State of Kansas
Coal Combustion Residuals
Part 256 Plan

Kansas Department of Health and Environment
Bureau of Waste Management

9/29/2015

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Susan Mosier, MD, Secretary Department of Health & Environment Sam Brownback, Governor

DECLARATION OF ADOPTION

I, Susan Mosier, MD, Secretary of the Kansas Department of Health and Environment, hereby adopt the following solid waste management plan regarding regulation of coal combustion residuals from electric utilities:

State of Kansas Coal Combustion Residuals Part 256 Plan

This plan has been developed under the authority of K.S.A. 65-3406.

This administrative act of adoption I hereby certify as being an official action of my Office of Secretary of the Kansas Department of Health and Environment on the 7th day of October, 2015.

Susan Mosier, MD
Secretary of Health and Environment

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Chapter 1
Introduction

Background

In the early 1980s, Kansas and other states prepared state solid waste management plans in accordance with the requirements set forth in 40 CFR Part 256 – Guidelines for Development and Implementation of State Solid Waste Management Plans. These plans were primarily to ensure that states would move forward to eliminate open dumps and establish environmentally sound ways to dispose of all types of solid waste and reduce the volume of solid waste disposed of in landfills. While references to a Kansas plan have been identified, neither the U.S. Environmental Protection Agency (EPA) nor the Kansas Department of Health and Environment (KDHE) has a copy of that plan, nor a record that EPA approved of that plan.

On April 17, 2015, EPA published recently adopted regulations in 40 CFR Parts 257 and 261 related to the "Disposal of Coal Combustion Residuals from Electric Utilities" (the CCR rule). These new federal regulations are self-implementing and will go into effect regardless of state decisions to adopt and enforce the new requirements. Furthermore, EPA has stated in the preamble to this CCR rule that there is "no explicit mechanism for EPA to officially approve a state program." Consequently, the standards set in the federal CCR rule will gradually become effective in states that may have their own solid waste regulations governing coal combustion facilities. Rather than have two separate sets of regulations applicable to these facilities, EPA is strongly encouraging states to adopt these new regulations. States may maintain or add additional requirements that are more stringent or broader in scope than the minimum standards set forth in the federal CCR rule.

EPA has determined that the best available tool to demonstrate that states are regulating coal combustion residuals (CCRs) in a manner consistent with the new CCR regulations is through the state solid waste management plans prepared in accordance with Part 256. Therefore, EPA is also encouraging states to revise those plans, if available, or if not available, prepare a plan to address the basic requirements of Part 256 with emphasis placed on how the state regulatory program will enforce all aspects of the CCR rule and any additional state-specific requirements.

In the 1970s and then again in the early 1990s, Kansas significantly modified state laws to ensure that all of the requirements of Part 256 were thoroughly addressed and officially codified in statute. Following the passage of those laws, multiple implementing regulations were adopted by KDHE which established applicable permitting, operating, inspection, and enforcement programs. The state laws that fully address the Part 256 plan requirements also direct KDHE to prepare a state solid waste plan to address emerging issues and priorities including waste reduction, public participation, local government responsibilities in local planning, and the sustainability of waste management systems. The first such Kansas solid waste management plan was prepared in the mid-1990s and that plan has been updated every five years. The most recent state plan was adopted in 2010. A plan update is due in 2015; however, EPA's recommendation to update the Part 256 plan has impacted that schedule.

Purpose and Scope of this State of Kansas Coal Combustion Residuals Part 256 Plan
Based upon the background information presented in the previous section and the combined interests of KDHE, the CCR-regulated community, elected government officials, and the public, KDHE prepared this new solid waste management plan for review and approval by EPA. The plan demonstrates KDHE's intent and approach to assess compliance with and enforce the CCR rule in Kansas. This plan also addresses the original requirements of Part 256 solid waste management plans by explaining how existing state laws and regulations have accomplished the 35-year-old goals required in those plans. This plan cites existing KDHE laws, regulations, and permit conditions that authorize KDHE to assess compliance and enforcement related to all aspects of the CCR rule. In addition, it explains the state's intention to adopt the specific CCR regulations by reference over the next 12 to 18 months to more directly address all requirements.

This plan will not thoroughly address all "sustainability" issues covered by the recent Kansas solid waste management plan; however, since waste reduction and resource recovery is a part of the Part 256 planning scope, there will be some reference to state activities in this area. To distinguish this plan from the more modern sustainability-focused plan, this plan will be referred to as the "State of Kansas Coal Combustion Residuals Part 256 Plan" or "Part 256 CCR Plan." The sustainability-focused plan will be called the "State of Kansas Comprehensive Solid Waste Management Plan"; this plan can be found on the KDHE Bureau of Waste Management web site at www.kdheks.gov/waste/.

The Part 256 CCR plan will cover no less than a five-year time period, which will be set to coincide with the timeframe covered in future updates of the State of Kansas Comprehensive Solid Waste Management Plan. KDHE will review both plans no less frequently than every three years to determine the need for revision and re-adoption.

Plan revisions, when necessary, will be a public process involving key stakeholders. The procedures will include a notice and public hearing, in accordance with the requirements of 40 CFR 256.03 and 256.60.

Short-Term Plan to Implement a CCR Regulatory Program through Permits
Prior to receiving EPA approval of this new Part 256 CCR Plan and KDHE's adoption of the specific CCR regulations, KDHE will enforce the CCR rule through existing permits held by each CCR-generating facility. Through meetings, site visits, and other correspondence that began in February of 2015, KDHE permit engineers, geologists, and scientists have assessed facility conditions and worked with facility representatives to identify facility upgrades, changes in operating practices, and/or changes to existing permits that are necessary to comply with the CCR rule. This collaborative effort will prepare facilities to be fully compliant as the new CCR regulatory deadlines arrive. It will also ensure that KDHE will have had an opportunity to provide important input to facilities prior to establishing official regulatory authority for all new requirements. These collaborative efforts will continue as this plan is reviewed and approved by EPA and as the regulation adoption process takes place through 2016.

Long-Term Plan to Adopt the CCR Regulations
KDHE is moving forward to adopt the federal CCR regulations by reference during late 2015 through 2016. This adoption process will follow or run simultaneous to the EPA review and

approval process for this “State of Kansas Coal Combustion Residuals Part 256 Plan.” Other existing laws and regulations contain additional state requirements for CCR facilities that are broader in scope or more stringent than the minimum federal standards. The final adoption of the CCR regulations should not require updates to the facility permits or associated permit documents because all such requirements will be taken into consideration as permit documents are updated in 2015.

Chapter 2
Compliance with General Part 256 Plan Requirements

History and Approach

The State of Kansas established a comprehensive solid waste regulatory program over multiple decades to thoroughly address the objectives of the state solid waste plan required by 40 CFR Part 256. State laws and implementing regulations accomplish all of the goals and requirements set forth in Part 256.

As explained in Chapter 1, Kansas prepared a plan in the early 1980s in response to the Part 256 federal regulation, but a copy or record of that plan cannot be found by either KDHE or EPA. Because state laws and regulations now address all aspects of the plan requirements, a new plan will not be prepared to address each section of Part 256 point by point. It would be of little value to prepare such a plan at this time because by definition, a plan establishes goals, objectives and strategies to accomplish things yet to be done.

With respect to the original Part 256 requirements, this Part 256 CCR Plan will explain how existing state laws achieve what the original plan would have set as goals and objectives. Some irrelevant parts of the original Part 256 requirements are not addressed, such as federal funding of state planning efforts. The focus of this assessment of state law as it relates to the Part 256 planning requirements will be those areas identified in the preamble to the CCR rule published on April 17, 2015. These minimum requirements set forth by EPA for approval include:

1. Identification of the responsibilities of state, local, and regional authorities in the implementation of the plan and the means for coordinating regional planning and implementation;
2. Prohibition on the establishment of new open dumps and the requirement that all solid waste be utilized for resource recovery or disposed of in landfills meeting the minimum federal criteria;
3. Provision for the closing or upgrading of all existing open dumps; and
4. No prohibition on negotiating or entering into contracts for the supply of solid waste to resource recovery facilities.

In addition, this plan must address the state approach to enforcing the new federal CCR rule. That enforcement strategy is provided in Chapter 3.

Kansas Solid Waste Laws and Regulations

In this chapter, the relevant state laws that accomplish the Part 256 goals and requirements are cited and briefly explained. Appendix A contains the cited laws, as in effect on the date this plan was prepared. A detailed review of implementing regulations is not included because state laws adequately establish the system of solid waste planning, permitting, compliance assessment, and enforcement in Kansas. The implementing regulations provide further clarification and detail to help Kansans understand solid waste management requirements and establish a firm basis for KDHE compliance and enforcement decisions.

Minimum Requirements of Part 256 Plan – § 256.01
This section addresses each of the four minimum plan requirements.

1. Identification of the responsibilities of state, local, and regional authorities in the implementation of the plan and the means for coordinating regional planning and implementation.

State policy recognizing the need for a thorough solid waste planning and regulatory program is set forth in Kansas Statutes Annotated (K.S.A.) 65-3401. This statement of policy includes support for the principles of resource conservation and recovery.

Numerous areas of state responsibility are addressed in K.S.A. 65-3406, which relates to the "duties and functions of the secretary." This section of law establishes authority for the Secretary of KDHE to adopt rules and regulations with respect to many areas of solid waste management. It addition, it directs KDHE to develop a state solid waste management plan and to assist counties and groups of counties to establish their own local or regional plans.

The state is also authorized by K.S.A. 65-3415 to administer a solid waste grant program to pay for part of the local or regional solid waste planning process. This grant program provided millions of dollars in aid to counties and regional planning groups in the 1990s to initially prepare plans.

K.S.A. 65-3405 establishes very detailed requirements for counties, designated cities, or regional groups of counties to prepare solid waste management plans. These requirements specify the need for local planning committees, local plan content, annual review and five-year update requirements, and local plan adoption procedures.

K.S.A 65-3410 gives cities and counties the authority to carry out solid waste management practices including the operation of facilities to process and dispose of solid waste. It also authorizes cities and counties to generate revenue to implement solid waste management plans by assessing fees on waste generators or residents in general.

2. Prohibition on the establishment of new open dumps and the requirement that all solid waste be utilized for resource recovery or disposed of in landfills meeting the minimum federal criteria.

K.S.A. 65-3402(j) defines open dumping as any disposal of solid waste in an area which is not permitted by KDHE. Permits for solid waste processing and disposal areas are granted by KDHE based upon a comprehensive set of laws set forth in K.S.A. 65-3407. K.S.A. 65-3409(a)(1) states that it is unlawful for any person to dispose of any solid waste by open dumping. In combination, these statutes prohibit the open dumping of solid waste in any unpermitted location. It is unlawful for solid waste to be delivered to any location that has not received a permit issued by KDHE. Permitted locations can be landfills or processors, including facilities designed to recover material and/or energy from solid waste.

3. Provision for closing or upgrading of all existing open dumps.

The same statutory provisions listed in item 2, which require all solid waste to go to permitted solid waste processing or disposal facilities, serve as the basis for closing or upgrading all open dumps. The permitting laws of Kansas were initially established in the early 1970s. At that time, all old city dumps and industrial landfills were closed and/or gradually converted to permitted facilities. In 2015, there are no known operating open dumps. If an open dump is identified by KDHE, enforcement to close the facility will be initiated in accordance with K.S.A. 65-3409 and other statutes as appropriate. If any open dump has impacted, or threatens to impact, public health or the environment, KDHE can require appropriate corrective measures under the authority granted by K.S.A. 65-3411. Any new open dump that is identified is either cleaned up by the responsible party, cleaned up by the state in cooperation with local government, or closed in place with the approval of local government.

4. No prohibition on negotiating or entering into contracts for the supply of solid waste to resource recovery facilities.

In the early 1980s, in response to the original Part 256 requirements, Kansas passed laws to address the implementation of resource recovery operations in the state. Multiple statutes authorize local governments to become directly involved in providing resource recovery practices, to address ownership of collected waste, and to enter long-term contracts to recover energy and/or material from solid waste. The statutes that comprehensively address resource recovery include K.S.A. 65-3410, 65-3418, 65-3421, and 65-3423.

Other Part 256 Requirements

Kansas laws that specifically address other Part 256 plan requirements follow. If no state laws clearly address the requirements, the method that is followed by KDHE to satisfy those requirements is explained.

§ 256.02 - Scope of Part 256 Plans: The local county or regional planning process is comprehensively addressed by K.S.A. 65-3405 and implementing regulations. All local plans must address all solid waste types and all practices (transportation, processing, and disposal). The local county/regional plans cover ten years and plans must be reviewed annually and thoroughly updated every five years. The state (KDHE) must report annually to the legislature regarding the status and adequacy of state laws and program revenue and make recommendations for changes to meet program needs.

