

Kansas Department of Health and Environment
Bureau of Waste Management Policy 2011-P4
related to
Solid and Hazardous Waste Enforcement
effective April 29, 2011

Purpose

This policy establishes guidelines under which enforcement will be taken in both the solid and hazardous waste programs to ensure consistency and fairness. This policy will further ensure that the public and the regulated community understand the consequences of non-compliance with solid and hazardous waste regulations.

Background

KDHE uses enforcement as a tool to provide all companies in Kansas a fair and balanced atmosphere under which to comply with environmental regulations. Enforcement ensures that a company does not gain an economic advantage or benefit from non-compliance, and is used to deter companies from ignoring or violating applicable legal requirements. In all cases, enforcement will be taken in a manner which is both fair and consistent.

KDHE currently has no criminal investigation division. Criminal investigations are referred either to EPA's Criminal Investigation Division (for hazardous waste cases) or to the Attorney General's office and/or District and County Attorneys (for solid waste cases). Criminal case referrals are rare, being pursued only in extreme situations, and will not be discussed in this policy.

Statutory authority for administrative, civil, and criminal actions and penalties

Solid Waste: KSA 65-3411 and 65-3419 authorize KDHE to pursue civil penalties as well as corrective actions for solid waste violations and hazards and pollution caused by improper solid waste management. Additionally, KSA 65-3409(c) states that violations of K.S.A. 65-3409(a) are considered class A misdemeanors.

Hazardous Waste: KDHE is authorized by KSA 65-3444 to pursue civil penalties of up to \$25,000 per day for each violation. Additionally, KSA 65-3446 authorizes KDHE to pursue administrative penalties of up to \$10,000 per day for each violation. KSA 65-3443 and KSA 65-3445 authorize corrective action orders for threatened pollution and hazards, or violations of hazardous waste laws. KSA 65-3441 further allows for criminal convictions and fines for both misdemeanors and felonies.

Action

KDHE will initiate enforcement actions based on the following guidelines whenever possible; however some cases may warrant greater or lesser enforcement or penalty amounts than are provided for in this policy.

Penalty Determinations

When calculating a penalty under this policy, KDHE will use the most current version of the appropriate Penalty Matrix (solid waste or hazardous waste) in an effort to generate consistent penalties based on the violation and the category of the violator. These categories encompass both permitted and unpermitted

entities and take into account whether or not the entity has been previously involved in enforcement. Other factors, such as the amount of waste involved in the violation(s) and/or potential threat to human health and/or the environment, may also be taken into account. When agreeing to a settlement of the penalty, KDHE will follow Bureau of Waste Management (BWM) Policy 2000-P3, Enforcement Settlements, whenever possible.

Solid Waste Enforcement Procedures and Guidelines

Unpermitted entities will typically only be involved in enforcement if they have violated the statute for “unlawful acts” under K.S.A. 65-3409, or if they have failed to comply with directives given to them by representatives of KDHE.

Permitted solid waste facilities will typically be inspected at least once every year. Some facilities may be inspected more or less frequently depending on compliance history and staff availability. Generally, KDHE will use the following progression of enforcement in reviewing permitted solid waste cases:

1. First citation of a violation

The first time a violation is cited, facility personnel need to work with the inspector to return to compliance. If a violation is severe enough and/or poses an imminent threat to human health or the environment, KDHE may choose to impose a penalty the first time the violation occurs.

2. Second citation of the same violation

Consecutive inspections. If the same violation is cited on the following inspection, facility personnel need to work with the inspector to return to compliance. In addition, the KDHE District Environmental Administrator (DEA) sends a Letter of Warning (LOW) to the facility to let them know that the violation has been repeated and the potential consequences of non-compliance.
Non-consecutive inspections. If the same violation is cited a second time, but not on the following inspection, facility personnel need to work with the inspector to return to compliance; no LOW is issued.

3. Third citation of the same violation

Consecutive inspections. If the same violation is cited on each of three consecutive inspections, facility personnel need to work with the inspector to return to compliance. In addition, the DEA and inspector prepare an enforcement referral to BWM, which reviews the case for possible penalties and notifies the facility if there are any penalties.
Non-consecutive inspections. If the same violation is cited a third time within a five-year period (for facilities inspected once each year) or a three-year period (for facilities inspected more than once each year), but not on three consecutive inspections, facility personnel need to work with the inspector to return to compliance. The DEA sends an LOW to the facility to let them know that the violation has been repeated and the potential consequences of non-compliance.

