40 CFR |
|---|--|
| 28-31-263(a) and 28-31-263(c)(1) | 263.10 |
| 28-31-263(a) | 263.20-22 except 263.20(h) |
| 28-31-263(a) | 263.30-263.31 |
| 28-31-264(a), 28-31-264(b)(2) and 28-31-264(c)(2) | 264.1 – 264.4 |
| 28-31-264(a), 28-31-264(b)(3) and 28-31-264(c)(3) | 264.10-264.19 |
| 28-31-264(a) | 264.30 – 264.37, 264.50 – 264.56 and 264.70 – 264.77 |
| 28-31-264(a) | 264.90 – 264.101 except 264.90(b)(4) |
| 28-31-264(a), and 28-31-264(c)(4)-(5) | 264.110 – 264.120 |
| 28-31-264(a), 28-31-264(c)(6)(A)-(D), 28-31-264(c)(8)-(9), 28-31-264(c)(11)-(17), 28-31-264(b)(4) | 264.140 – 264.151 except 264.143(e)(1), 264.144(b), 264.144(c), 264.145(e)(1), 264.147(a)(1)(ii), 264.147(b)(1)(ii), and 264.151(i)-(j) |
| 28-31-264(a) and 28-31-264(c)(18) | 264.170-264.179 |
| 28-31-264(a), 28-31-264(c)(19)-(20), and 28-31-264(b)(5) | 264.190 -200 |
| 28-31-264(a), 28-31-264(b)(10), 28-31-264(c)(21(A)-(B), 28-31-264(c)(22)-(23), 28-31-264(c)(24)(A)-(B) and 28-31-264(c)(25) | 264.220-264.232, 264.50-264.59, 264.270 – 264.283, 264.300 – 264.304, 264.309-264.351, 264.550 – 264.555, 264.570-264.575 except 264.226(c), 264.227(d)(2)(ii), 264.280(b) |
| 28-31-264(a), 28-31-264(c)(26)-(28), 28-31-264(b)(8)-(9) | 264.1030 – 264.1036, 264.1050 264.264.1065, 264.1080-264.1090, 264.1100-1102, 264.1200-264.1202 |
| 28-31-264(c)(26) | 264.1060(b)(3) |
| 28-31-264(a) | Appendices I, IV – VI, and IX |
| 28-31-265(a), 28-31-265(c)(2)-(3) and 28-31-265(b)(2) | 265.1 and 265.4 |
| 28-31-265(a), 28-31-265(c)(4), 28-31-265(b)(3) | 265.10 – 265.19, 265.30 – 265.37, 265.50 – 265.56, and 265.70 – 265.77 |
| 28-31-265(a) | 265.90 – 265.94 except 265.90(c), 265.90(d)(1), 265.90(e), and 265.93(d)(2) |

