

Fact Sheet

Implementation of RCRA Corrective Action in Kansas

October 2013

Background

On September 20, 2013, the Kansas Department of Health and Environment (KDHE) received authorization from the U.S. Environmental Protection Agency (EPA) to administer the Resource Conservation Recovery Act (RCRA) Corrective Action (CA) program in Kansas. This program was initiated in 1984 with the passage of the Hazardous and Solid Waste Act Amendments to address environmental contamination at facilities that have treated, stored, or disposed of hazardous waste (TSD facilities). Since that time, the Region 7 Office of EPA has administered the RCRA CA program in Kansas with assistance from the Bureau of Waste Management (BWM) and the Bureau of Environmental Remediation (BER), using various state authorities and cooperative agreements. With this authorization KDHE will immediately provide CA oversight in lieu of U.S. EPA at certain TSDs and gradually assume more complete CA responsibility at other facilities in the TSD universe.

General Approach to RCRA CA Implementation under a Kansas Authorized Program

To most effectively utilize limited resources and to take advantage of extensive institutional knowledge within KDHE, various regulatory authorities and associated mechanisms will continue to be used to direct investigations and clean up RCRA CA facilities. These include: (1) BER orders, state cooperative agreements, and consent agreements; and (2) BWM orders, permits, and post-closure plans. Facilities that are currently working with either BWM or BER to implement CA will continue to work with those respective bureaus. EPA will continue to maintain responsibility at certain facilities presently subject to EPA-issued orders and permits that contain CA provisions until a multi-year transition period is completed.

New or Reissued Permits

The CA portion of new or reissued permits for RCRA TSD facilities will be issued under state authority. BWM will take the lead in developing these permits, reviewing all corrective action deliverables, and coordinating all such reviews. BWM will utilize a combination of general, standard, and site-specific permit language in developing corrective action permit conditions. In addition, BWM will be responsible for issuing draft permits, facilitating public participation related to the draft permit, responding to public comments and issuing the final permit. BWM will coordinate with EPA to ensure that appropriate site-specific requirements from previously-issued EPA permits and orders are considered and appropriately integrated into the replacement permit.

EPA Continued Involvement in RCRA CA

Permits previously issued by EPA that contain CA provisions will continue to be under EPA's legal authority until terminated by EPA and reissued by KDHE. The decision to terminate any CA permit, other than by expiration, will be coordinated with KDHE. When necessary because of KDHE's resource limitations, KDHE may request EPA assistance in the development of state-issued permits and/or to provide technical support, providing review and comment on various permit deliverables.

Technical oversight of CA activities under EPA-issued permits will continue to be the responsibility of EPA. However, primary technical oversight of EPA-issued permits where the CA portion of the permit was developed by BWM on behalf of EPA will be the responsibility of BWM.

CA Facilities Subject to Existing State or EPA Orders

KDHE will continue to provide CA oversight at facilities subject to existing state orders. Both BWM and BER will continue to maintain lead oversight responsibility for CA state orders, review CA deliverables, and coordinate all such reviews and public participation activities at their respective facilities. BWM and BER will strive to ensure that CA is implemented in a consistent manner between programs. Both BWM and BER will develop and implement new and amended state orders for corrective action on a site-specific basis. All state CA final orders, whether consensual or unilateral, are subject to appeal pursuant to Kansas' Hazardous Waste Management Laws and Regulations and the Kansas Administrative Procedures Act. KDHE will distribute copies of all signed orders to facilities and EPA. If requested by KDHE and as resources allow, EPA may serve in a technical support role for CA performed under state-issued orders, providing review/comment on facility deliverables and/or agency comment letters to the facility, as appropriate. Any facilities that are presently subject to EPA orders will remain under EPA technical oversight.

General Authorities of KDHE and EPA

EPA and KDHE reserve their respective rights under applicable laws to issue orders as may be necessary to respond to findings of endangerment to public health or the environment. EPA retains the authority to issue CA orders under federal authority, but will consult with and notify KDHE prior to the issuance of any federal CA orders in Kansas. EPA recognizes the state authority to issue state CA orders pursuant to Kansas law; however, the issuance of such orders does not preclude EPA's issuance of CA orders under federal authority, including Section 3008(h) of RCRA, which is not part of the state's authorized program. EPA also reserves the right to issue orders as part of facility- or company-specific enforcement actions.

When permits or state orders are issued by KDHE to federal facilities and technical oversight is provided by BER through the federal Defense State Memorandum of Agreement (DSMOA) Program, the work completed through DSMOA oversight will be considered equivalent to that of work completed under Kansas' CA authority.

KDHE EPA Memorandum of Agreement

More details regarding the transition of CA responsibility from EPA to KDHE are established in a Memorandum of Agreement (MOA) which was part of the approved Kansas CA authorization application. The conditions set forth in that MOA take precedence over the information provided in this fact sheet. The MOA is available upon request from BWM.

CA Fees

Kansas does not have any specific permit or monitoring fees related to CA oversight; however, reimbursement of BWM and BER oversights costs will be collected from affected TSD facilities in accordance with Kansas Statutes Annotated (KSA) 65-3453 and 65-3455.

Questions

Questions regarding this fact sheet and RCRA CA implementation in general can be directed to BWM at 785-296-1609.