§ 256.03 – Adoption and Revision of State Plan: K.S.A. 65-3406(a)(5) directs KDHE to develop a state solid waste management plan, but does not specify the administrative procedures to be followed to adopt that plan. The steps listed below describe the plan development and public participation processes leading to adoption of the Part 256 CCR Plan by the Secretary of KDHE:

- Notification of anticipated adoption or revision distributed via the KDHE Bureau of Waste Management newsletter or other means;
- Plan developed based upon federal requirements, state needs, and stakeholder input;
- Notice to adopt the plan posted on the KDHE web site and published in the *Kansas Register*;

- Public comments received for at least 30 days following posting of the notice on the web site and publication in the *Kansas Register*;
- Public hearing held at least 30 days after posting the notice on the web site and publication in the *Kansas Register*. The reduced notification requirement for this Part 256 CCR Plan was approved by EPA, in accordance with 40 CFR 25.5(b) and 256.60(c), in a letter to KDHE dated August 6, 2015;
- Responsiveness summary prepared, made available on web site, and sent to individuals who submit comments or request a copy. The responsiveness summary contains all comments received during the public comment period and hearing as well as KDHE's response to comments;
- Plan finalized and adopted by the Secretary of KDHE.
- Adopted plan posted on KDHE web site.

Items noted above and other relevant information will be posted on the KDHE Bureau of Waste Management comprehensive solid and hazardous waste web site: www.kdheks.gov/waste/. KDHE will issue press releases, if it is deemed appropriate, to solicit comments and/or announce the adoption of plans.

The plan will be reviewed every three years and revised and readopted when necessary.

§§ 256.10 and 256.11 – Responsibilities to Implement Solid Waste Plans Including Services Related to Solid and Hazardous Waste Management: Multiple state laws assign responsibilities related to implementation of waste management plans and compliance with relevant laws and regulations. K.S.A. 65-3405 assigns local solid waste planning responsibilities to counties or designated cities. Those plans must identify needed services and indicate whether local government or private sector businesses will provide those services. K.S.A. 65-3410 authorizes counties to raise revenue to implement local solid waste management plans. Solid waste facilities are prohibited from receiving regulated quantities of hazardous waste [K.S.A. 65-3402(a)]. This prohibition does not include household hazardous waste or conditionally exempt small quantity generator waste, which may be disposed of in municipal solid waste landfills and pass through a transfer station.

§§ 256.20 to 256.22 – State Regulatory and Enforcement Powers: The Kansas legislature has empowered KDHE to administer a comprehensive compliance and enforcement program beginning with the establishment of a broad list of unlawful acts [K.S.A. 65-3409], authorization to conduct compliance inspections [K.S.A. 65-3406 (a)(10)], authorization to issues permits and ensure compliance at all solid waste processing and disposal facilities [K.S.A. 65-3407], and authority to develop and enforce a broad range of very specific regulations related to many solid waste management practices [K.S.A. 65-3406]. As mentioned earlier in this chapter, these authorities include KDHE's directive to close any identified open dumps and to administer permitting, inspection, and enforcement options to ensure that no waste is managed in open dumps.

§§ 256.30 and 256.31 – Encouragement of Resource Recovery Operations: As explained above under the fourth minimum requirement for a Part 256 Plan, Kansas state law establishes policies that encourage local governments to implement resource recovery practices including long-term contracts to process waste for reuse and recovery. In addition, the statutory statement of policy

encourages the wise use of waste as a resource [K.S.A. 65-3401(e)] and other laws facilitate the development of resource recovery projects and practices. For example, K.S.A. 65-3415 authorizes KDHE to administer grant programs to assist local governments, non-profit organizations, and private businesses to start-up and enhance projects and programs related to recycling, composting, and household hazardous waste (HHW) collection. K.S.A. 65-3415a(c)(9) authorizes KDHE to expend solid waste management funds collected primarily from a landfill tonnage fee to carry out public education and technical training on solid waste issues, particularly issues related to waste reduction and recovery. KDHE has utilized and will continue to use this spending authority, along with a statutory directive in K.S.A. 65-3406(a)(9), to carry out annual training in a statewide conference on recycling, composting, HHW, and energy recovery from waste. KDHE has also been statutorily directed to carry out research or studies related to solid waste management to enhance state practices including resource recovery [K.S.A. 65-3406(a)(7)]. This has included municipal solid waste compositions studies at landfills. Additional studies will periodically be carried out to assess the changing nature of the waste stream and the potential for improved waste recovery activities.

<u>§§ 256.40 to 256.42 – Facility Planning:</u> Kansas state law authorizes counties to plan for the types of solid waste facilities that are needed and that will be established to meet those needs, including both publicly and privately owned and operated facilities. The planning laws and authorities are specified in K.S.A. 65-3405. Local governments must also verify that any proposed solid waste processing or disposal facility is consistent with their local plan as part of the facility permit application process [K.S.A. 65-3407(m)]. The Kansas Legislature requires KDHE to perform an annual assessment of the state solid waste program including the adequacy of state funding to carry out the responsibilities set forth in state law. This reporting requirement is specified in K.S.A. 65-3415a(h). In 2013, a special assessment of statewide resources and recovery/waste reduction activities was required which involved: 1) the preparation of a written report submitted to the Legislature; and 2) a Legislative hearing on the adequacy of statewide practices [K.S.A. 65-3410b]. This report established an ongoing review process for KDHE to annually repeat the assessment of waste reduction adequacy.

<u>§ 256.50 – Coordination with Other Programs:</u> The Kansas solid waste program coordinates fully with the KDHE water and air programs. This coordination is specified in statute, regulation, and agency policy. Examples follow:

- It is unlawful to burn solid waste unless authorized under the Kansas Air Quality Act [K.S.A. 65-3409(a)(4)].
- Any solid waste processing or disposal area that has a point source discharge must comply with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to K.S.A. 65-164 *et seq.* (Kansas Water Law). This requirement is specified in Kansas Administrative Regulation (K.A.R.) 28-29-23(q).

KDHE coordinates with other agencies and regulatory programs regarding solid waste facility location, design, and operation issues including: wetlands and floodplains (U.S. Army Corps of Engineers), the Kansas historic preservation act (Kansas State Historical Society), landfill gas (KDHE Bureau of Air), storm water permitting (KDHE Bureau of Water), and zoning (local government planning agencies). Comments on every landfill permit are also sought from: the U.S. Fish and Wildlife Service; the Division of Water Resources within the Kansas Department

of Agriculture (KDA); the Kansas Department of Wildlife, Parks and Tourism; the Kansas Biological Survey; the Kansas Corporation Commission; the Kansas Geological Survey; the State Conservation Commission within the KDA Division of Conservation; and Kansas Water Office.

§§ 256.60 to 256.65 – Public Participation: Public participation related to this state plan was addressed above under § 256.03 on adoption and revision. KDHE maintains a list comprised of people who have been identified as potentially interested in solid waste issues (e.g. county commissioners) and individuals who have requested to be placed on the list. These people receive a newsletter which includes information on planned updates to solid waste management plans when appropriate. County commissions are required to hold public hearings regarding county/regional plans prior to new or updated plan adoption actions [K.S.A. 65-3405(d)].

The state public participation process related to all solid waste permit actions has been established in state regulations based upon the department's general authority to adopt rules and regulations related to the entire permitting process [K.S.A. 65-3406(a)(12)]. Public participation in the state regulatory process is established in the Kansas Rules and Regulations Filing Act [K.S.A. 77-415 through 77-438]. Both of these are discussed in more detail in Chapter 3.

There is no routine public notification or participation as part of KDHE's solid waste program compliance and enforcement procedures because facilities typically come into compliance within 30 to 60 days. When illegal disposal at an open dump is identified, local government officials are involved in the removal or closure decisions, unless the waste is promptly removed by the responsible party. Compliance and enforcement information is available to the public under the Kansas Open Records Act.

Chapter 3
Implementation of the CCR Rule in Kansas

Introduction

This chapter of the "State of Kansas Coal Combustion Residuals 256 Plan" addresses the solid waste management plan requirements of 40 CFR Part 256 with respect to the disposal of CCR from electric utilities. This chapter also describes how Kansas will implement and enforce the standards contained in 40 CFR 257 Subpart D – Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments.

State Legal Authority

As described in Chapter 2, Kansas has adequate legal authority to prohibit the establishment of new open dumps and to close or upgrade existing open dumps. K.S.A. 65-3409(a) prohibits the disposal of solid waste, including CCR, by "open dumping", as defined in K.S.A. 65-3402(j); K.S.A. 65-3419 provides enforcement authority for any violation of K.S.A. 65-3409(a). Since surface impoundments temporarily store solid waste, they are classified as solid waste processing facilities and therefore are not considered open dumps.

State Regulatory Powers

Kansas currently has authority to enforce disposal and management standards for solid waste, including CCR, which are equivalent to or more stringent than the requirements of 40 CFR 257.

K.S.A. 65-3406 authorizes and directs the Secretary of KDHE to: adopt solid waste management regulations and standards necessary to protect the public health and environment; issue permits and orders; and conduct inspections.

K.S.A. 65-3407 states that, with some exceptions: "…no person shall construct, alter or operate a solid waste processing facility or a solid waste disposal area of a solid waste management system, except for clean rubble disposal sites, without first obtaining a permit from the secretary." CCR landfills fall under the definition of a solid waste disposal area in K.S.A. 65-3402(d) and CCR surface impoundments fall under the definition of a solid waste processing facility in K.S.A. 65-3402(c); both are subject to the permitting requirement.

K.A.R. 28-29-7(a), regarding conditions of permits, states that the secretary shall stipulate: "…special operating conditions, procedures, and changes necessary to comply with these and other state or federal laws and regulations."

In addition, each permit in place for electric utilities that are managing CCR contains the following general condition:

> This permit is subject to modification by the department at the time of any scheduled renewal or: (a) whenever the modification is needed to reflect changed state or federal rules, (b) to incorporate changes in the facility operations or closure plan, (c) to make other modifications proposed by the permittee and approved by the department, (d) whenever the department determines that modification is necessary to prevent or reduce actual or potential hazard(s) to the public health or safety, or pollution or contamination of the environment or, (e)

> because of changed or unforeseen circumstances. The filing of a request by permittee for a permit modification, or the filing of a notice of anticipated noncompliance does not stay any permit condition. Approval from KDHE must be obtained prior to any modifications to the landfill design, operational and closure plans approved with this permit or any development of new cells not detailed in those plans. Any minor modifications approved by KDHE are incorporated by reference.

Therefore, until Kansas adopts 40 CFR 257 Subpart D by reference, the state can establish standards which are equivalent to or more stringent than the federal regulations through permit modifications.

Authority to inspect facilities and obtain records and samples is provided by K.S.A. 65-3406(a)(10) and K.A.R. 28-29-16. Certain reporting requirements are established in K.A.R. 28-29-23(f), which also allows KDHE to establish additional reporting requirements in permit conditions.

Administrative and judicial enforcement capabilities to ensure compliance, including enforcement of orders and permit conditions and imposition of penalties, are provided by K.S.A. 65-3409 and 65-3419.

Kansas will clarify its authority to enforce CCR disposal standards by adopting 40 CFR 257 Subpart D by reference in 2016.

Status of Coal-Fired Power Plants in Kansas

Kansas currently has seven electric utilities that are managing CCR in one or more landfills (LFs) and/or surface impoundments (SIs):

Permit	Owner - Facility	County	LF(s)	SI(s)
413	Kansas City Board of Public Utilities – Nearman Creek	Wyandotte	Yes*	Yes
210	Kansas City Board of Public Utilities – Quindaro**	Wyandotte	Yes	No
420	Holcomb Common Facilities, LLC – Holcomb Station	Finney	Yes	No
359	Westar Energy, Inc. – Jeffrey Energy Center	Pottawatomie	Yes	Yes
337	Kansas City Power & Light Company – La Cygne	Linn	Yes	Yes
847	Westar Energy, Inc. – Lawrence Energy Center	Douglas	Yes	Yes
322	Westar Energy, Inc. – Tecumseh Energy Center	Shawnee	Yes	Yes

* This landfill is inactive and it is anticipated that it will not be subject to the requirements of 40 CFR 257 Subpart D.

** BPU-Quindaro has phased out coal combustion and is now using natural gas to produce electricity. The facility has no surface impoundments and plans to cease disposal of CCR in the landfill before October 19, 2015. It is anticipated, therefore, that this facility will not be subject to the requirements of 40 CFR 257 Subpart D.

Kansas has solid waste permits in place at all electric utilities in the state that are subject to the CCR rule. These permits primarily address the CCR landfills at each facility, but will be modified to include CCR surface impoundments, as necessary. Each solid waste permit contains:

- General conditions
- A design plan
- An engineering report
- An operating plan
- A groundwater monitoring plan
- A sampling and analysis plan
- A closure plan
- A post-closure plan
- Evidence of financial assurance

Priority Facilities
Kansas has no priority facilities. No facilities have been identified as posing an exceptional risk to public health or the environment and all should be in compliance with 40 CFR Subpart D regulations by the relevant deadlines.

Compliance Schedules
Kansas does not anticipate that any facility will be classified as an "open dump" requiring a compliance schedule. However, if a facility requests an extension to any of the compliance dates in the CCR rule, Kansas will evaluate the request in accordance with federal guidelines including consideration of the following:

- Whether other disposal units can be used;
- Whether the facility has made a good faith effort to meet compliance deadlines;
- Whether there are factors beyond the facility's control that have made it unable to meet the compliance deadlines;
- Documentation from the facility supporting their claims and/or the results of an independent investigation;
- The technical complexity of the requirements, the activities that remain to be completed, the reasons for the lack of compliance, and other site-specific factors such as geology, geography, weather, and engineering considerations.

Any approved compliance schedule would identify the specific activities that remain to be completed, along with clear and enforceable deadlines for each, and follow the public participation requirements of 40 CFR 256.64.