| <p align="center">State Requirement KAR</p> | <p align="center">Analogous Federal Requirement 40 CFR</p> |
|---|---|
| <p>28-31-265(a), 28-31-265(c)(6)-(10), 28-31-265(c)(13), 28-31-265(b)(5)-(9), 28-31-265(c), 28-31-265(c)(18)-(22)</p> | <p>265.110 – 265.121, 265.140-265.150, 265.170-265.178 265.190 – 265.202, 265.220-265.231, 265.250-265.260, 265.270 – 265.282, 265.300 – 265.316, 265.340 – 265.352, 265.370 – 265.383, 265.400 – 265.406, 265.430, 265.440 – 265.445, 265.1030-265.1035, 265.1050-265.1064, 265.1080-265.1090, 265.1100-265.1101, 265.1200 – 265.1202 except 265.144(b), 265.144(c), 265.201, 265.201(a)-(d) and (f)-(h), 265.221(g), 265.280(e)</p> |
| <p>28-31-265(a)</p> | <p>Appendices I, III – VI</p> |
| <p>28-31-266(a), 28-31-266(c)(2)-(5), 28-31-266(b)</p> | <p>266.20 – 266.23, 266.70, 266.80, 266.100-266.102, 266.104 – 266.112, 266.200 – 266.206, 266.210, 266.220-266.360, 266.400 – 266.422</p> |
| <p>28-31-266(a)</p> | <p>Appendices I – IX and XI – XIII</p> |
| <p>28-31-267(a), 28-31-267(c)(2)-(4), 28-31-267(b)(2)</p> | <p>267.1 – 267.3, 267.10 – 267.18, 267.30-267.36, 267.50 – 267.58, 267.70 – 267.76, 267.90 –267.101, 267.110 – 267.117, 267.140 – 267.148, 267.150-267.151, 267.170 – 267.177, 267.190 – 267.204 and 267.1100 – 267.1108</p> |
| <p>28-31-268(a), 28-31-268(c)(4)</p> | <p>268.1 – 268.7 and 268.9 except 268.1(e)(1), 268.5-6, 268.7(a)(5), 268.7(a)(9)(iii). 268.7(a)(10)</p> |
| <p>28-31-268(a), 28-31-268(c)(8)-(11), 28-31-268(b)(3)</p> | <p>268.14, 268.20 – 268.50 except 268.42(b) and 268.44</p> |
| <p>28-31-268(a)</p> | <p>Appendices III – IV, VI-VIII, XI</p> |
| <p>28-31-270(a), 28-31-270(b)(1), 28-31-270(c)(1)</p> | <p>270.1</p> |
| <p>28-31-270(a) , 28-31-270(c)(2)(A)(i)-(ii), 28-31-270(c)(2)(B)-(E)</p> | <p>270.2 except “Corrective action management unit,” Emergency Permit,” “Permit,” “Remedial action plan,” “Standardized permit”</p> |
| <p>28-31-270(b)(4)</p> | <p>270.3</p> |
| <p>28-31-270(a)</p> | <p>270.4 – 270.5</p> |
| <p>28-31-260b(b)(1)</p> | <p>270.6</p> |

| State Requirement KAR | Analogous Federal Requirement 40 CFR |
|--|---|
| 28-31-270(a), 28-31-270(c)(4)-(17), 28-31-270(c)(19)-(24), 28-31-270(b)(4)-(8) | 270.10 – 270.33, 270-40 – 270.43, 270.50 - 270.5, 270-60 – 270.68, 270.70 – 270.73, 270.79 – 270.110, 270.115, 270.120 – 270.150, 270.155-270.190, 270.195, 270.200 – 270.230, 270.235, 270.250, 270.255, 270.260-270.305 , 270.310, 270.315-270.320 except 270.10(a) and 270.17(d) |
| 28-31-273(a) | 273.1 – 273.9, 273.10 – 273.20, 273.30 – 273.40, 273.50 – 273.56, 273.60 – 273.62 and 273.70 except 273.8(a)(2) |
| 28-31-273(b)(4) | 273.80 – 273.81 |
| 28-31-279(a), 28-31-279(c)(1)-(2), 28-31-279(c)(3)(A)-(D), 28-31-279(c)(4)(A)-(C), 28-31-279(c)(5) | 279.1, 279.10-279.12, 279.20 – 279.24, 279.30 – 279.32, 279.40-279.47, 279.50 - 279.67, 279.70-279.75 279.80-279.81 except 279.10(b)(3) |
| 28-31-279(a) | 279.60 -279.67 except 279.62(b)(1)-(2) and 279.64(g) |

H. *Where are the revised State rules different from the Federal rules?*

1. Rules for which Kansas is not seeking authorization.
 - a) Kansas is not seeking authorization for, and has appropriately left authority with EPA, for the majority of the non-delegable Federal rules that address specific functions for which EPA must retain authority, including the Federal requirements at 40 CFR 261.39(a)(5), 262.21, 262 Subparts E, F and H, 268.5, 268.6, 268.42(b), 268.44(a) – (g) and 270.3. However, Kansas has adopted the provisions at 40 CFR 263.20(g)(4), 264.71(a)(3), 265.71(a)(3), 268.5, 268.6 and 268.42(b). EPA will continue to implement all of

the above mentioned requirements directly through the RCRA regulations.