4. Fourth citation of the same violation

The fourth time a violation is cited in a five-year period (if not on consecutive inspections), facility personnel need to work with the inspector to return to compliance. The DEA and inspector prepare an enforcement referral to BWM, which reviews the case for possible penalties and notifies the facility if there are any penalties.

The facility will be notified of violations and penalties through either:

- A formal Letter of Warning (LOW) requiring the facility to describe the steps that will be taken to ensure that the violation will not be repeated; or
- A letter, inviting facility representatives to discuss the violations and penalties with KDHE enforcement staff; or
- An Administrative Order, which the facility may appeal to a hearing officer.

Hazardous Waste Enforcement Procedures and Guidelines

The majority of hazardous waste inspections conducted by KDHE take place at facilities that generate hazardous waste but are not required to have a permit. The inspection frequency at these facilities varies considerably depending on their generator classification and compliance history. The procedures for determining the level and type of enforcement actions will depend on those same factors.

There are currently four categories of hazardous waste generators in Kansas:

- Conditionally Exempt Small Quantity Generators (CESQGs);
- Kansas Small Quantity Generators (KSQGs);
- Small Quantity Generators (SQGs); and
- Large Quantity Generators (LQGs).

Treatment, Storage, and Disposal facilities (TSDs) are required to have a permit. TSDs may also be generators and subject to the same types of enforcement. Additionally, permitted facilities may be subject to enforcement review if they have serious or multiple violations of their permit, or if they are found to be out of compliance with the same permit violations on multiple inspections.

Inspection Frequency

The typical inspection frequency follows:

CESQG/KSQG – Generally inspected based on a complaint or incorrect classification.

SQG – Inspected about every 5 to 10 years

LQG – Inspected about every 2 to 3 years

TSD – Inspected about every 1 to 3 years depending on their permit type and status.

Basis for enforcement actions and penalties

Enforcement will be taken based on the severity of the violations and/or violations that have been repeated from previous inspections. Enforcement may also be taken if a facility refuses to return to compliance or does not respond to the inspector.

If a facility has been inspected before, their previous violations may be considered. Typically the previous two inspections are reviewed for that facility in evaluating their compliance history. These inspections may be two to ten years apart, depending on many factors. Second and third offenses may not only trigger an enforcement review, but may also increase the size of any resulting penalty.

Failing to correct violations or failing to respond to an inspector as requested may also trigger an enforcement review. In such cases, the inspector or their DEA may send follow-up correspondence including an LOW. The LOW will warn of the impending consequences of further non-compliance. The DEA may refer the case to BWM for enforcement. The resulting enforcement may result in an Administrative Order with directives to perform corrective actions and may also include penalties.

Severity of violations

The following violations will automatically trigger an enforcement review:

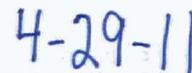
1. Unlawfully dumping or depositing hazardous waste (K.S.A. 65-3441(a)(1));
2. Unlawfully constructing, modifying, or operating a hazardous waste facility (K.S.A. 65-3441(a)(2)), which can include:
 - a. Unlawful treatment (evaporation, solidification, etc.);
 - b. Unlawful storage (storage beyond that allowed in the regulations for the facility's generator status);
 - c. Acceptance of hazardous waste from other facilities without a permit;
3. Refusing or hindering entry, inspection, sampling, or the examination or copying of records related to the purposes of this act (K.S.A. 65-3441(a)(5));
4. Knowingly making 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 (K.S.A. 65-3441(a)(6));
5. Knowingly destroying, altering or concealing any record required to be maintained under rules and regulations promulgated by the secretary pursuant to this act (K.S.A. 65-3441(a)(7));
6. Transporting hazardous waste to a facility not authorized to operate under the federal or state hazardous waste program (K.S.A. 65-3441(a)(9));
7. Transporting and disposing of, or causing the transportation and disposition of, hazardous waste in a manner contrary to the rules and regulations, standards or orders of the secretary (K.S.A. 65-3441(a)(11));
8. Operating a hazardous waste transfer facility at which hazardous waste is transferred from one or more containers to one or more different containers (K.S.A. 65-3441(a)(12));
9. Failing to maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

Severity may also be determined based on the number and type of violations cited. When making this determination, consideration will be made to the generator classification, permit status, and number and type of issues cited under each violation. This will also include whether or not the generator or permittee was out of compliance on the majority of their regulatory and/or permit requirements. The number of violations is not necessarily the determining factor, but also the type of regulatory category (i.e. training, container management, preparedness and prevention, etc.).

This policy shall remain in effect until it is revoked or is rendered obsolete by amendments to the solid waste laws or regulations.



William L. Bider
Director, Bureau of Waste Management



Date