Short-Term Implementation of CCR Rule through Permits
The six coal-fired electric utilities in Kansas that will be subject to the 40 CFR 257 Subpart D regulations will modify their solid waste permits to address the new CCR rule. In general the modifications will address the following items, which have initial Subpart D deadlines in 2015 and 2016:

- Documentation of whether existing CCR SIs are lined or unlined per 40 CFR 257.71
- Documentation of construction history, initial hazard potential classification assessment, initial structural stability assessment, and initial safety factor assessment for all existing SIs per 40 CFR 257.73
- Installation of a permanent identification marker at each SI per 40 CFR 257.73
- Preparation/update of the fugitive dust control plan per 40 CFR 257.80
- Preparation/update of a run-on/run-off control system plan for all LFs per 40 CFR 257.81

- Preparation/update of an inflow design flood control system plan for all SIs per 40 CFR 257.82
- Monthly monitoring of CCR SI instrumentation per 40 CFR 257.83
- Weekly and annual inspections of CCR units per 40 CFR 257.83 and 257.84
- Preparation/update of the closure plan for each CCR unit per 40 CFR 257.102
- Preparation/update of the post-closure care plan per 40 CFR 257.104
- Recordkeeping per 40 CFR 257.105
- Notifications to KDHE per 40 CFR 257.106
- Creation of a CCR web site per 40 CFR 257.107

In addition, these facilities will:

- Update the "Plat" or "Certificate of Survey" to delineate and label the facility boundary and the limits of all existing and proposed CCR units within the facility boundary.
- Identify all the "uniquely associated wastes" listed in 40 CFR 261.4(b)(4), provide the quantities that are generated by the facility, and describe how and at what location these wastes are managed.
- Define the current groundwater monitoring system and propose a system that meets the requirements of 40 CFR 257.91.
- Update the Sampling and Analysis Plan to meet the requirements of 40 CFR 257.93 and 257.94.

Facility permits will continue to be updated as necessary to ensure compliance with requirements of the CCR rule that have deadlines after 2016.

Applicable Kansas Statutes (K.S.A.) and Regulations (K.A.R.)

Kansas already has regulations in place that apply to CCR landfills and surface impoundments. (Existing requirements that are more stringent or broader in scope than 40 CFR 257 Subpart D are indicated with an asterisk.) These include the following:

<u>KDHE Bureau of Waste Management (BWM)</u>

The following, as in effect on the date this plan was prepared, can be found in Appendix A:

- K.S.A. 65-3407, which contains permitting requirements including: background investigations of permit applicants*; permit fees*; plans and data; permit conditions*; financial assurance*; liability insurance*; requirements for transferring permits; location restriction (would only apply to a new permit for an off-site CCR landfill)*; zoning certification*; and proof of land ownership*;
- K.A.R. 28-29-6, which requires permits for solid waste disposal areas and processing facilities*;
- K.A.R. 28-29-6a and BWM Policies 98-05 and 04-02, which require public participation for new permits and major modifications to permits*;
- K.A.R. 28-29-7 through 28-29-10, which address conditions, modification, suspension, denial, and revocation of permits*;
- K.A.R. 28-29-12, which requires permitted facilities to have a closure plan and, where wastes remain on-site, to have a post-closure care plan and conduct post-closure care of the site for at least 30 years;

- K.A.R. 28-29-16, which gives KDHE the authority to conduct inspections;
- K.A.R. 28-29-19, which gives KDHE the authority to require environmental monitoring;
- K.A.R. 28-29-20, which gives KDHE the authority to require a restrictive covenant and/or easement*;
- K.A.R. 28-29-20a, which requires monitoring analyses to be conducted by a KDHE-certified laboratory*;
- K.A.R. 28-29-23, which very generally addresses: methods of disposal and processing, planning and design, location restrictions, access roads*, recordkeeping and reports*, air quality, facility communications*, fire protection*, access control*, signage*, safety program*, disease vector control*, odor and particulate control, gas control, water pollution, maps, disposal of hazardous waste, and adoption of 40 CFR 257.3-5 and 257.3-6;
- K.A.R. 28-29-25(b), which requires plans and specifications for solid waste disposal areas and processing facilities not otherwise provided for in the solid waste regulations;
- K.A.R. 28-29-84 and KDHE Division of Environment Policy "Permit Renewal Fees for Generator Owned/Operated Industrial Waste Landfills," which set permit fees*;
- BWM Policy 02-02, which requires a 5-foot separation from groundwater at all new solid waste disposal facilities;
- BWM Policy 05-01, which requires applicants for new solid waste landfills and significant modifications of an existing solid waste landfill to notify the following agencies*: Kansas Biological Survey; Kansas Corporation Commission; KDA-Division of Water Resources; Kansas Department of Wildlife, Parks and Tourism; Kansas Geological Survey; KDA-State Conservation Commission; Kansas State Historical Society; Kansas Water Office; U.S. Army Corps of Engineers; and U.S. Fish and Wildlife Service; and
- BWM Policy 2014-P1, which addresses post-closure permit renewal and financial assurance.*

<u>KDHE Bureau of Water (BOW)</u>

- K.A.R. 28-16-160 *et seq.*, which regulate industrial wastewater lagoons if not permitted as a solid waste processing facility or solid waste landfill [K.A.R. 28-16-160(ii)]. Because these regulations will not apply to CCR units that are permitted by BWM, they are not considered more stringent or broader in scope than the CCR regulations, and are not included in the Appendices.

<u>KDA - Division of Water Resources (DWR)</u>

The following, as in effect on the date this plan was prepared, can be found in Appendix B:

- K.S.A. 82a-301 *et seq.* and implementing regulations at K.A.R. 5-40-1 *et seq.*, which regulate dams.

Compliance Assessments and Enforcement Strategy

KDHE believes that existing state laws, regulations, and permit conditions already authorize KDHE to enforce the standards set forth in the April 17, 2015 CCR rule. Pending the adoption of the specific CCR regulations, KDHE will ensure that facility permits are modified as necessary along with facility operating plans and other permit documents to fully conform to the CCR requirements. The existing solid waste permits for CCR disposal contain general permit conditions that authorize KDHE to modify the permit whenever necessary to conform to new or revised state or federal laws and regulations. Those permits and all associated design and

operating plans are enforceable documents under Kansas state law [K.S.A. 65-3409(a)(3)]. Compliance with the updated permit conditions and associated documents will be assessed by KDHE inspectors and permitting staff. These facilities are inspected by KDHE district staff at least once each year.

Since current conditions at coal combustion facilities differ, updates needed to facility design, operating, and closure plans will also differ. At a minimum, KDHE will ensure that permits are updated to address all CCR-regulated units and that facilities complete modifications to all permit documents in accordance with all new federal deadlines. With these changes to permits and other permit documents, KDHE will have clear authority to enforce the new CCR rule whenever operations are assessed through compliance inspections or when permits are annually renewed. KDHE's enforcement authority does not require the adoption of the new regulations because all requirements will be enforced through permits. Nevertheless, for purposes of clarity and consistency, KDHE will move forward to adopt the federal CCR regulations by reference.

KDHE's short-term approach to assess compliance and carry out enforcement as necessary will depend heavily upon the revised permit documents and conditions; however, it should be emphasized that Kansas' existing laws and regulations address many of the requirements in the CCR rule, though in a general way. These laws and regulations provide additional basis and authority to require permit modifications before the adoption of the CCR regulations.

Because the initial regulatory deadlines arrive in October 2015, six months after the CCR rule was published in the Federal Register, it is possible that some permit documents will not be modified and approved by KDHE to address the new rule before that date. In those cases, the rule will still be in effect because the regulations are self-implementing, but KDHE's enforcement authority could lag behind the regulatory deadlines for a brief period of time. Since the CCR rule will be in effect regardless of whether the facility permits and other documents have been revised, KDHE expects facilities to move forward with plan modifications in an expedited manner.

Long-Term Plan to Adopt CCR Regulations

As discussed in Chapter 1, KDHE will be adopting 40 CFR Subpart D by reference. Kansas will follow EPA guidelines for the adoption of regulations by reference and will consult with EPA while drafting the regulations to ensure that modifications are consistent with the federal criteria. The regulations will not be modified to make them any more or less stringent than the Federal regulations and existing state requirements.

After the proposed regulations are drafted by KDHE, they go through multiple reviews and a two-month public comment period; the regulation adoption process is described in more detail in a subsequent section entitled "Public Participation." The adoption process takes a minimum of six months after the proposed regulations have been approved by the Secretary of KDHE. The Bureau of Waste Management plans to have proposed regulations approved by the Secretary by the end of 2015 and in effect sometime in 2016.

Coordination with Other Environmental Programs
Most of the requirements of 40 CFR Subpart D will be regulated by BWM, however, certain requirements will be regulated under or in coordination with other State programs.

Title V Air Quality permits issued by the KDHE Bureau of Air (BOA) contain dust control measures at coal-fired power plants. The fugitive dust control requirements of 40 CFR 257.80 will be addressed in the BWM solid waste permit in coordination with BOA.

The requirements of 40 CFR 257.82(b), concerning the outflow of surface impoundments, will be regulated by BOW under NPDES permits. BOW will also issue NPDES construction stormwater permits for any construction sites of one acre or more.

DWR regulates the construction, operation, and maintenance of dams that: 1) have a height of 25 feet or more; or 2) have a height of six feet or more and a storage volume of 50 acre-feet or more at the emergency spillway elevation. Class A, low hazard dams that have a height of less than 30 feet and a storage volume of less than 125 acre-feet at the emergency spillway elevation are exempt from permitting. Class C, high hazard dams are required to have a safety inspection conducted by a licensed professional engineer once every three years and Class B, significant hazard dams are required to have a safety inspection conducted by a licensed professional engineer once every five years. Some CCR facilities have dams that are on the DWR inspection schedule. These DWR inspections will not replace the annual inspections required under 40 CFR 257.83(b), however information from the annual inspections will be shared with the DWR. Siting of new facilities will be approved in coordination with other agencies, as described in Chapter 2.

Public Participation

Permits
New CCR permits and significant modifications of CCR permits for solid waste disposal and processing facilities are subject to the public participation process. K.A.R. 28-29-6a sets forth the public notice and hearing requirements for municipal solid waste landfill permits, and Bureau of Waste Management policy 98-05 extends this requirement to other solid waste facilities, including industrial landfills and solid waste processing facilities.

For all new permits and significant modifications of permits, public meetings are held in accordance with BWM Policy 04-02, after which a public notice of the permit is posted in the *Kansas Register*. There is a 30-day public comment period and, if there is sufficient public interest, a public hearing. A response to comments is made available to the public when the final permit decision is issued. Two examples of significant modifications are: 1) the addition of a new CCR management unit; and 2) the lateral expansion of an existing unit into a previously unpermitted area.

There is no public participation process for the annual permit renewals, because there is not a significant degree of public interest. The annual permit renewal is an administrative process, only requiring submission of the following:

- The renewal fee, if applicable;
- Proof of liability insurance;

- Current closure and post-closure care cost estimates; and
- Proof of financial assurance for closure and post-closure care.

CCR permits that are modified to incorporate all existing CCR units (such as surface impoundments and CCR piles), rather than add new disposal units or surface impoundments, will be subject to a modified public participation process. Full public disclosure of how all CCR will be managed at the facility will be accomplished through a public notice and public comments will be accepted, however there will be no public meetings or public hearing. This modified public participation approach is justified because these units were already in operation under the oversight of the KDHE Bureau of Water; the only change is the permit and regulations under which these units will be regulated.

Regulations

Stakeholder input is routinely sought in the development of new and amended regulations. The Bureau of Waste Management has already held stakeholder meetings to discuss implementation of the CCR rule in Kansas.

In accordance with the Kansas Rules and Regulations Filing Act, K.S.A. 77-415 through 77-438 (which can be found, as in effect on the date this plan was prepared, in Appendix C), the State regulatory development process includes:

- Preparation of an Economic and Environmental Impact Statement;
- Consultation with the League of Kansas Municipalities, the Kansas Association of Counties, and the Kansas Association of School Boards, as appropriate;
- Approval by the Secretary of Administration;
- Approval by the Attorney General;
- Publication of a public hearing notice, which includes a summary of the proposed regulations, in the *Kansas Register*. The hearing notice, proposed regulations, and regulatory impact statement are posted on the KDHE web site;
- Submission of the public hearing notice, proposed regulations, and Economic and Environmental Impact Statement to the Citizens Regulatory Review Board;
- A public comment period of at least 60 days;
- Review and comment by the Joint Committee on Administrative Rules and Regulations;
- A public hearing;
- Revisions to regulations if required;
- Preparation and distribution of a responsiveness summary. The responsiveness summary contains all comments received during the public comment period and hearing as well as KDHE's response to comments. It is made available on the KDHE web site, and sent to individuals who submit comments or request a copy;
- Adoption by the Secretary;
- Publication of the adopted regulations in the *Kansas Register*.

The process, from the time the regulations are submitted to the Secretary of Administration to publication in the *Kansas Register* takes a minimum of six months; the process can take significantly longer depending on the time needed for the review by the Secretary of Administration and the Attorney General.

In addition to the required notifications listed above, the KDHE Bureau of Waste Management informs the public and key stakeholders of regulations that are being drafted, regulations proposed for adoption, and regulations that have been adopted, through one or more of the following, as appropriate:

- The KDHE Division of Environment Regulatory Agenda, which is posted on the KDHE web site at www.kdheks.gov/befs;
- The KDHE Bureau of Waste Management newsletter;
- Letters and emails to stakeholders; and
- Stakeholder meetings.