b) Kansas is not seeking authorization for the National Environmental Performance Track Program (April 22, 2004, 69 FR 21737); as amended October 25, 2004, 69 FR 62217; Revision Checklist 204). On May 14, 2009, EPA terminated the National Environmental Performance Track Program.

c) Kansas has not adopted the optional provisions at 40 CFR 260.20 - 22, which are applicable to the delisting of a waste, and the provision at 40 CFR 260.23 which addresses petitions to add a universal waste. These optional provisions were not promulgated under HSWA. Therefore, the provisions for delisting a waste, or to petition to add a universal waste, are not applicable in Kansas.

d) Kansas has not adopted the provisions at 266.103 which are applicable to interim status burners. There are currently no such facilities in the State, nor does the State expect there will be in the future. If at any time a facility in the State of Kansas becomes subject to 40 CFR 266.103, the Federal government will administer the applicable regulations.

e) Kansas did not adopt the provision at 270.42(1) which

requires a list of all approved permits and permit modifications be maintained and a notification, published annually, announcing an updated list is available for review. The State and EPA have agreed to place this requirement in the Memorandum of Agreement.

2. More stringent Kansas rules.

The Kansas hazardous waste program contains some provisions that are more stringent than is required by the RCRA program as codified in the July 1, 2006, edition of the title 40 of the Code of Federal Regulations. These more stringent provisions are being recognized as a part of the Federally-authorized program.

The specific more stringent provisions are also noted in Kansas' authorization application. They include, but are not limited to, the following:

Kansas Generator Regulations - Generally applicable to all generator classifications

a) At 28-31-261(c)(6) generators who generate 1 kg or more of acutely hazardous waste in a calendar month are considered large quantity generators (LQGs) for that waste and the waste becomes subject to the LQG requirements.

Kansas is more stringent because under the federal regulations, generators that generate exactly 1 kg of acute hazardous waste are not subject to the LQG requirements.

This more stringent requirement is also applicable to the accumulation of acutely hazardous waste.

b) In addition, at 28-31-261(c)(6) Kansas replaces the phrases "that acute hazardous waste" and "those accumulated wastes" with "the generator's hazardous waste and acute hazardous waste." This requires all generator's waste to become subject to full regulation if a generator exceeds the limits of 40 CFR 261.5(e), (f)(2) or (g)(2), not just the specific waste that exceeded the limits.

c) The federal regulations at 40 CFR 265.201(a)-(d) and (f)-(h) are only applicable to generators of between 100 and 1,000 kg/mo. Kansas modifies these provisions at 28-31-265(c)(17)(A)-(D) making these provisions applicable to generators who accumulate more than 25kg, which makes the State more stringent.

d) At 28-31-4 Kansas requires the information on the originally submitted RCRA notification form be changed if there is a change in the information.

e) At 28-31-262(c)(7) Kansas requires labels to read "Hazardous Waste." The federal regulations allow other words which identify the contents.

f) At 28-31-262(b)(3) Kansas does not adopt the special requirements applicable to F006 waste at 40 CFR 262.34(g) - (i) and is therefore more stringent.

Kansas Generator Classifications

Kansas establishes four (4) generator categories as opposed to the three (3) established by the Federal regulations. The table below illustrates the differences between the State's generator categories and those in the Federal provisions.

| Generator size (kg of HW/month) | Kansas Generator Classification | EPA Generator Classification |
|--|---|---|
| <25 | Conditionally exempt small quantity generator | Conditionally exempt small quantity generator |
| >=25 but <100 | Kansas small quantity generator | Small quantity generator |
| >100 but < 1,000 | Small quantity generator | Small quantity generator |
| >= 1,000 | Large quantity generator | Large quantity generator |

Some Federal rules which, when applied to the State specific generator classifications, make the State rules more stringent. Kansas has also promulgated rules which are specific to the State's generator classifications, which EPA has determined are also more stringent than the RCRA program. These include, but are not limited to the following:

