Kansas Department of Health and Environment

Regulatory Impact Statement

pursuant to K.S.A. 77-416

Proposed Amended Regulation K.A.R. 28-31-10

Revised January 31, 2012

Executive Summary of Proposed Regulations

In October of 1985, the Kansas Department of Health and Environment (KDHE) obtained authorization from the U.S. Environmental Protection Agency (EPA) to administer the hazardous waste management program. The Kansas hazardous waste program regulates hazardous waste generators, hazardous waste transporters, and hazardous waste treatment, storage, and disposal (TSD) facilities. The program monitors hazardous waste activities in the state by issuing and maintaining permits, conducting compliance inspections, overseeing corrective actions, and responding to complaints that allege the mismanagement of hazardous waste.

The cost to administer the Kansas hazardous waste management program is funded by a federal grant and various fees paid by the generators, transporters, and handlers of hazardous waste. No state general funds are used to support this program although some program efforts, such as complaint investigations, address issues unrelated to fee payer activities. The federal grant has remained fairly constant for more than 15 years so the state fees have had to provide an increasing percentage of total program costs in accordance with inflation.

To cover part of KDHE's cost of monitoring hazardous waste activities, K.S.A. 65-3431(u) authorizes KDHE to collect fees from TSD facilities, hazardous waste transporters, and hazardous waste generators. The maximum fee for each facility is limited to $50,000 annually. Current fees range from $100 to $15,000 per year. The fee revenue currently collected is inadequate to meet the projected budgetary needs of the hazardous waste regulatory program. It was determined that most fees must be increased in calendar year 2012 to sustain necessary hazardous waste program activities.

KDHE prepared an initial proposal for an increase in some monitoring fees and initiation of new TSD permit maintenance fees to maintain the current level of service. This proposal was shared with the universe of facilities that pay hazardous waste fees. Comments were received which resulted in a change to the original proposal. Based upon industry/business comments, KDHE has decided to move forward with an increase in facility monitoring fees only, in combination with some reduction in program staff size. The original proposal to include a TSD permit maintenance fee in additional to the fixed monitoring fee has been eliminated.

In response to fee payer comments, KDHE evaluated program needs and determined that the current staffing level can be reduced to some degree without jeopardizing program approval by the U.S. Environmental Protection Agency. The proposed fee increase is based upon a 10 percent reduction in staff effort related to monitoring hazardous waste generators, which number more than 1500, and a 15 percent reduction in staff effort related to monitoring permitted TSD facilities, which number 34. KDHE proposes to hold several currently vacant positions open and not fill any new vacancies related to hazardous waste program until the proposed reductions are achieved. There will be some program impacts associated with the proposed reductions in staff;

however, it is believed that the department will still be able to demonstrate program adequacy to the U.S. Environmental Protection Agency.

This proposed regulation increases the annual monitoring fees for TSD facilities and hazardous waste generators. The fees for hazardous waste transporters will be reduced, to reflect the actual level of staff monitoring required for this activity. The hazardous waste monitoring fees for TSDs and Large Quantity Generators (LQGs) have not been adjusted since October 29, 2004. The hazardous waste monitoring fees for hazardous waste transporters, Small Quantity Generators (SQGs), and Kansas Small Quantity Generators (KSQGs) have not been adjusted since September 20, 2002. The proposed fee increases were established to generate enough revenue to satisfy the reduced program staffing budget estimates. Also, the proposed new fee amounts were determined based upon staff effort and operating costs related to actual time spent on generator and TSD work. Thus, generator fees should not subsidize staff work on TSDs nor should TSD fees subsidize work on generators.

Based on all comments and considerations, post-hearing changes will be made to the proposed regulation: the proposed increase to treatment, storage, and disposal facility fees will be reduced. The proposed increases to hazardous waste generator fees and the decrease to transporter fees will remain the same.

The originally proposed fee changes and the revised post-hearing fee changes are shown in the following schedule:

TSD Designation	Current Fee	Proposed Fee	Revised Fee
On-site storage facility	$7,500	$12,500	$10,000
Off-site storage facility	$8,000	$13,500	$10,000
On-site nonthermal treatment facility	$7,500	$12,500	$10,000
Off-site nonthermal treatment facility	$8,000	$16,500	$12,000
On-site thermal treatment facility	$8,000	$16,500	$12,000
Off-site thermal treatment facility	$12,000	$22,000	$18,000
On-site landfill or underground injection well	$10,000	$18,500	$14,000
Off-site landfill or underground injection well	$15,000	$20,000	$18,000
Facilities subject to postclosure care	$10,000	$16,500	$14,000

The “incinerator facility” category has been removed since incineration is a type of thermal treatment.

Transporters	Current Fee	Proposed Fee
Hazardous Waste Transporters	$300	$200

Generator Category	Current Fee	Proposed Fee
LQG: 5 tons or less	$250	$300
LQG: 5 to 50 tons	$750	$900
LQG: 50 to 500 tons	$2,500	$2,800
LQG: more than 500 tons	$7,500	$8,000
SQG & KSQG	$100	$150

In Fiscal Year 2011, KDHE collected approximately $672,000 in generator and TSD monitoring fees combined. Using the most recent information on numbers of facilities, including the anticipated closure of one off-site thermal treatment facility, the projected annual revenue after the revised fee changes will be about $885,650. These additional revenues should support the continued operation of the Kansas hazardous waste program for the next several years.

In addition, a typographical error in paragraph (b)(3) will be corrected.

