

Responsiveness Summary

On September 27, 2011, the Kansas Department of Health and Environment (KDHE) held a public hearing in the Prairie Conference Room of the Curtis State Office Building, Topeka, Kansas to consider the adoption of proposed new solid waste regulation 28-29-1a. The comment period began with the publication of the Notice of Hearing on Proposed Administrative Regulations in the *Kansas Register* on July 21, 2011 and ended on September 30, 2011. The organizations and people that submitted comments during the public comment period are summarized in the table below.

Organization	Name	Type of Comment
Joint Committee on Administrative Rules and Regulations	Raney L. Gilliland	Written

§ **The Joint Committee on Administrative Rules and Regulations** considered the proposed amended regulation at its meeting on August 29, 2011. On September 21, 2011 KDHE received a comment letter from the Committee dated September 9, 2011, which can be found as an attachment to the Report of the Hearing Officer. The Committee's comment and KDHE's response follow:

Comment: KAR. 28-29-1a. The Committee Believes that the manner in which the agency drafted the proposed regulation does not conform to the requirements for amending rules and regulations set forth in K.S.A. 2010 Supp. 77-419, which requires that rule and regulation amending an existing regulation contain the entire section amended and that the new matter be indicated by underlining or printing in italics and the material to be deleted shown in strike-through type. Also, the Committee believes this type of regulation will be confusing for the regulated community because there is no indication in the regulation "being amended" that the amendment has been made in another regulation. The Committee believes that the listed regulations should be amended instead. The Committee will send a letter to KDHE's general counsel on this matter, with copies to the Attorney General's Office and the Department of Administration and will request that the agency's general counsel appear before to the Committee at the Committee's meeting on October 10, 2011, and explain the rationale for amending other regulations in this manner.

Response: Timothy E. Keck, Deputy Chief Counsel of KDHE appeared before the Committee on October 10, and provided a schedule for revising the regulations modified by K.A.R. 28-29-1a. The Committee agreed that KDHE could go forward with the adoption and publication of K.A.R. 28-31-1a provided the written copy of the testimony, which includes the regulation revision schedule, is made part of the record.

Action: A copy of Mr. Keck's testimony is attached. KDHE will revise the regulations according to the schedule described in the testimony.



Testimony on KAR 28-29-1a

Presented to
Joint Committee on Administrative Rules and Regulations
By
Timothy E. Keck, Deputy Chief Counsel
Kansas Department of Health and Environment

October 10, 2011

Chairman Holmes and members of the committee, I am Timothy E. Keck, the Deputy Chief Counsel of the Kansas Department of Health and Environment (KDHE). Thank you for the opportunity to provide testimony on KAR 28-29-1a related to the Modification of obsolete references and text in the Solid Waste Management Regulations.

At the August 29, 2011, Joint Committee on Administrative Rules and Regulations meeting an issue arose about the propriety of the proposed regulation pursuant to K.S.A. 77-419 vis-à-vis an amendment to a regulation. The concern was that the proposed 28-29-1a amends regulations in a manner that does not comply with K.S.A. 77-419. We understand this concern and KDHE is cognizant of the need to revise the underlying regulations addressed in 28-29-1a.

At KDHE we consider 28-29-1a a new regulation that is meant as a way to temporarily alleviate certain "dead ends" in the regulatory framework that will cause the regulated community confusion. Because of the age and complexity of the referred-to regulations, it will take years to complete the process contemplated by K.S.A. 77-419. 28-29-1a is meant to provide a stop gap measure to allow KDHE a place to direct the regulated community so that the "dead ends" don't occur and to provide the regulated entities clarification in the regulations until the underlying regulations can be revised.

KDHE has committed to the following schedule to complete the process of re-drafting all the regulations referred to in 28-29-1a:

- 1) 28-29-300; Definitions; Construction & Demolition; in approval process now; working with DOA;
- 2) 28-29-1100 to 28-29-1107; Household Hazardous Waste; being drafted now; completed by 2012;
- 3) 28-29-109; Special Waste; begin drafting in 2012; completed 2013;

- 4) 28-29-23 and 28-29-23a; Standards for solid waste processing facilities and disposal area and transfer station; begin drafting 2012; completed 2014.
- 5) 28-29-102 to 28-29-108; RE: Municipal Solid Waste Landfills; begin drafting in 2013; completed 2015;
- 6) 28-29-27; Medical Services Waste; begin drafting in 2013; completed 2016.

Thank you for the opportunity to provide testimony to the committee today.