Kansas Generator Classification - Conditionally exempt small quantity generator (CESQG)

The following table lists regulations where there is a state requirement and with a direct analogous Federal requirement.

| State Requirement KAR | Analogous Federal Requirement 40 CFR |
|----------------------------------|---|
| 28-31-261(c)(5) | 261.5(a) |
| 28-31-261(c)(7) | 261.5(g) |
| 28-31-261(c)(9) | 261.5(g)(3) |
| 28-31-261(c)(13) and (14) | 261.33(e) and (f) |
| 28-31-261a | No analog in federal regulations |
| 28-31-262a(f)(2)(C)(i) | 262 Subpart C |
| 28-31-262a(f)(2)(C)(ii) | 262.34 |
| 28-31-262a(f)(2)(C)(iii) | 265.15(d) |
| 28-31-262a(f)(2)(C)(iv) | 265 Subpart I |
| 28-31-262a(f)(2)(C)(v) | 265.201 |
| 28-31-273(a) | 273.8(a)(2) related |
| 28-31-279(a) | 279.10(b)(3) related |

*Additional rules applicable to Kansas Generator Status -
CESQG*

- a) At 28-31-262a(f) (1) Kansas prohibits conditionally exempt small quantity generators from disposing of their hazardous waste in a construction and demolition landfill in Kansas. Construction and demolition landfills in Kansas are not subject to the provisions of 40 CFR 257.5 thru 257.30 and therefore cannot accept CESQG waste.
- b) At 28-31-262a(f) (2) (A) Kansas requires CESQGs that accumulate 25k (55 lbs) or more of hazardous waste to inspect areas where one or more hazardous waste containers are stored, on a monthly basis.

c) At 28-31-262a(f) (2) (B) (i) and (ii) Kansas limits a CESQG that sends 25k or more of hazardous waste at any one time to disposal at state permitted Kansas household hazardous waste sites, or a disposal facility meeting certain requirements in 40 CFR 261.5(g).

Kansas Generator Classification -Kansas small quantity generator (KSQG)

The following table lists regulations where there is a state requirement and with a direct analogous Federal requirement.

| State Requirement KAR | Analogous Federal Requirement 40 CFR |
|----------------------------------|---|
| 28-31-262(c)(4) | 262.27(b) |
| 28-31-262(c)(9) | 262.42(b) |
| 28-31-262(c)(11)(A) and (B) | 262.44 |
| 28-31-262a(e)(3)(A), (B) and (C) | 262 Subparts A, B, and C |
| 28-31-262a(e)(3)(D) | 262.34 |
| 28-31-262a(e)(3)(E) | 262.44 |
| 28-31-262a(e)(3)(G) | 265.15(d) |
| 28-31-262a(e)(3)(H) | 265 Subpart C |
| 28-31-262a(e)(3)(I) | 265 Subpart I |
| 28-31-262a(e)(3)(J) | 265.201 |
| 28-31-262a(e)(3)(K) | 268.7(a)(5) |
| 28-31-268(c)(2) and (5) | 268.1(e)(1); 268.7(a)(5); 268.7(a)(10) |

*Additional rules applicable to Kansas Generator Status -
KSQG*

a) At 28-31-262a(e) (1) Kansas requires KSQGs to submit a

waste minimization certification.

b) At 28-31-262a(e) (2) Kansas requires KSQGs to inspect areas where one or more hazardous waste containers are stored, on a monthly basis.

c) At 28-31-262a(e) (4) Kansas requires KSQGs to provide training no more than six months after an employee is hired or transferred to a new position, repeat the training annually, record the employee name, date of training, and topics covered and keep records for at least three years from the date of the training. Personnel training records may accompany personnel transferred within the same company.

d) At 28-31-262a(e) (5) Kansas requires any KSQG that accumulates more than 1,000k (2,200 lbs) of hazardous waste to comply with all requirements for small quantity generators.