Appendix A

Referenced Bureau of Waste Management Statutes, Regulations, and Policies

Kansas Statutes Annotated (K.S.A.)

65-3401. Statement of policy. It is hereby declared that protection of the health and welfare of the citizens of Kansas requires the safe and sanitary disposal of solid wastes. The legislature finds that the lack of adequate state regulations and control of solid waste and solid waste management systems has resulted in undesirable and inadequate solid waste management practices that are detrimental to the health of the citizens of the state; degrade the quality of the environment; and cause economic loss. For these reasons it is the policy of the state to:

(a) Establish and maintain a cooperative state and local program of planning and technical and financial assistance for comprehensive solid waste management.

(b) Utilize the capabilities of private enterprise as well as the services of public agencies to accomplish the desired objectives of an effective solid waste management program.

(c) Require a permit for the operation of solid waste processing and disposal systems.

(d) Achieve and maintain status for the Kansas department of health and environment as an approved state agency for the purpose of administering federal municipal solid waste management laws and regulations.

(e) Encourage the wise use of resources through development of strategies that reduce, reuse and recycle materials.

History: L. 1970, ch. 264, § 1; L. 1992, ch. 316, § 1; L. 1997, ch. 140, § 1; July 1.

65-3402. Definitions. As used in this act, unless the context otherwise requires:

(a) "Solid waste" means garbage, refuse, waste tires as defined by K.S.A. 65-3424, and amendments thereto, and other discarded materials, including, but not limited to, solid, semisolid, sludges, liquid and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. Solid waste does not include hazardous wastes as defined by subsection (f) of K.S.A. 65-3430, and amendments thereto, recyclables or the waste of domestic animals as described by subsection (a)(1) of K.S.A. 65-3409, and amendments thereto.

(b) "Solid waste management system" means the entire process of storage, collection, transportation, processing, and disposal of solid wastes by any person engaging in such process as a business, or by any state agency, city, authority, county or any combination thereof.

(c) "Solid waste processing facility" means incinerator, composting facility, household hazardous waste facility, waste-to-energy facility, transfer station, reclamation facility or any other location where solid wastes are consolidated, temporarily stored, salvaged or otherwise processed prior to being transported to a final disposal site. This term does not include a scrap material recycling and processing facility.

(d) "Solid waste disposal area" means any area used for the disposal of solid waste from more than one residential premises, or one or more commercial, industrial, manufacturing or municipal operations. "Solid waste disposal area" includes all property described or included within any permit issued pursuant to K.S.A. 65-3407, and amendments thereto.

(e) "Person" means individual, partnership, firm, trust, company, association, corporation, individual or individuals having controlling or majority interest in a corporation, institution, political subdivision, state agency or federal department or agency.

(f) "Waters of the state" means all streams and springs, and all bodies of surface or groundwater, whether natural or artificial, within the boundaries of the state.

(g) "Secretary" means the secretary of health and environment.

(h) "Department" means the Kansas department of health and environment.

(i) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water.

(j) "Open dumping" means the disposal of solid waste at any solid waste disposal area or facility which is not permitted by the secretary under the authority of K.S.A. 65-3407, and amendments thereto, or the disposal of solid waste contrary to rules and regulations adopted pursuant to K.S.A. 65-3406, and amendments thereto.

(k) "Generator" means any person who produces or brings into existence solid waste.

(l) "Monitoring" means all procedures used to (1) systematically inspect and collect data on the operational parameters of a facility, an area or a transporter, or (2) to systematically collect and analyze data on the quality of the air, groundwater, surface water or soils on or in the vicinity of a solid waste processing facility or solid waste disposal area.

(m) "Closure" means the permanent cessation of active disposal operations, abandonment of the disposal area, revocation of the permit or filling with waste of all areas and volume specified in the permit and preparing the area for the long-term care.

(n) "Postclosure" means that period of time subsequent to closure of a solid waste disposal area when actions at the site must be performed.

(o) "Reclamation facility" means any location at which material containing a component defined as a hazardous substance pursuant to K.S.A. 65-3452a, and amendments thereto, or as an industrial waste pursuant to this section is processed.

(p) "Designated city" means a city or group of cities which, through interlocal agreement with the county in which they are located, is delegated the responsibility for preparation, adoption or implementation of the county solid waste plan.

(q) "Nonhazardous special waste" means any solid waste designated by the secretary as requiring extraordinary handling in a solid waste disposal area.

(r) "Recyclables" means any materials that will be used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as an effective substitute for a commercial product. "Recyclables" includes, but is not limited to, paper, glass, plastic, municipal water treatment residues, as defined by K.S.A. 65-163, and amendments thereto, and metal, but does not include yard waste.

(s) "Scrap material processing industry" means any person who accepts, processes and markets recyclables.

(t) "Scrap material recycling and processing facility" means a fixed location that utilizes machinery and equipment for processing only recyclables.

(u) "Construction and demolition waste" means solid waste resulting from the construction, remodeling, repair and demolition of structures, roads, sidewalks and utilities; untreated wood and untreated sawdust from any source; treated wood from construction or demolition projects; small amounts of municipal solid waste generated by the consumption of food and drinks at construction or demolition sites, including, but not limited to, cups, bags and bottles; furniture and appliances from which ozone depleting chlorofluorocarbons have been removed in accordance with the provisions of the federal clean air act; solid waste consisting of motor vehicle window glass; and solid waste consisting of vegetation from land clearing and grubbing, utility maintenance, and seasonal or storm-related cleanup. Such wastes include, but are not limited to, bricks, concrete and other masonry materials, roofing materials, soil, rock, wood, wood products, wall or floor coverings, plaster, drywall, plumbing fixtures, electrical wiring,

electrical components containing no hazardous materials, nonasbestos insulation and construction related packaging. "Construction and demolition waste" shall not include waste material containing friable asbestos, garbage, furniture and appliances from which ozone depleting chlorofluorocarbons have not been removed in accordance with the provisions of the federal clean air act, electrical equipment containing hazardous materials, tires, drums and containers even though such wastes resulted from construction and demolition activities. Clean rubble that is mixed with other construction and demolition waste during demolition or transportation shall be considered to be construction and demolition waste.

(v) "Construction and demolition landfill" means a permitted solid waste disposal area used exclusively for the disposal on land of construction and demolition wastes. This term shall not include a site that is used exclusively for the disposal of clean rubble.

(w) "Clean rubble" means the following types of construction and demolition waste: Concrete and concrete products including reinforcing steel, asphalt pavement, brick, rock and uncontaminated soil as defined in rules and regulations adopted by the secretary.

(x) "Industrial waste" means all solid waste resulting from manufacturing, commercial and industrial processes which is not suitable for discharge to a sanitary sewer or treatment in a community sewage treatment plant or is not beneficially used in a manner that meets the definition of recyclables. Industrial waste includes, but is not limited to: Mining wastes from extraction, beneficiation and processing of ores and minerals unless those minerals are returned to the mine site; fly ash, bottom ash, slag and flue gas emission wastes generated primarily from the combustion of coal or other fossil fuels; cement kiln dust; waste oil and sludges; waste oil filters; and fluorescent lamps.

(y) "Composting facility" means any facility that composts wastes and has a composting area larger than one-half acre.

(z) "Household hazardous waste facility" means a facility established for the purpose of collecting, accumulating and managing household hazardous waste and may also include small quantity generator waste or agricultural pesticide waste, or both. Household hazardous wastes are consumer products that when discarded exhibit hazardous characteristics.

(aa) "Waste-to-energy facility" means a facility that processes solid waste to produce energy or fuel.

(bb) "Transfer station" means any facility where solid wastes are transferred from one vehicle to another or where solid wastes are stored and consolidated before being transported elsewhere, but shall not include a collection box provided for public use as a part of a county-operated solid waste management system if the box is not equipped with compaction mechanisms or has a volume smaller than 20 cubic yards.

(cc) "Municipal solid waste landfill" means a solid waste disposal area where residential waste is placed for disposal. A municipal solid waste landfill also may receive other nonhazardous wastes, including commercial solid waste, sludge and industrial solid waste.

(dd) "Construction related packaging" means small quantities of packaging wastes that are generated in the construction, remodeling or repair of structures and related appurtenances. "Construction related packaging" does not include packaging wastes that are generated at retail establishments selling construction materials, chemical containers generated from any source or packaging wastes generated during maintenance of existing structures.

(ee) "Industrial facility" includes all operations, processes and structures involved in the manufacture or production of goods, materials, commodities or other products located on, or adjacent to, an industrial site and is not limited to a single owner or to a single industrial process.

For purposes of this act, it includes all industrial processes and applications that may generate industrial waste which may be disposed at a solid waste disposal area which is permitted by the secretary and operated for the industrial facility generating the waste and used only for industrial waste.

History: L. 1970, ch. 264, § 2; L. 1974, ch. 352, § 156; L. 1977, ch. 221, § 1; L. 1979, ch. 202, § 1; L. 1981, ch. 251, § 21; L. 1992, ch. 316, § 2; L. 1993, ch. 274, § 1; L. 1994, ch. 283, § 1; L. 1995, ch. 221, § 1; L. 1997, ch. 140, § 2; L. 2001, ch. 127, § 1; L. 2002, ch. 121, § 1; L. 2005, ch. 25, § 1; L. 2006, ch. 53, § 1; April 6.

65-3405. Solid waste management plan required; solid waste management committee; process for adoption and revision of plan; contents of plan. (a) Each county of this state, or a designated city, shall submit to the secretary a workable plan for the management of solid waste in such county. The plan developed by each county or designated city shall be adopted by the governing body of such county or designated city if so authorized. Two or more counties, by interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq., and amendments thereto, may develop and adopt a regional plan in lieu of separate county plans.

(b) There shall be established in each county or group of counties cooperating in a regional plan a solid waste management committee. A county which cooperates in a regional plan may establish its own county committee in addition to cooperating in the required regional committee. A county which does not cooperate in a regional plan may designate, by interlocal agreement, a city as the solid waste management planning authority for the county. Subject to the requirements of this section, the membership of the committee, the terms of committee members, the organization of the committee and selection of its officers shall be determined by the county or counties by interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq., and amendments thereto. The number of members on the committee, whether an individual county committee or a regional committee, shall be not fewer than five or a number equal to the total number of counties cooperating in the regional plan, whichever is more, and shall not exceed 30. The membership shall include: (1) Representatives of incorporated cities located in the county or counties, not to exceed five members representing any cities of the first class, three members representing any cities of the second class and one member representing any cities of the third class; (2) one representative of unincorporated areas of the county or counties; (3) representatives of the general public, citizen organizations, private industry, any private solid waste management industry operating in the county or counties and any private recycling or scrap material processing industry operating in the county or counties; (4) the recycling coordinator, if any, of the county or counties; and (5) any other persons deemed appropriate by the county, designated city or groups of counties, including, but not limited to, county commissioners, county engineers, county health officers and county planners. Members of the committee shall be appointed by the board of county commissioners or governing body of the designated city or by agreement of the boards of county commissioners cooperating in the plan. A county commissioner shall not be appointed to a regional planning committee unless one or more other noncommissioners also represent the commissioner's county on the committee. A regional planning committee shall include at least one representative of each county in the region. Persons appointed to an individual county planning committee in a county covered by a regional plan may also serve on a regional planning committee. Members appointed to represent cities shall be nominated by the mayor of the city represented, or by agreement of all mayors of the cities represented if more than one city of the class is located in the county or counties. If the

nominee is not appointed or rejected within 30 days after nomination, the nominee shall be deemed appointed.

(c) The solid waste management committee, whether an individual county committee or a regional committee, shall: (1) Be responsible for the preparation of the solid waste management plan of the individual county or group of counties; (2) review the plan at least annually; and (3) provide to the county commissioners of the individual county or group of counties served by the plan a report containing the results of the annual plan reviews, including recommendations for revisions to the plan. Annual plan reviews which take place in years when county commissions are scheduled to carry out five-year public hearings in accordance with subsection (d) shall comprehensively evaluate the adequacy of the plan with respect to all criteria established by subsection (j). The responsibilities of a solid waste management committee established in a county which cooperates in a regional plan are to be determined by the county commission of such county.

(d) Each county commission shall: (1) Review the county or regional solid waste management plan, the annual review report and any proposed revisions of the plan prepared by the solid waste management committee; (2) adopt the solid waste management plan or proposed revisions to the plan prepared by the solid waste management committee as submitted or as revised by the county commission, except as provided by subsection (g) for regional plans; (3) at least every five years hold a public hearing on the county or regional solid waste management plan, including a review of projected solid waste management practices and needs for a 10-year planning period; (4) notify the department that the solid waste management committee has completed each annual review and each five-year public hearing and that the commission has adopted the plan or review, except as provided in subsection (g) for regional plans; (5) submit with the annual notification a list of solid waste management committee members representing the county on an individual county committee or a regional committee; and (6) review permit applications for solid waste processing facilities and solid waste disposal areas submitted to the department pursuant to K.S.A. 65-3407, and amendments thereto, to determine consistency of the proposed facility with the county or regional plan and to certify that the area is properly zoned or compatible with surrounding land uses. County commissions may utilize the annual plan review reports prepared by solid waste management committees as the basis for the required five-year public hearings.

