

## Responsiveness Summary for K.A.R 28-31-10

On October 17, 2011, the Kansas Department of Health and Environment (KDHE) held a public hearing in Room 530 of the Curtis State Office Building, Topeka, Kansas to consider the adoption of proposed amendments to hazardous waste regulation KAR 28-31-10. The comment period began with the publication of the Notice of Hearing on Proposed Administrative Regulations in the *Kansas Register* on August 11, 2011 and ended on October 17, 2011. The organizations and people that submitted comments during the public comment period are summarized in the table below.

Organization	Name	Format	Date
Joint Committee on Administrative Rules and Regulations	Raney L. Gilliland	Written	9/9/2011
Joint Committee on Administrative Rules and Regulations	Raney L. Gilliland	Written	9/16/2011
Exline, Inc.	Rob Exline	Written	10/13/2011

- **The Joint Committee on Administrative Rules and Regulations** considered the proposed amended regulation at its meeting on August 29, 2011. On September 20, 2011, KDHE received a comment letter from the Committee dated September 16, 2011. On September 21, 2011 KDHE received a comment letter from the Committee dated September 9, 2011. Both of these letters can be found as an attachment to the Report of the Hearing Officer. The Committee’s comments and KDHE’s response follow:

**Comment from letter dated 9/9/2011:** KAR 28-31-10. The Committee requests additional information about the specific categories and amounts that have led to the budget shortfall, such as the amounts of salary increases for engineers and geologists made in response to 2008 Senate Sub for HB 2916 (below-market salary adjustments for certain state employees). The Committee will request the KDHE budget director appear before the Committee at its meeting on October 10, 2011, to explain the need for fee increases and why the Legislature was not notified during the 2011 Session of the underfunding leading to this significant fee increase. Copies of this letter will be sent to the chairpersons of the Senate Ways and Means and the House Appropriations committees, the chairpersons of the corresponding budget subcommittees dealing with the KDHE budget, and those committees’ ranking minority members.

**Comment from letter dated 9/16/2011:** At its meeting of August 29, 2011, the Joint Committee on Administrative Rules and Regulations heard proposed KAR 28-31-10, which would significantly raise fees for certain hazardous waste facilities. As directed by that Committee, it is requested that your agency’s budget director attend the Committee’s meeting on October 10 to discuss the shortfall of funding for the Bureau of Hazardous Waste and why such a shortfall (necessitating the fee increases) was not brought to the attention of legislators during the 2011 Session. The Committee directed that a copy of this letter be sent to the Chairperson, Vice=chairperson, and ranking minority member of the House Appropriations Committee, the Senate Ways and Means Committee, and the appropriate subcommittees.

**Response:** KDHE agreed to send a representative to the Committee's meeting on October 10, 2011.

**Action:** Aaron Dunkel, Deputy Secretary of KDHE, appeared before the Committee on October 10, 2011 to provide this information.

- **Exline, Inc.** submitted comments and questions in a letter which was dated October 13, 2011 and received by KDHE on October 14, 2011. A copy of this letter can be found as an attachment to the Report of the Hearing Officer. Exline's comments and questions and KDHE's responses follow:

**Comment:** Exline, Inc. believes that the proposed fee increases for the TSD Post Closure Care are not appropriate. Under the proposed regulation, Exline's fees would increase from \$ 10,000 to \$ 16,000 per year – an increase of 65 %.

**Response:** Based on comments received and the most recent budgetary information for the hazardous waste program, KDHE agrees that the fee for facilities subject to postclosure care should be reduced.

**Action:** KDHE has revised the regulation. The annual monitoring fee for facilities subject to postclosure care will be \$14,000.

**Question:** Since no state general funds are used to support the hazardous waste regulatory program, does this mean that the RCRA grant from EPA has been reduced by \$ 285,800 (i.e. the proposed fee increase)?

**Response:** No, the amount of the RCRA grant has remained the same since 2009.

**Question:** What is the total department budget?

**Response:** The estimated budget to fund the RCRA Hazardous Waste Program in 2012 is \$1,930,185.

**Question:** What percentage of the budget is paid by the EPA RCRA grant?

**Response:** The EPA RCRA grant award to Kansas for 2012 is \$1,092,564; the grant will pay 57% of the estimated 2012 program costs.

**Question:** What percentage of the budget is paid by Hazardous Waste fees?

**Response:** To fully fund the RCRA Hazardous Waste Program in 2012, KDHE needs to collect \$836,621 in Hazardous Waste fees, or 43% of the estimated 2012 program costs.

**Question:** If there will be staff reductions (10% in generator oversight and 15% in TSD permitting), why is there not a proposed fee decrease?

**Response:** Both the reduction in staff and the fee increases for generators and TSDs are necessary to ensure that the hazardous waste program will not run out of funds. Some of the factors that have contributed to the increase in program costs include:

- Inflation;
- State- and agency-mandated salary increases for certain classes of employees; and
- The rising cost of health insurance.

The fees for hazardous waste transporters have been reduced to reflect the level of monitoring required of KDHE staff.

**Comment:** Since all TDS facilities have differing levels of required oversight and those levels of oversight would likely vary over time, Exline proposes that the annual permit fee system should be modified. Specifically, Exline proposes that the KDHE BOWM consider implementing a system that is similar to the one utilized by the KDHE Bureau of Environmental Remediation (BER). That system records man-hours and expenses that are incurred by the Department for each facility and invoices the Responsible Party (or Permittee) on a quarterly basis for actual costs incurred. Exline believes that such a system could be readily employed with respect to Hazardous Waste permitted facilities (not generators). Moreover, Exline believes that such a system would be much more fair and equitable since the Hazardous Waste permitted facilities are far from uniform – particularly the TSD post-closure care facilities.

**Response:** KDHE’s initial proposal was for:

1. An increase in some monitoring fees; and
2. Initiation of new TSD permit maintenance fees which would have been based on the actual costs to the Department for each facility.

This proposal was shared with the universe of facilities that pay hazardous waste fees. Based upon negative comments received from industry and business with respect to the permit maintenance fee, KDHE decided to move forward with an increase in facility monitoring fees only.

**Action:** No change will be made to the regulation based on this comment.

- Based on the department’s reevaluation of the hazardous waste monitoring fee fund, the increase in fees for hazardous waste treatment, storage, or disposal facilities will be less than originally proposed. The fees in effect until July 1, 2012, the originally proposed fees, and the revised post-hearing fees are shown in the following schedule:

<u>TSD Designation</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Revised Fee</u>
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

- Due to a delay in adopting the proposed amendments to this regulation, the department has added the following language to the end of the regulation: *“This regulation shall be effective on and after July 1, 2012.”*