Kansas Generator Status - Small Quantity Generator (SQG)

a) At 28-31-261(c) (8) Kansas replaces "generators of between 100 kg and 1000 kg of hazardous waste" with "small quantity generators." Kansas is more stringent because the generation limit for CESQGs is lower <25 kg rather than < 100 kg. Also, generators of ≥ 25 kg but ≤ 100 kg per

calendar month are subject to requirements more stringent than the 40 CFR 261.5 requirements. See also 28-31-262a(f).

b) At 28-31-262a(d) (1) Kansas requires small quantity generators to provide training no more than six months after an employee is hired or transferred to a new position, repeat the training annually, record the employee name, date of training, and topics covered and keep records for at least three years from the date of the training. Personnel training records may accompany personnel transferred within the same company.

c) At 28-31-262a(d) (2) (A) Kansas subjects small quantity generators to the inspection documentation and record keeping requirements of 40 CFR 265.15(d) for both containers and tanks.

d) At 28-31-262a(d) (2) (B) and (C) Kansas subjects small quantity generators to the closure requirements of 40 CFR 265.11(a) and (B) and 265.114.

Kansas Generator Status - Large Quantity Generator (LQG)

At 28-31-262a(c) Kansas requires large quantity generators to document and keep records of weekly inspections of containers and hazardous waste storage areas as well as daily inspections of tanks in accordance with 40

CFR 265.15(d).

*Additional Kansas regulations deemed to be more stringent
by EPA*

a) At 28-31-263(c)(2) Kansas requires transporters of KSQG waste to comply with 263.20(1)-(4), which under the Federal program are only applicable to SQGs.

b) At 28-31-264(c)(9)-(10) and 28-31-265(c)(11)-(12) Kansas requires owners/operators to update the post-closure cost estimate during the post-closure period as well as the active life of the facility.

c) At 28-31-264a(a)(1) establishes the definitions for state-specific terms applicable to the state's additional requirements for financial assurance required under 40 CFR 264.143, 264.145 and 264.147.

d) At 28-31-264a(a)(2)(B) Kansas requires an insurer to have a current minimum rating in the secure or investment grade category by the A.M. Best insurance rating agency and not be a "captive insurance company." The term "captive insurance company" is defined at 28-31-264a(a)(1)(A).

e) At 28-31-264a(a)(2)(C) Kansas requires a surety company to have a current minimum rating in the secure or investment grade category by the A.M. Best insurance rating agency and must be licensed in Kansas.

f) At 28-31-264a(b) Kansas applies the requirements found at 40 CFR 264.119(b) to active facilities.

g) At 28-31-264a(c) (1) Kansas outlines the specific requirements to be included in the restrictive covenant.

h) At 28-31-264a(c) (2) Kansas outlines the specific requirements for easements.

i) At 28-31-264a(c) (3) Kansas requires that each offer or contract for the conveyance of easement, title, or other interest to the property shall disclose all terms and conditions and provisions for care and subsequent land use. Provisions for maintaining waste containment and monitoring systems are required.

j) At 28-31-264a(c) (4) Kansas requires that all covenants, easements, and other documents be permanent unless there is an agreement between the property owner and the Secretary of State to remove it.

k) At 28-31-264a(d) Kansas requires that operators of hazardous waste container or tank storage facilities mark all containers and tanks in accordance with the requirements of 40 CFR 262.34(a) (2) and (3).

- l) At 28-31-264a(g) Kansas requires all hazardous waste injection wells to comply with the Kansas Underground Injection Well regulations.
- m) At 28-31-265a Kansas makes these additional requirements for TSDs applicable to interim status facilities.
- n) At 28-31-267a Kansas makes these additional requirements for TSDs applicable to facilities operating under a standardized permit.
- o) At 28-31-270(c) (3) Kansas requires persons applying for a permit to dispose of hazardous waste to first petition the secretary for an exception to the State's prohibition against underground land burial.
- p) At 28-31-279(b) (2) Kansas specifically prohibits the use of used oil as a dust suppressant.
- q) At 28-31-279(a) (1) Kansas specifically prohibits the disposal of used oil on or into sewers; storm drainage systems; surface water; groundwater; or the ground.
- r) At 28-31-279a(a) (2) Kansas specifically prohibits the application of used oil as a coating; a sealant; a dust suppressant; pesticide carrier; or any other similar application.