(e) The county commission of each county which has completed an individual county solid waste plan shall convene an annual meeting of the county solid waste management committee to review the plan. If a quorum of the solid waste management committee is not present, the county commission may independently complete the annual review required in subsection (c).

(f) The county commission of a county which has completed an individual county solid waste management plan may choose to revise its plan at a time which does not coincide with a scheduled annual review by the county solid waste management committee. In such a case, the county commission shall convene a meeting of the solid waste management committee to review the commission's proposed changes and obtain committee comments and recommendations for plan revision. If a quorum of the solid waste management committee is not present, the county commission may independently revise and adopt the county solid waste management plan. The aforementioned meeting shall include an opportunity for public input.

(g) A regional solid waste management committee shall meet annually to review the regional solid waste management plan. The recommendations of the regional committee shall be distributed to the county commissioners of each county cooperating in the regional plan. Each

county commission shall either: (1) Adopt the regional committee report, including any proposed plan revisions, and submit the record of adoption back to the regional committee; or (2) submit comments back to the regional committee. Following the adoption of the annual review report by every county in the region, the regional committee shall notify the department that the annual review or five-year update has been completed.

(h) The county commission of a county which cooperates in a regional solid waste management plan may choose to revise its plan at a time which does not coincide with a scheduled annual review by the regional solid waste management committee. At such time, the provisions of the interlocal agreement shall establish protocols for addressing the needs of the county seeking the change in the regional plan.

(i) Each county or group of counties is required to adopt and implement a solid waste management plan pursuant to this section and is responsible for continued and ongoing planning for systematic solid waste management within the boundaries of such county or group of counties. The solid waste management plan of each county, designated city or group of counties shall provide for a solid waste management system plan to serve all generators of solid waste within the county or group of counties.

(j) Every plan shall:

(1) Delineate areas within the jurisdiction of the political subdivision or subdivisions where waste management systems are in existence and areas where the solid waste management systems are planned to be available within a 10-year period.

(2) Conform to the rules and regulations, standards and procedures adopted by the secretary for implementation of this act.

(3) Provide for solid waste management systems in a manner consistent with the needs and plans of the whole area, and in a manner which will not contribute to pollution of the waters or air of the state, nor constitute a public nuisance and shall otherwise provide for the safe and sanitary disposal of solid waste.

(4) Conform with existing comprehensive plans, population trend projections, engineering and economics so as to delineate with practicable precision those portions of the area which may reasonably be expected to be served by a solid waste management system within the next 10 years.

(5) Take into consideration existing acts and regulations affecting the development, use and protection of air, water or land resources.

(6) Establish a time schedule and revenue schedule for the development, construction and operation of the planned solid waste management systems, together with the estimated cost thereof.

(7) Describe the elements of the plan which will require public education and include a plan for delivering such education.

(8) Include such other reasonable information as the secretary requires.

(9) Establish a schedule for the reduction of waste volumes taking in consideration the following: (A) Source reduction; (B) reuse, recycling, composting; and (C) land disposal.

(10) Take into consideration the development of specific management programs for certain wastes, including but not limited to lead acid batteries, household hazardous wastes, small quantities of hazardous waste, white goods containing chlorofluorocarbons, pesticides and pesticide containers, motor oil, consumer electronics, medical wastes, construction and demolition waste, seasonal clean-up wastes, wastes generated by natural disasters and yard waste.

(k) The plan and any revision of the plan shall be reviewed by appropriate official planning agencies within the area covered by the plan for consistency with programs of comprehensive planning for the area. All such reviews shall be transmitted to the secretary with the proposed plan or revision.

(l) The secretary is hereby authorized to approve or disapprove plans for solid waste management systems, or revisions of such plans, submitted in accordance with this act. If a plan or revision is disapproved, the secretary shall furnish any and all reasons for such disapproval, and the county or group of counties whose plan or revision is disapproved may request a hearing before the secretary in accordance with K.S.A. 65-3412, and amendments thereto.

(m) The secretary is authorized to provide technical assistance to counties or designated cities in coordinating plans for solid waste management systems required by this act, including revisions of such plans.

(n) The secretary may recommend that two or more counties adopt, submit and implement a regional plan rather than separate county plans.

(o) The secretary may institute appropriate action to compel submission of plans or plan revisions in accordance with this act and the rules and regulations, standards and procedures of the secretary.

(p) Upon approval of the secretary of a solid waste management plan, the county or designated city is authorized and directed to implement the provisions contained in the plan.

(q) A county cooperating in a regional solid waste management plan may withdraw from such plan only:

(1) In accordance with the terms of the interlocal agreement adopting the old plan or upon revision or termination of such agreement to permit withdrawal and upon a determination by the secretary that the existing regional solid waste management plan will not be significantly affected by the withdrawal; or

(2) if two or more revised solid waste management plans are prepared and submitted to the department for review and approval addressing solid waste management in counties which have decided to plan individually or in any newly formed regions.

History: L. 1970, ch. 264, § 5; L. 1974, ch. 352, §158; L. 1992, ch. 316, § 3; L. 1997, ch. 140, § 3; L. 2002, ch. 79, § 1; July 1.

65-3406. Duties and functions of secretary; rules and regulations; exemption of certain solid waste disposal areas from certain requirements. (a) The secretary is authorized and directed to:

(1) Adopt such rules and regulations, standards and procedures relative to solid waste management as necessary to protect the public health and environment, prevent public nuisances and enable the secretary to carry out the purposes and provisions of this act.

(2) Report to the legislature on further assistance needed to administer the solid waste management program.

(3) Administer the solid waste management program pursuant to provisions of this act.

(4) Cooperate with appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out duties under this act.

(5) Develop a statewide solid waste management plan.

(6) Provide technical assistance, including the training of personnel to cities, counties and other political subdivisions.

(7) Initiate, conduct and support research, demonstration projects and investigations and coordinate all state agency research programs with applicable federal programs pertaining to solid waste management systems.

(8) Establish policies for effective solid waste management systems.

(9) Assist counties and groups of counties to establish and implement solid waste planning and management.

(10) Authorize issuance of such permits and orders and conduct such inspections as may be necessary to implement the provisions of this act and the rules and regulations and standards adopted pursuant to this act.

(11) Conduct and contract for research and investigations in the overall area of solid waste storage, collection, transportation, processing, treatment, recovery and disposal including, but not limited to, new and novel procedures.

(12) Adopt rules and regulations for permitting of all solid waste disposal areas, including those that are privately owned.

(13) Adopt rules and regulations establishing criteria for the location of processing facilities and disposal areas for solid wastes.

(14) Adopt rules and regulations establishing appropriate measures for monitoring solid waste disposal areas and processing facilities, both during operation and after closure.

(15) Adopt rules and regulations requiring that, for such period of time as the secretary shall specify, any assignment, sale, conveyance or transfer of all or any part of the property upon which a permitted disposal area for solid waste is or has been located shall be subject to such terms and conditions as to the use of such property as the secretary shall specify to protect human health and the environment.

(16) Adopt suitable measures, including rules and regulations if appropriate, to encourage recovery and recycling of solid waste for reuse whenever feasible.

(17) Adopt rules and regulations establishing standards for transporters of solid waste.

(18) Adopt rules and regulations establishing minimum standards for closing, termination, and long-term care of sites for the land disposal of solid waste. In this subsection, "site" refers to a site for the land disposal of solid waste which has a permit issued under K.S.A. 65-3407 and amendments thereto. The owner of a site shall be responsible for the long-term care of the site for 30 years after the closing of the site, except the secretary may extend the long-term care responsibility of a particular site or sites as the secretary deems necessary to protect the public health and safety or the environment. Any person acquiring rights of ownership, possession or operation in a permitted site or facility for the land disposal of solid waste at any time after the site has begun to accept waste and prior to closure shall be subject to all requirements of the permit for the site or facility, including the requirements relating to long-term care of the site or facility.

(19) Enter into cooperative agreements with the secretary of commerce for the development and implementation of statewide market development for recyclable materials.

(20) Adopt rules and regulations for the management of nonhazardous special wastes.

(b) In adopting rules and regulations, the secretary shall allow the exemption contained in subsection (f)(1) of 40 CFR 258.1 (October 9, 1991), as amended and in effect on the effective date of this act.

(c) (1) Any rules and regulations adopted by the secretary which establish standards for solid waste processing facilities or solid waste disposal areas that are more stringent than the standards required by federal law or applicable federal regulations on such date shall not become effective

until 45 days after the beginning of the next ensuing session of the legislature, which date shall be specifically provided in such rule and regulation.

(2) The provisions of subsection (c)(1) shall not apply to rules and regulations adopted before January 1, 1995, which establish standards for location, design and operation of solid waste processing facilities and disposal areas.

(d) Any solid waste disposal area which qualifies for the exemption provided for by subsection (b) and which successfully demonstrates that naturally occurring geological conditions provide sufficient protection against groundwater contamination shall not be required to construct a landfill liner or leachate collection system. The secretary shall adopt rules and regulations which establish criteria for performing this demonstration and standards for liner and leachate collection systems for exempt landfills which fail the demonstration. Solid waste disposal areas which qualify for the exemption provided for by subsection (b) may be designed with trenches or units which have straight vertical walls. All solid waste disposal areas which qualify for the exemption provided for by subsection (b) shall be required to comply with all applicable rules and regulations adopted by the secretary and approved by the U.S. environmental protection agency, including location restrictions, operating requirements and closure standards for municipal solid waste landfills. Operating requirements include, but are not limited to, hazardous waste screening, daily cover, intermediate cover, disease vector control, gas monitoring and management, air emissions, survey controls, compaction, recordkeeping and groundwater monitoring.

The identification of groundwater contamination caused by disposal activities at a solid waste disposal area which has qualified for the exemption provided for by subsection (b) shall result in:

(1) The loss of such exemption; and

(2) the application of all corrective action and design requirements specified in federal laws and regulations, or in equivalent rules and regulations adopted by the secretary and approved by the U.S. environmental protection agency, to such disposal area.

History: L. 1970, ch. 264, § 6; L. 1974, ch. 352, § 159; L. 1975, ch. 312, § 12; L. 1977, ch. 221, § 2; L. 1979, ch. 202, §5; L. 1981, ch. 251, § 22; L. 1992, ch. 316, § 4; L. 1993, ch. 274, § 2; L. 1994, ch. 283, § 2; L. 1995, ch. 140, § 1; L. 1997, ch. 139, § 1; July 1.

65-3407. Permits to construct, alter or operate solid waste processing facilities and solid waste disposal areas; requirements for closure and post-closure care. (a) Except as otherwise provided by K.S.A. 65-3407c, and amendments thereto, no person shall construct, alter or operate a solid waste processing facility or a solid waste disposal area of a solid waste management system, except for clean rubble disposal sites, without first obtaining a permit from the secretary.

(b) Every person desiring to obtain a permit to construct, alter or operate a solid waste processing facility or disposal area shall make application for such a permit on forms provided for such purpose by the rules and regulations of the secretary and shall provide the secretary with such information as necessary to show that the facility or area will comply with the purpose of this act. Upon receipt of any application and payment of the application fee, the secretary, with advice and counsel from the local health authorities and the county commission, shall make an investigation of the proposed solid waste processing facility or disposal area and determine whether it complies with the provisions of this act and any rules and regulations and standards adopted thereunder. The secretary also may consider the need for the facility or area in

conjunction with the county or regional solid waste management plan. If the investigation reveals that the facility or area conforms with the provisions of the act and the rules and regulations and standards adopted thereunder, the secretary shall approve the application and shall issue a permit for the operation of each solid waste processing or disposal facility or area set forth in the application. If the facility or area fails to meet the rules and regulations and standards required by this act the secretary shall issue a report to the applicant stating the deficiencies in the application. The secretary may issue temporary permits conditioned upon corrections of construction methods being completed and implemented.

(c) Before reviewing any application for permit, the secretary shall conduct a background investigation of the applicant. The secretary shall consider the financial, technical and management capabilities of the applicant as conditions for issuance of a permit. The secretary may reject the application prior to conducting an investigation into the merits of the application if the secretary finds that:

(1) The applicant currently holds, or in the past has held, a permit under this section and while the applicant held a permit under this section the applicant violated a provision of subsection (a) of K.S.A. 65-3409, and amendments thereto; or

(2) the applicant previously held a permit under this section and that permit was revoked by the secretary; or

(3) the applicant failed or continues to fail to comply with any of the provisions of the air, water or waste statutes, including rules and regulations issued thereunder, relating to environmental protection or to the protection of public health in this or any other state or the federal government of the United States, or any condition of any permit or license issued by the secretary; or if the secretary finds that the applicant has shown a lack of ability or intention to comply with any provision of any law referred to in this subsection or any rule and regulation or order or permit issued pursuant to any such law as indicated by past or continuing violations; or

(4) the applicant is a corporation and any principal, shareholder, or other person capable of exercising total or partial control of such corporation could be determined ineligible to receive a permit pursuant to subsection (c)(1), (2) or (3) above.

(d) Before reviewing any application for a permit, the secretary may request that the attorney general perform a comprehensive criminal background investigation of the applicant; or in the case of a corporate applicant, any principal, shareholder or other person capable of exercising total or partial control of the corporation. The secretary may reject the application prior to conducting an investigation into the merits of the application if the secretary finds that serious criminal violations have been committed by the applicant or a principal of the corporation.