Environmental Benefit Statement

1) Need for proposed amendments and environmental benefit likely to accrue

a. Need

Current fee revenue will not adequately sustain the Kansas hazardous waste program. Without the fee increase, the state hazardous waste program would require a major staff reduction which would jeopardize program adequacy as determined by the U.S. EPA. All of the citizens of Kansas benefit from the state hazardous waste program because it provides regulatory oversight related to the management of wastes that would impact human health and the environment if mismanaged. The businesses of Kansas have repeatedly indicated their preference for a state regulatory program in lieu of having all permitting and enforcement being carried out by the U.S. EPA. In addition, businesses benefit from the technical training and assistance offered by KDHE.

b. Environmental benefit

The proposed changes to hazardous waste fees do not provide direct environmental benefits; however, failure to sustain an adequate state regulatory program due to a budget shortfall could result in serious environmental impacts. Before a state hazardous waste regulatory program was established, hazardous wastes were mismanaged and numerous contaminated sites were created, many of which are still undergoing long-term clean-up. The preventive nature of this program has virtually eliminated the formation of new contaminated sites caused by hazardous waste mismanagement. Some return to such problems could result if the state program is not maintained.

2) When applicable, a summary of the research or data indicating the level of risk to the public health or the environment being removed or controlled by the proposed regulations or amendments

Risk is not being reduced by increasing hazardous waste fees as proposed; however, failure to raise fees would increase the risk associated with mismanagement of hazardous waste because the preventive aspects of the program would be reduced or perhaps eliminated if the U.S. EPA determined the shrinking program to be inadequate.

3) If specific contaminants are to be controlled by the proposed regulation or amendment, a description indicating the level at which the contaminants are considered harmful according to current available research

Not applicable.

Economic Impact Statement

1) Are the proposed regulations or amendments mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program?

The fee increase is not mandated by federal law; however, the U.S. EPA does routinely evaluate the adequacy of the state hazardous waste regulatory program. Failure to maintain adequacy with respect to staff resources and outputs could result in EPA action to withdraw program approval.

2) Do the proposed regulations or amendments exceed the requirements of applicable federal law?

No.

3) Description of costs to agencies, to the general public and to persons who are affected by, or are subject to, the regulations:

a. Capital and annual costs of compliance with the proposed regulations or amendments and the persons who will bear those costs.

There is no cost to the agency or the general public unless they are part of the hazardous waste management system. The estimated annual cost to each hazardous waste TSD facility, transporter, and generator due to the proposed increase in the monitoring fee follows. In the original Regulatory Impact Statement filed with the proposed regulations, the number of transporters was incorrectly listed as 83. Also, the number of TSD off-site thermal treatment facilities has been reduced from two to one based on the anticipated closure of one of these facilities in 2012.

Category	number in Kansas	change /facility	total increase
TSD: On-site storage	2	$2,500	$5,000
TSD: Off-site storage	4	$2,000	$8,000
TSD: On-site nonthermal treatment	0	$2,500	$0
TSD: Off-site nonthermal treatment	2	$4,000	$8,000
TSD: On-site thermal treatment	2	$4,000	$8,000
TSD: Off-site thermal treatment	1	$6,000	$6,000
TSD: On-site landfill or underground injection well	1	$4,000	$4,000
TSD: Off-site landfill or underground injection well	0	$3,000	$0
TSD: Post-closure care	14	$4,000	$56,000
Transporter	214	($100)	($21,400)
LQG: 5 tons or less	48	$50	$2,400
LQG: 5 to 50 tons	90	$150	$13,500
LQG: 50 to 500 tons	37	$300	$11,100
LQG: more than 500 tons	13	$500	$6,500
SQG & KSQG	1359	$50	$67,950
Net increase for all facilities			$175,050

b. Initial and annual costs of implementing and enforcing the proposed regulations or amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.
There will be no initial or annual costs to implement or enforce this regulation.

c. Costs which would likely accrue if the proposed regulations or amendments are not adopted, the persons who will bear the costs, and those who will be affected by the failure to adopt the regulations.
If the proposed increases in hazardous waste monitoring fees are not adopted, KDHE would have to significantly reduce hazardous waste management program staff and monitoring activities. If the U.S. EPA determines that the reduced state resources cannot adequately administer the hazardous waste program, the authority to run the program and the associated federal funding would be withdrawn. Each year EPA provides approximately $1,100,000 to the state to manage the hazardous waste program.

d. A detailed statement of the data and methodology used in estimating the costs used in the statement.
The estimated cost of implementing the proposed regulation was calculated based upon the number of facilities currently paying fees in each regulated category (KDHE's current data base) and the proposed change in the fee for each specific type of facility.

e. Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulations.
This regulation is designed to generate the revenue needed to sustain the state hazardous waste program at a reduced staffing level. Current statutory authority allows a variety of fees to be collected from the facilities that generate and manage hazardous waste. No less intrusive or costly methods were identified based upon existing statutory authority. This regulatory approach will spread the costs most evenly among all affected hazardous waste generators and handlers. The fee schedules were developed to ensure that generator fees are adequate to pay for generator staff efforts and TSD fees are adequate to pay for TSD staff effort.

f. Consultation with League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.
Municipalities, counties, and school boards will not incur any costs as a result of the regulatory changes unless they are a generator of hazardous waste. A copy of the original Regulatory Impact Statement was sent to each of these organizations at the start of the public comment period.

John Heim, Executive Director
Kansas Association of School Boards
1420 S.W. Arrowhead Rd.
Topeka, KS 66604

Don Moler, Executive Director
League of Kansas Municipalities
300 S.W. 8th
Topeka, KS 66603

Randy Allen, Director
Kansas Association of Counties
300 S.W. 8th, 3rd Floor
Topeka, KS 66603