3. Broader in Scope.

EPA considers the following State requirements to be beyond the scope of the Federal program, and therefore EPA is not authorizing these requirements and cannot enforce them. Entities must comply with these requirements in accordance with State law, but they are not RCRA requirements. The specific broader in scope provisions include, but are not limited to, the following:

a) The statute at KSA 65-3433(b)(1) requires the State to provide notice of application in a major newspaper in the county for which a new off-site facility application has been received. This notice must be published for three consecutive weeks and a copy of the notice sent to the city clerk of any city located within three miles of the proposed facility.

b) At KSA 65-3433(c) and KSA 65-3438 Kansas requires the Secretary to make a final decision on the permit application within 240 days. There is not a permit decision deadline in the Federal program, making this provision broader in scope. KSA 65-3433(c) also states that, once a permit has been issued by the Secretary, "no local ordinance, permit or other requirements may prohibit the construction or modification of such a facility or restrict

transportation to the facility." Because the Federal program does not include language concerning local prohibitions, this provision is broader in scope.

c) At KSA 65-3435 Kansas prohibits the Secretary from approving an application "unless applicant has fee simple title to the property where the facility will be located, free of any liens, easements, covenants, or any other encumbrances to the title." Because the Federal program does not have any requirements concerning ownership of the land, this provision is broader in scope.

d) At KSA 65-3437(d) Kansas requires the Department to inspect the location of the proposed facility. An inspection report must be filed with the Secretary before issuing the permit and made available for public review. Because the Federal program does not have an inspection requirement, this provision is broader in scope.

e) At 28-31-124a(b) Kansas requires a disclosure statement from a permit applicant to obtain the information necessary to conduct a background investigation.

f) At 28-31-124c(b) the state has chosen to include a regulation which outlines the basis of a permit application denial by the secretary. The federal regulations speak to

issuing a tentative decision to deny. The Kansas regulation states only that if the permit application does not meet the regulatory requirements, it will be denied.

g) At 28-31-260(c)(2)(D) Kansas has modified the definition of "qualified ground-water scientist" to require such to be a licensed geologist or a professional engineer. Kansas also requires training in corrective action.

h) At 28-31-260a(a)(6) and (7) Kansas defines the terms "Kansas licensed geologist" and "Kansas professional engineer" and substitutes these terms for the Federal terms "qualified geologist or geotechnical engineer;" "qualified engineer;" and/or "qualified soil scientist."

i) At 28-31-262(c)(2) Kansas requires that the sample be sent to a laboratory certified by the department for the hazardous waste analysis.

j) At 28-31-262a(a)(2) Kansas requires SQGs and LQGs shipping waste to use only transporters who are properly registered with the department. The federal program does not require transporter registration so the State is broader in scope.

k) At 28-31-262a(b) Kansas requires SQGs and KSQGs to submit a report to the secretary by March 1 each year that

details the total quantities of waste produced during the previous calendar year. The State also requires that LQGs, SQGs and KSQGs submit their annual monitoring fee with the report, adhere to a schedule for submission, and keep the report for three years. These provisions are broader in scope as there are no analogous requirements in the Federal program.

l) Kansas requires entities to pay annual fees. The regulations regarding these fees can be found at 28-31-262a(b) (2); 28-31-10(a) - (f); and 28-31-10a.

m) At 28-31-263a(a) Kansas exempts KSQGs and CESQGs that meet certain conditions from the transporter requirements.

n) At 28-31-263a(c) Kansas requires transporters to ensure that the generators and facilities from whom they pick up or to whom they deliver hazardous waste, have provided proper notification to the department.

o) At 28-31-263(g) Kansas requires transporter use routes that minimize risk to public health and that are preferred routes.