(e) (1) The fees for a solid waste processing or disposal permit shall be established by rules and regulations adopted by the secretary. The fee for the application and original permit shall not exceed $5,000. Except as provided by paragraph (2), the annual permit renewal fee shall not exceed $2,000. No refund shall be made in case of revocation. In establishing fees for a construction and demolition landfill, the secretary shall adopt a differential fee schedule based upon the volume of construction and demolition waste to be disposed of at such landfill. All fees shall be deposited in the state treasury and credited to the solid waste management fund. A city, county, other political subdivision or state agency shall be exempt from payment of the fee but shall meet all other provisions of this act.

(2) The annual permit renewal fee for a solid waste disposal area which is permitted by the secretary, owned or operated by the facility generating the waste and used only for industrial waste generated by such facility shall be not less than $1,000 nor more than $4,000. In

establishing fees for such disposal areas, the secretary shall adopt a differential fee schedule based upon the characteristics of the disposal area sites.

(f) Plans, designs and relevant data for the construction of solid waste processing facilities and disposal sites shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, alteration or operation of such facility or area. In adopting rules and regulations, the secretary may specify sites, areas or facilities where the environmental impact is minimal and may waive such preparation requirements provided that a review of such plans is conducted by a professional engineer licensed to practice in Kansas.

(g) Each permit granted by the secretary, as provided in this act, shall be subject to such conditions as the secretary deems necessary to protect human health and the environment and to conserve the sites. Such conditions shall include approval by the secretary of the types and quantities of solid waste allowable for processing or disposal at the permitted location.

(h) Before issuing or renewing a permit to operate a solid waste processing facility or solid waste disposal area, the secretary shall require the permittee to demonstrate that funds are available to ensure payment of the cost of closure and postclosure care and provide liability insurance for accidental occurrences at the permitted facility.

(1) If the permittee owns the land where the solid waste processing facility or disposal area is located or the permit for the facility was issued before the date this act is published in the Kansas register, the permittee shall satisfy the financial assurance requirement for closure and postclosure care by providing a trust fund, a surety bond guaranteeing payment, an irrevocable letter of credit or insurance policy, or by passing a financial test or obtaining a financial guarantee from a related entity, to guarantee the future availability of funds. The secretary shall prescribe the methods to be used by a permittee to demonstrate sufficient financial strength to become eligible to use a financial test or a financial guarantee procedure in lieu of providing the other financial instruments. Solid waste processing facilities or disposal areas, except municipal solid waste landfills, may also demonstrate financial assurance costs by use of ad valorem taxing power.

(2) If the permittee does not own the land where the solid waste processing facility or disposal area is located and the permit for the facility is issued after the date this act is published in the Kansas register, the permittee shall satisfy the financial assurance requirement for closure and postclosure care by providing a trust fund, a surety bond guaranteeing payment, or an irrevocable letter of credit.

(3) The secretary shall require each permittee of a solid waste processing facility or disposal area to provide liability insurance coverage during the period that the facility or area is active, and during the term of the facility or area is subject to postclosure care, in such amount as determined by the secretary to insure the financial responsibility of the permittee for accidental occurrences at the site of the facility or area. Any such liability insurance as may be required pursuant to this subsection or pursuant to the rules and regulations of the secretary shall be issued by an insurance company authorized to do business in Kansas or by a licensed insurance agent operating under authority of K.S.A. 40-246b, and amendments thereto, and shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance pursuant to K.S.A. 40-216, and amendments thereto, except as authorized by K.S.A. 40-246b, and amendments thereto. Nothing contained in this subsection shall be deemed to apply to any state agency or department or agency of the federal government.

(i) (1) Permits granted by the secretary as provided by this act shall not be transferable except as follows:

(A) A permit for a solid waste disposal area may be transferred if the area is permitted for only solid waste produced on site from manufacturing and industrial processes or on-site construction or demolition activities and the only change in the permit is a name change resulting from a merger, acquisition, sale, corporate restructuring or other business transaction.

(B) A permit for a solid waste disposal area or a solid waste processing facility may be transferred if the secretary approves of the transfer based upon information submitted to the secretary sufficient to conduct a background investigation of the new owner as specified in subsections (c) and (d) of K.S.A. 65-3407, and amendments thereto, and a financial assurance evaluation as specified in subsection (h) of K.S.A. 65-3407, and amendments thereto. Such information shall be submitted to the secretary not more than one year nor less than 60 days before the transfer. If the secretary does not approve or disapprove the transfer within 30 days after all required information is submitted to the secretary, the transfer shall be deemed to have been approved.

(2) Permits granted by the secretary as provided by this act shall be revocable or subject to suspension whenever the secretary shall determine that the solid waste processing or disposal facility or area is, or has been constructed or operated in violation of this act or the rules and regulations or standards adopted pursuant to the act, or is creating or threatens to create a hazard to persons or property in the area or to the environment, or is creating or threatens to create a public nuisance, or upon the failure to make payment of any fee required under this act.

(3) The secretary also may revoke, suspend or refuse to issue a permit when the secretary determines that past or continuing violations of the provisions of K.S.A. 65-3409, subsection (c)(3) of K.S.A. 65-3407 or K.S.A. 65-3424b, and amendments thereto, have been committed by a permittee, or any principal, shareholder or other person capable of exercising partial or total control over a permittee.

(j) Except as otherwise provided by subsection (i)(1), the secretary may require a new permit application to be submitted for a solid waste processing facility or a solid waste disposal area in response to any change, either directly or indirectly, in ownership or control of the permitted real property or the existing permittee.

(k) In case any permit is denied, suspended or revoked the person, city, county or other political subdivision or state agency may request a hearing before the secretary in accordance with K.S.A. 65-3412, and amendments thereto.

(l) (1) No permit to construct or operate a solid waste disposal area shall be issued on or after the effective date of this act if such area is located within 1/2 mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

(2) Any permit, issued before the effective date of this act, to construct or operate a solid waste disposal area is hereby declared void if such area is not yet in operation and is located within 1/2 mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

(3) The provisions of this subsection shall not be construed to prohibit: (A) Issuance of a permit for lateral expansion onto land contiguous to a permitted solid waste disposal area in operation on the effective date of this act; (B) issuance of a permit for a solid waste disposal area for disposal of a solid waste by-product produced on-site; (C) renewal of an existing permit for a

solid waste area in operation on the effective date of this act; or (D) activities which are regulated under K.S.A. 65-163 through 65-165 or 65-171d, and amendments thereto.

(m) Before reviewing any application for a solid waste processing facility or solid waste disposal area, the secretary shall require the following information as part of the application:

(1) Certification by the board of county commissioners or the mayor of a designated city responsible for the development and adoption of the solid waste management plan for the location where the processing facility or disposal area is or will be located that the processing facility or disposal area is consistent with the plan. This certification shall not apply to a solid waste disposal area for disposal of only solid waste produced on site from manufacturing and industrial processes or from on-site construction or demolition activities.

(2) If the location is zoned, certification by the local planning and zoning authority that the processing facility or disposal area is consistent with local land use restrictions or, if the location is not zoned, certification from the board of county commissioners that the processing facility or disposal area is compatible with surrounding land use.

(3) For a solid waste disposal area permit issued on or after July 1, 1999, proof that the applicant either owns the land where the disposal area will be located or operates the solid waste disposal area for an adjacent or on-site industrial facility, if the disposal area is: (A) A municipal solid waste landfill; or (B) a solid waste disposal area that has: (i) A leachate or gas collection or treatment system; (ii) waste containment systems or appurtenances with planned maintenance schedules; or (iii) an environmental monitoring system with planned maintenance schedules or periodic sampling and analysis requirements. If the applicant does not own the land, the applicant shall also provide proof that the applicant has acquired and duly recorded an easement to the landfill property. The easement shall authorize the applicant to carry out landfill operations, closure, post-closure care, monitoring, and all related construction activities on the landfill property as required by applicable solid waste laws and regulations, as established in permit conditions, or as ordered or directed by the secretary. Such easement shall run with the land if the landfill property is transferred and the easement may only be vacated with the consent of the secretary. These requirements shall not apply to a permit for lateral or vertical expansion contiguous to a permitted solid waste disposal area in operation on July 1, 1999, if such expansion is on land leased by the permittee before April 1, 1999.

History: L. 1970, ch. 264, § 7; L. 1974, ch. 352, § 160; L. 1977, ch. 221, § 3; L. 1981, ch. 251, § 23; L. 1991, ch. 196, § 1; L. 1992, ch. 316, § 5; L. 1993, ch. 274, § 4; L. 1994, ch. 283, § 3; L. 1997, ch. 140, § 4; L. 1999, ch. 112, § 1; L. 2001, ch. 127, § 2; L. 2002, ch. 101, § 1; L. 2006, ch. 53, § 2; April 6.

65-3409. Unlawful acts; penalties. (a) It shall be unlawful for any person to:

(1) Dispose of any solid waste by open dumping, but this provision shall not prohibit: (A) The use of solid wastes, except for waste tires, as defined by K.S.A. 65-3424, and amendments thereto, in normal farming operations or in the processing or manufacturing of other products in a manner that will not create a public nuisance or adversely affect the public health; or (B) an individual from dumping or depositing solid wastes resulting from such individual's own residential or agricultural activities onto the surface of land owned or leased by such individual when such wastes do not create a public nuisance or adversely affect the public health or the environment.

(2) Except as otherwise provided by K.S.A. 65-3407c, and amendments thereto, construct, alter or operate a solid waste processing or disposal facility or act as a waste tire transporter or

mobile waste tire processor, as defined by K.S.A. 65-3424, and amendments thereto, without a permit or be in violation of the rules and regulations, standards or orders of the secretary.

(3) Violate any condition of any permit issued under K.S.A. 65-3407 or 65-3424b, and amendments thereto.

(4) Conduct any solid waste burning operations in violation of the provisions of the Kansas air quality act.

(5) Store, collect, transport, process, treat or dispose of solid waste contrary to the rules and regulations, standards or orders of the secretary or in such a manner as to create a public nuisance.

(6) Refuse or hinder entry, inspection, sampling and the examination or copying of records related to the purposes of this act by an agent or employee of the secretary after such agent or employee identifies and gives notice of their purpose.

(7) Violate subsection (b) of K.S.A. 65-3424a, subsection (c) of K.S.A. 65-3424b or K.S.A. 65-3424i, and amendments thereto.

(8) Divide a solid waste disposal area which has been issued a permit pursuant to K.S.A. 65-3407, and amendments thereto, into two or more parcels of real property for the purpose of selling or transferring a portion of the permitted area to a new owner without receiving prior approval of the secretary. If the secretary does not approve or deny the division of the area within 60 days after the matter is submitted to the secretary for approval, the division shall be deemed to have been approved. Approval pursuant to this subsection shall not be necessary for transfer of a permitted solid waste disposal area as allowed by subsection (i)(1) of K.S.A. 65-3407, and amendments thereto.

(b) No person shall be held responsible for failure to secure a permit under the provisions of this section for the dumping or depositing of any solid waste on land owned or leased by such person without such person's expressed or implied consent, permission or knowledge.

(c) Any person who violates any provision of subsection (a) shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished as provided by law.

History: L. 1970, ch. 264, § 9; L. 1974, ch. 352, § 162; L. 1977, ch. 221, § 4; L. 1981, ch. 251, § 24; L. 1991, ch. 197, § 8; L. 1993, ch. 13, § 17; L. 1997, ch. 140, § 6; L. 2001, ch. 127, § 4; July 1.

65-3410. Cities or counties authorized to provide for collection and disposal of solid wastes or contract therefor; fees; adoption of regulations and standards. (a) Each city or county or combination of such cities and counties may provide for the storage, collection, transportation, processing and disposal of solid wastes and recyclables generated within its boundaries; and shall have the power to implement any approved solid waste management plan and to purchase all necessary equipment, acquire all necessary land, build any necessary buildings, incinerators, transfer stations, or other structures, lease or otherwise acquire the right to use land or equipment and to do all other things necessary for a proper effective solid waste management system and recycling program including the levying of fees and charges upon persons receiving service. On or before the first day of July of each calendar year, the board of county commissioners of any county, may, by resolution establish a schedule of fees to be imposed on real property within any county solid waste and recyclables service area, revenue from such fees to be used: To implement an approved solid waste management plan, to conduct operations necessary to administer the plan and to carry out its purposes and provisions; or for the acquisition, operation and maintenance of county waste disposal sites; or for financing waste

collection, storage, processing, reclamation, disposal services and recycling programs, where such services are provided. In establishing the schedule of fees, the board of county commissioners shall classify the real property within the county solid waste and recyclables service area based upon the various uses to which the real property is put, the volume of waste occurring from the different land uses and any other factors that the board determines would reasonably relate the waste disposal and recyclable fee to the real property upon which it would be imposed.

The board shall set a reasonable fee for each category established and divide the real property within the county service areas according to categories and ownership. The board shall impose the appropriate fee upon each division of land and provide for the billing and collection of such fees. The fees may be established, billed, and collected on a monthly, quarterly or yearly basis. Fees collected on a yearly basis may be billed on the ad valorem tax statement. Prior to the collection of any fees levied on real property by the board under this section, the board shall notify affected property owners by causing a copy of the schedule of fees to be mailed to each property owner to whom tax statements are mailed in accordance with K.S.A. 79-2001, and amendments thereto.

Any fees authorized pursuant to this section which remain unpaid for a period of 60 or more days after the date upon which they were billed may be collected thereafter by the county as provided herein.

(1) At least once a year the board of county commissioners shall cause to be prepared a report of delinquent fees. The board shall fix a time, date, and place for hearing the report and any objections or protests thereto.

(2) The board shall cause notice of the hearing to be mailed to the property owners listed on the report not less than 10 days prior to the date of the hearing.

(3) At the hearing the board shall hear any objections or protests of property owners liable to be assessed for delinquent fees. The board may make such revisions or corrections to the report as it deems just, after which, by resolution, the report shall be confirmed.

(4) The delinquent fees set forth in the report as confirmed shall constitute assessments against the respective parcels of land and are a lien on the property for the amount of such delinquent fees. A certified copy of the confirmed report shall be filed with the county clerk for the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll. The lien created attaches upon recordation, in the office of the county clerk of the county in which the property is situated, of a certified copy of the resolution of confirmation. The assessment may be collected at the same time and in the same manner as ordinary county ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection, and enforcement of county ad valorem property taxes shall be applicable to such assessment.

Any city collecting solid waste fees or charges may collect delinquent fees or charges for garbage and trash storage, collection and disposal in the manner provided for counties.

(b) In carrying out its responsibilities, any such city or county may adopt ordinances, resolutions, regulations and standards to implement an approved solid waste management plan, to conduct operations necessary to administer the plan and to carry out its purposes and provisions; and for the storage, collection, transportation, processing and disposal of solid wastes and recyclables which shall be in conformity with the rules, regulations, standards and

procedures adopted by the secretary for the storage, collection, transportation, processing and disposal of solid wastes and recyclables.

(c) Cities or counties may contract with any person, city, county, other political subdivision or state agency in this or other states to carry out their responsibilities to implement an approved solid waste management plan including any operations necessary to administer the plan and carry out its purposes and provisions; and for the collection, transportation, processing and disposal of solid wastes and recyclables. **History:** L. 1970, ch. 264, § 10; L. 1972, ch. 239, § 1; L. 1974, ch. 257, § 1; L. 1974, ch. 352, § 163; L. 2004, ch. 163, § 4; L. 2009, ch. 117, § 1; July 1.

65-3410a. Cities; counties; solid waste plan restrictions.

(a) Except as provided by subsection (b), no city or county shall adopt by ordinance, resolution or in a solid waste management plan under K.S.A. 65-3405 or 65-3410, and amendments thereto, restrictions for any solid waste disposal area within its boundaries if such restrictions supersede or impair the local legislation of another city or county being serviced by the same solid waste disposal area or require another city or county to adopt new solid waste management requirements not currently required by statewide rules and regulations.

(b) A city or county may adopt restrictions for a solid waste disposal area under subsection (a) if:

(1) The city or county owns the solid waste disposal area; and

(2) such restrictions apply to the residents of such city or county but not to residents of another city or county being serviced by the same solid waste disposal area.

(c) This section shall be part of and supplemental to the provisions of article 34 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

(d) This section shall apply to any solid waste disposal area, including those in operation prior to July 1, 2014.

History: L. 2013, ch. 129, § 1; L. 2014, H.B. 2551; July 1.

65-3410b. Solid waste report: secretary of health and environment; certain legislative committees.

(a) On or before January 1, 2014, the secretary of health and environment shall prepare, with review and input from operators of municipal solid waste landfills, haulers of solid waste, business and residential consumers of haulers of solid waste, cities and counties, a report on solid waste management in Kansas for the senate committee on ethics, elections and local government and the house committee on local government. The report shall include, but not be limited to, the following:

(1) A review of statutes, rules and regulations and policies on solid waste management, including, but not limited to, details on yard waste, recycling, generation rates, composting, precipitation, source reduction efforts, population, landfill capacity and gas recovery in landfills; and

(2) recommendations for legislative changes and estimates of the cost of the state of implementing such changes.

(b) This section shall be part of and supplemental to the provisions of article 34 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 2013, ch. 129, § 2; July 1.

65-3411. Orders to prevent pollution or hazard. If the secretary finds that the generation, accumulation, management or discharge of solid waste by any person is, or threatens to cause pollution of the land, air or waters of the state, or is a hazard to property in the area or to public health and safety, the secretary may order the person to alter the generation, accumulation or management of the solid waste or to provide and implement such solid waste management system as will prevent or remove pollution or hazards. The secretary may order any person having a permit issued pursuant to this act and operating a public or commercial solid waste management system, or any part thereof, which the secretary finds suitable to manage the solid waste, to provide and implement a solid waste management system or part thereof to prevent or remove such pollution or hazard. Such order shall specify a fair compensation to the owner or permittee for property taken or used and shall specify the terms and conditions under which the permittee shall provide such solid waste management services. Such order shall specify the length of time, after receipt of the order during which the person or permittee shall provide or implement the solid waste management system or alter the generation accumulation or management of the solid waste.

History: L. 1970, ch. 264, § 11; L. 1974, ch. 352, § 164; L. 1977, ch. 221, § 5; L. 1981, ch. 251, § 25; L. 1986, ch. 318, § 97; July 1.

65-3412. Hearings in accordance with Kansas administrative procedure act; judicial review. Any person aggrieved by an order or disapproval of the secretary pursuant to K.S.A. 65-3411, and amendments thereto, may, within 15 days of service of the order, request in writing a hearing on the order. Hearings shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the secretary pursuant to this section is subject to review in accordance with the Kansas judicial review act.

History: L. 1970, ch. 264, § 12; L. 1974, ch. 352, § 165; L. 1986, ch. 318, § 98; L. 1988, ch. 356, § 203; L. 2010, ch. 17, § 144; July 1.

65-3415. Solid waste grants. (a) The secretary is authorized to assist counties, designated cities or regional solid waste management entities by administering grants to pay up to 60% of the costs of preparing and revising official plans for solid waste management systems in accordance with the requirements of this act and the rules and regulations and standards adopted pursuant to this act, and for carrying out related studies, surveys, investigations, inquiries, research and analyses.

(b) The secretary is authorized to assist counties, designated cities, municipalities, regional solid waste management entities that are part of an interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq. and amendments thereto or other applicable statutes, colleges, universities, schools, state agencies or private entities, by administering competitive grants that pay up to 75% of eligible costs incurred by such a county, city, regional entity, college, university, school, state agency or private entity pursuant to an approved solid waste management plan, for any project related to the development and operation of recycling, source reduction, waste minimization and solid waste management public education programs. Such projects shall include, but not be limited to, the implementation of innovative waste processing technologies which demonstrate nontraditional methods to reduce waste volume by recovering materials or by converting the waste into usable by-products or energy through chemical or physical processes. To be eligible for competitive grants awarded pursuant to this section, a county, designated city, regional entity, college, university, school, state agency or private entity

must be implementing a project which is part of a solid waste management plan approved by the secretary or implementing a project with statewide significance as determined by the secretary with the advice and counsel of the solid waste grants advisory committee.

(c) The secretary is authorized to assist counties, cities or regional solid waste management entities that are part of an interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq. and amendments thereto or other applicable statutes, by administering grants that pay up to 60% of costs incurred by such a county, city or regional entity for:

(1) The development or enhancement of temporary and permanent household hazardous waste programs operated in accordance with K.S.A. 65-3460 and amendments thereto;

(2) the first year of operation following initial start-up of temporary and permanent household hazardous waste programs; and

(3) educating the public regarding changes in household hazardous waste collection program operations or services.

(d) The secretary is authorized to assist counties, cities or regional solid waste management entities that are part of an interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq. and amendments thereto or other applicable statutes, by administering grants that pay up to 75% of costs incurred by such a county, city or regional entity to develop and implement temporary agricultural pesticide collection programs.

(e) The secretary is authorized to assist counties, cities or regional solid waste management entities that are part of an interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq. and amendments thereto or other applicable statutes, by administering grants that pay up to 75% of costs incurred by such a county, city, or regional entity to develop and implement exempt small quantity hazardous waste generator waste collection programs, subject to the following:

(1) The aggregate amount of all such grants made for a fiscal year shall not exceed $150,000; and

(2) no grantee shall receive any such grants in an aggregate amount exceeding $50,000.

(f) (1) Failure of any public or private entity to pay solid waste tonnage fees as required pursuant to K.S.A. 65-3415b, and amendments thereto, shall bar receipt of any grant funds by such entity until fees and related penalties have been paid.

(2) Failure of a county or regional authority to perform annual solid waste plan reviews and five year public hearings, and submit appropriate notification to the secretary that such actions have been carried out pursuant to K.S.A. 65-3405, and amendments thereto, shall bar receipt of any grant funds by any entity within the jurisdiction of such county or regional authority unless the grant would support a project expected to yield benefits to counties outside the jurisdiction of such county or regional authority.

(3) A city, county, regional authority, college, university, school, state agency or private entity shall not be eligible to receive grants authorized in K.S.A. 65-3415, and amendments thereto, if the department determines that such city, county, regional authority, college, university, school, state agency or private entity is operating in substantial violation of applicable solid and hazardous waste laws or rules and regulations.

(4) The secretary may establish additional minimum requirements for grant eligibility.

(g) If the secretary determines that a grant recipient has utilized grant moneys for purposes not authorized in the grant contract, the secretary may order the repayment of such moneys and cancel any remaining department commitments under the grant. If the grant recipient fails to comply with the secretary's order, the secretary may initiate a civil action in district court to recover any unapproved expenditures, including administrative and legal expenses incurred to

pursue such action. Recovered grant moneys or expenses shall be remitted to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the solid waste management fund.

(h) All grants shall be made in accordance with appropriation acts from moneys in the solid waste management fund created by K.S.A. 65-3415a and amendments thereto.

(i) Local match requirements for all solid waste grant programs may be met by in-kind contributions.

History: L. 1970, ch. 264, § 15; L. 1974, ch. 352, § 168; L. 1992, ch. 316, § 6; L. 1995, ch. 221, § 2; L. 1997, ch. 140, § 8; L. 2000, ch. 96, § 1; L. 2001, ch. 127, § 5; July 1.

65-3415a. Solid waste management fund. (a) There is hereby created in the state treasury the solid waste management fund.

(b) The secretary shall remit to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys collected or received by the secretary from the following sources:

(1) Solid waste tonnage fees imposed pursuant to K.S.A. 65-3415b, and amendments thereto;

(2) application and annual fees provided for by K.S.A. 65-3407, and amendments thereto;

(3) gifts, grants, reimbursements or appropriations intended to be used for the purposes of the fund, but excluding federal grants and cooperative agreements; and

(4) any other moneys provided by law.

Upon receipt of each such remittance, the state treasurer shall deposit in the state treasury any amount remitted pursuant to this subsection to the credit of the solid waste management fund.

(c) Moneys in the solid waste management fund shall be expended for the following purposes:

(1) Grants to counties or groups of counties or designated city or cities pursuant to K.S.A. 65-3415, and amendments thereto;

(2) monitoring and investigating solid waste management plans of counties and groups of counties;

(3) payment of extraordinary costs related to monitoring permitted solid waste processing facilities and disposal areas, both during operation and after closure;

(4) payment of costs of postclosure cleanup of permitted solid waste disposal areas which, as a result of a postclosure occurrence, pose a substantial hazard to public health or safety or to the environment;

(5) emergency payment for costs of cleanup of solid waste disposal areas which were closed before the effective date of this act and which pose a substantial risk to the public health or safety or to the environment, but the total amount of such emergency payments during a fiscal year shall not exceed an amount equal to 50% of all amounts credited to the fund during the preceding fiscal year;

(6) payment for emergency action by the secretary as necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release from a solid waste processing facility or a solid waste disposal area;

(7) payment for corrective action by the secretary at an active or closed solid waste processing facility or a solid waste disposal area where solid waste management activity has resulted in an actual or potential threat to human health or the environment, if the owner or operator has not been identified or is unable or unwilling to perform corrective action;

(8) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of K.S.A. 65-3401 through 65-3423, and amendments thereto, including the cost of any additional employees or increased general operating costs of the department attributable therefor;

(9) development of educational materials and programs for informing the public about solid waste issues;

(10) direct payments to reimburse counties or cities for household, farmer or exempt small quantity generator hazardous wastes generated from persons not served by existing household hazardous waste programs or direct payment of contractors for the disposal costs of such wastes;

(11) payment of costs associated with the solid waste grants advisory board pursuant to K.S.A. 65-3426, and amendments thereto;

(12) with the consent of the city or county, payment for the removal and disposal or on-site stabilization of solid waste which has been illegally dumped when the responsible party is unknown, unwilling or unable to perform the necessary corrective action, provided that: (A) Moneys in the fund shall be used to pay only 75% of the costs of such corrective action and the city or county shall pay the remaining 25% of such costs; and (B) not more than $10,000 per site shall be expended from the fund for such corrective action;

(13) payment of the costs to administer regional or statewide waste collection programs designed to remove hazardous materials and wastes from homes, farms, ranches, institutions and small businesses not generally covered by state or federal hazardous waste laws and rules and regulations; and

(14) payment for the disposal of household hazardous waste generated as a result of community clean-up activities following natural disasters such as floods and tornados.