p) At 28-31-264(c) (7) (A) and (B), and 28-31-264(c) (7) Kansas requires that the insurer must be licensed to or eligible to provide insurance in Kansas.

q) At 28-31-264a(c)(4) Kansas requires the owner of the property to pay all recording fees. There is no analogous counterpart in the Federal program, so the State is broader in scope.

r) At 28-31-264a(a)(2)(A) Kansas requires the bank or trust company have authority to issue letters of credit in Kansas or to act as trustee for the facility in Kansas.

s) At 28-31-264a(a)(3) Kansas requires that, if the financial assurance is a "purchased" financial instrument, the financial institution which provides the "purchased" financial instrument must be unrelated to both the owner and the operator of the facility.

t) At 28-31-264a(a)(4) Kansas requires that each person required to submit information under one or more of the following requirements must also submit a copy of the most recent corporate annual report: 40 CFR 264.143(f)(3); 264.145(f)(3); 265.143(e)(3); 265.145(e)(3); or 267.143(f)(2).

u) At 28-31-264a(a)(5) Kansas requires corporate reports be submitted for both publicly and privately owned facilities and contain financial statements, notes to the financial statements, and a copy of the independent CPA's report,

including an unqualified opinion.

v) At 28-31-264a(e) Kansas promulgates additional laboratory certification and analysis requirements.

w) At 28-31-264a(f) Kansas applies additional laboratory certification requirements regarding the analysis of hazardous waste to be burned for destruction or energy recovery.

x) At 28-31-6 and 28-31-279a(b) Kansas subjects transporters of hazardous waste and used oil to registration and insurance requirements. There is not an analogous provision in the Federal program therefore the Kansas provision is broader in scope.

y) At 28-31-13 Kansas addresses variances from the State requirements that EPA deems to be more stringent or broader in scope than the Federal program. Because there is no analogous provision in the Federal program, the State is broader in scope.

z) At KS-31-6(a)-(d) Kansas establishes state specific requirements for person(s) transporting hazardous waste or used oil. These requirements include registration with the Secretary, and the securing and maintenance of liability insurance on all vehicles transporting hazardous waste or

used oil in Kansas. There is no analogous counterpart in the Federal program, so the State is broader in scope.

I. Who handles permits after the authorization takes effect?

Kansas will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer and enforce any RCRA and HSWA (Hazardous and Solid Waste Act) permits or portions of permits which it has issued in Kansas prior to the effective date of this authorization until the State incorporates the terms and conditions of the Federal permits into the State RCRA permits. Kansas will immediately assume oversight responsibility on two sites with EPA-issued permits, the Former Lawrence Nitrogen Plant (KSD007128507) and the Former Sunflower Army Ammunition Plant (KS3213820878), through the authority of State-issued orders. EPA will not issue any more new permits, or new portions of permits, for the provisions listed in the table above after the effective date of this authorization. EPA will continue to implement and issue permits for any HSWA requirements for which Kansas is not yet authorized.

J. How does this action affect Indian Country (18 U.S.C. 1151) in Kansas?

Kansas is not authorized to carry out its Hazardous Waste

Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

K. What is codification and is EPA codifying Kansas' Hazardous Waste Program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart R for this authorization of Kansas' program until a later date.

STATUTORY AND EXECUTIVE ORDER REVIEWS

The Office of Management and Budget (OMB) has exempted this rule (RCRA State Authorization) from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011). This rule authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by state law. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Incorporation by reference will not impose any new burdens on small entities.

Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

Executive Order 13132 (64 FR 43255, August 10, 1999), does not apply to this rule because it will not have federalism implications (i.e., substantial direct effects on the States, on the relationship between national government and the states, or on the distribution of power and responsibilities among the various levels of government). This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on

environmental health or safety risks. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use" (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

EPA approves state programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The final rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance

with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

The Congressional Review Act (5 U.S.C. 801 et seq), generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 27, 2013

Mark Hague,
Acting Regional Administrator,
Region 7.