(d) If the secretary determines that expenditures from the solid waste management fund are necessary to perform authorized corrective actions related to solid waste management activities, the person or persons responsible for illegal dumping activity or the operation or long-term care of a disposal area whose failure to comply with this act, rules and regulations promulgated thereunder, or permit conditions resulted in such determination, shall be responsible for the repayment of those amounts expended. The secretary shall take appropriate action to enforce this provision against any responsible person. If amounts are recovered for payment for corrective action pursuant to subsection (c)(12), 25% of the amount recovered shall be paid to the city or county that shared in the cost of the corrective action. Otherwise, the secretary shall remit any amounts recovered and collected in such action to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the solid waste management fund. Prior to initiating any corrective action activities authorized by this section, the secretary shall give written notice to the person or persons responsible for the waste to be cleaned up and to the property owner that the department will undertake corrective action if the responsible person or persons do not perform the necessary work within a specified time period. The department and its representatives are authorized to enter private property to perform corrective actions if the responsible party fails to perform required clean-up work but no such entry shall be made without the property owner's consent except upon notice and hearing in accordance with the Kansas administrative procedure act and a finding that the solid waste creates a public nuisance or adversely affects the public health or the environment.

(e) Expenditures from the solid waste management fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or a person designated by the secretary.

(f) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the solid waste management fund interest earnings based on:

(1) The average daily balance of moneys in the solid waste management fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(g) The solid waste management fund shall be used for the purposes set forth in this act and for no other governmental purposes. It is the intent of the legislature that the fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.

(h) The secretary shall prepare and deliver to the legislature on or before the first day of each regular legislative session, a report which summarizes all expenditures from the solid waste management fund, fund revenues and recommendations regarding the adequacy of the fund to support necessary solid waste management programs.

History: L. 1992, ch. 316, § 8; L. 1993, ch. 207, § 11; L. 1995, ch. 221, § 3; L. 1996, ch. 253, § 15; L. 1997, ch. 140, § 9; L. 2000, ch. 96, § 2; L. 2001, ch. 5, § 243; July 1.

65-3417. Solid waste plans and programs; considerations; judicial review of secretary's actions. (a) In developing solid waste plans or the implementation of a solid waste program in conformance with K.S.A. 65-3401 through 65-3415, and amendments thereto, and rules and regulations adopted thereunder, cities, counties or multiples or combinations thereof shall consider demographic and geographic differences within their area of jurisdiction in promulgating solid waste plans and programs, and the board shall consider the demographic and geographic variations in giving approval or denying approval of such plans and programs.

(b) Any action of the secretary pursuant to the provisions of article 34 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, is subject to review in accordance with the Kansas judicial review act.

History: L. 1973, ch. 257, § 1; L. 1975, ch. 462, § 104; L. 1986, ch. 318, § 99; L. 2010, ch. 17, § 145; July 1.

65-3418. Vesting of title to solid waste; liability of generator; authority of resource recovery facilities provided by cities or counties or combinations thereof; contracts. (a) Title to the solid waste collected, processed or disposed of in accordance with the provisions of this act and the rules and regulations adopted thereunder shall vest in the owner of the solid waste management activity, area or facility in which the solid waste is placed. Solid waste produced from a discrete source disposed of in ways other than in accordance with this act shall remain the property of the generator and the generator shall be liable for removal of the waste, restoration of the area in which the waste was disposed and to provide for lawful disposal of the waste. It shall not constitute a defense to the generator that the generator acted through an independent contractor in the transportation or disposal of the solid waste.

(b) When a city or a county or any combination of cities or counties, or both, provides by contract for a resource recovery facility or facilities to recover materials or energy from solid wastes as a part of an approved solid waste management plan, the resource recovery facility or facilities shall have sole ownership, utilization and disbursement control of all waste collected by

that facility or facilities or delivered to that facility or facilities and shall have the power to sell recovered or recycled materials or energy. Such provision shall be interpreted to include either active participation and financial support of such resource recovery facility or facilities or oversight and regulatory control of such facility or facilities by the local governments. A resource recovery facility may contract to dispose of materials or products as allowed by rules and regulations of the secretary adopted pursuant to K.S.A. 65-3401 *et seq.*, and amendments thereto and conditions as set by the original owner of such materials delivered for disposal and resource recovery, so as to avoid reuse or resale of such special products or materials. Nothing herein shall be construed to prohibit or limit private waste collectors from extracting from the waste they collect, prior to delivery to the resource recovery facility, any materials that may have value to such collectors for purposes of recycling, reuse or resale.

History: L. 1977, ch. 221, § 6; L. 1981, ch. 251, § 26; L. 1984, ch. 239, § 1; July 1.

65-3419. Violations of act; penalties; procedure; injunctions. (a) Any person who violates any provision of subsection (a) of K.S.A. 65-3409, and amendments thereto, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to $5,000 for every such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of subsection (a) of K.S.A. 65-3409, and amendments thereto, may impose a penalty within the limits provided in this section, which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No penalty shall be imposed pursuant to this section except upon the written order of the director of the division of environment to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to a hearing before the secretary of health and environment. Any such person may, within 15 days after service of the order, make written request to the secretary for a hearing thereon. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(d) Any action of the secretary pursuant to subsection (c) is subject to review in accordance with the Kansas judicial review act.

(e) Notwithstanding any other provision of this act, the secretary, upon receipt of information that the storage, transportation, processing, treatment or disposal of any waste may present a substantial hazard to the health of persons or to the environment or for a threatened or actual violation of this act or rules and regulations adopted pursuant thereto, or any orders issued pursuant thereto, or any permit conditions required thereby, may take such action as the secretary determines to be necessary to protect the health of such persons or the environment. The action the secretary may take shall include, but not be limited to:

(1) Issuing an order directing the owner, generator, transporter or the operator of the processing, treatment or disposal facility or site, or the custodian of the waste, which constitutes such hazard or threatened or actual violation, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes such hazard. Such action may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Commencing an action to enjoin acts or practices specified in paragraph (1) or requesting that the attorney general or appropriate district or county attorney commence an action to enjoin those acts or practices or threatened acts or practices. Upon a showing by the secretary that a

person has engaged in those acts or practices or intends to engage in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this paragraph (2) shall have precedence over other cases in respect to order of trial.

(3) Applying to the district court in the county in which an order of the secretary under paragraph (1) will take effect, in whole or in part, for an order of that court directing compliance with the order of the secretary. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this paragraph (3) for a court order shall have precedence over other cases in respect to order of trial.

(f) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction or permanent injunction shall issue without such allegations and without such proof.

History: L. 1977, ch. 221, § 7; L. 1986, ch. 318, § 100; L. 1988, ch. 356, § 204; L. 1989, ch. 186, § 31; L. 1992, ch. 316, § 7; L. 2010, ch. 17, § 146; July 1.

65-3421. Resource recovery facilities provided by cities or counties; contracts. When a city or a county or combination of cities or counties provides for a facility or facilities to recover materials or energy as a part of an approved solid waste management plan, any city, county or state agency may enter into a long-term contract to supply solid waste to the resource recovery facility or facilities; to construct, operate and maintain or construct or operate or maintain such facilities; to contract with a private entity for the construction, operation and maintenance of such facilities; to market materials or energy recovered from such facility or facilities; or to utilize such facility or facilities to conserve materials or energy by reducing the volume of solid waste. For the purpose of this section "long-term" shall mean a period of not less than 10 nor more than 30 years. All long-term contracts negotiated under this section shall be reviewed and approved by the attorney general before becoming effective.

History: L. 1981, ch. 251, § 27; L. 1984, ch. 239, § 2; July 1.

65-3423. Same; contracts with private persons for performance of certain functions; authority of private entities. (a) When a city or a county or any combination of cities or counties, or both, provides for a facility or facilities to recover materials or energy as a part of an approved solid waste management plan, the city or county or the separate legal entity created to govern the combination of cities or counties, or both, if such an entity exists, may enter into contracts with private persons for the performance of any such functions of the plan which, in the opinion of the city or county or such separate legal entity, can desirably and conveniently be carried out by a private person under contract provided any such contract shall contain such terms and conditions as will enable the city or county or such separate legal entity to retain overall supervision and control of the business, design, operating management, transportation, marketing, planning and research and development functions to be carried out or to be performed by such private persons pursuant to such contract. Such contracts may be entered into either on a negotiated or an open-bid basis, and the city or county or such separate legal entity in its discretion may select the type of contract it deems most prudent to utilize considering the scope

of work, the management complexities associated therewith, the extent of current and future technological development requirements and the best interests of the state.

(b) Private entities may construct, operate, maintain and own resource recovery facilities; form contracts to supply solid waste to the resource recovery facility or facilities; form contracts to market materials or energy recovered from such facility or facilities; or utilize such facility or facilities to conserve materials or energy by reducing the volume of solid waste under the supervision of and with the approval of the city or county or such separate legal entity, subject to the approval of the Kansas department of health and environment, and in accordance with the approved local solid waste management plan.

History: L. 1984, ch. 239, § 4; July 1.

uifer likely to be impacted by contamination from the facility. This term shall include the migration pathway to the aquifer and shall extend to the first demonstrated aquiclude. This term shall also include perched water tables, which are locally elevated water tables above a discontinuous low-permeability layer that is within a relatively higher-permeability layer.

(ppp) "Vegetative food waste" means food waste and food processing waste from materials including fruits, vegetables, and grains. Vegetative food waste shall not refer to animal products or by-products, including dairy products, animal fat, bones, and meat.

(qqq) "Vertical expansion" means an increase in the design capacity of an existing unit by increasing the final elevation limit of the unit.

(rrr) "Water pollution" means contamination or alteration of the physical, chemical, or biolog-ical properties of any waters of the state that cre-ates a nuisance or that renders these waters harm-ful to public health, safety, or welfare; harmful to the plant, animal, or aquatic life of the state; or unsuitable for beneficial uses.

(sss) "Working face" means any part of a solid waste disposal area where waste is being disposed of.

(ttt) "Yard waste" means vegetative waste generated from ordinary yard maintenance, including grass clippings, leaves, branches less than 0.5 inches in diameter, wood chips and ground wood less than 0.5 inches in diameter, and garden wastes. (Authorized by and implementing K.S.A. 65-3406; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982; amended Oct. 1, 1999; amended May 30, 2003.)

28-29-4. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-5. (Authorized by K.S.A. 65-3406; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-6. Permits and engineering plans. (a) *Application for permits.* Every person desiring to obtain a permit shall file an application for a permit for the proposed solid waste disposal area or processing facility with the department at least thirty (30) days before the date the person wishes to start construction, alteration, or operation of the disposal area or processing facility. The application shall be on forms furnished by the department.

(b) *Design plans and engineering reports.*

(1) Design and closure plans and engineering reports required under these regulations shall bear the seal and signature of a professional engineer licensed to practice in Kansas.

(2) *Waiver.* Plans, designs, and relevant data for the construction of the following solid waste disposal areas and processing facilities, need not be prepared by a professional engineer provided that a review of these plans is conducted by a professional engineer licensed to practice in Kansas:

(A) Solid waste processing facilities when the equipment is originally manufactured for those purposes and installation is supervised by the vendor, or when the equipment requires only fencing, buildings, and connection to utility lines to be operational;

(B) Construction and demolition landfills; and

(C) Solid waste disposal areas considered by the department to be located in secure geological formations, which are a part of a solid waste management system established pursuant to K.S.A. 65-3401 *et seq.*, and which are expected to receive less than one hundred (100) tons of solid waste annually.

(c) *Permit considerations.* Any permit issued by the secretary shall, where appropriate, be reviewed with respect to all responsibilities within the department.

(d) *Transfer of permits.* Before any assignment, sale, conveyance, or transfer of all or any part of the property upon which a solid waste processing facility, or solid waste disposal area is or has been located, and before any change in the responsibility of operating a processing facility or disposal area is made, the permittee shall notify the department, in writing, of the intent to transfer title or operating responsibility, at least thirty (30) days in advance of the date of transfer. The person to whom the transfer is to be made shall not operate the solid waste processing facility or disposal area until the secretary issues a permit to that person. The person to whom the transfer is to be made shall submit the following:

(1) A permit application and plans, maps, and data as required by subsection (a) of this regulation;

(2) Plans satisfactory to the department for correcting any existing permit violations; and

(3) Substantiation in writing that the applicant has copies of all approved maps, plans, and specifications relating to the solid waste processing facility or disposal area.

(e) *Conformity with official plan.* Permits shall not be issued by the secretary until the applicant has secured, from the board of county commissioners or from the mayor of an incorporated city having an official plan, certification that the proposed facility is consistent with the official plan. This approval shall not be required when the official plan does not provide for management of the solid waste(s) to be processed or disposed.

(f) *Reopening closed sites or facilities.* Any person proposing to reopen, excavate, disrupt, or remove any solid waste from any solid waste disposal area where operations have been terminated shall secure a new permit as specified in paragraph (a) of this regulation. Applications for a permit shall include, where applicable, an operational plan stating the area involved, lines and grades defining limits of excavation, estimated number of cubic yards of material to be excavated, location where excavated solid waste is to be deposited, the estimated time required for excavation, and a plan for restoring the site.

(g) *Emergency provisions.* In emergency situations involving solid waste which requires storage, transportation, or disposal on a one-time basis or other special cases where strict adherence to these regulations would result in undue hardships or unnecessary delays, the department can prescribe on a case-by-case basis, the procedures and conditions necessary for the safe and effective management of the wastes. The generator shall not take action in these cases except as immediately necessary for the protection of human health or the environment, until the action is approved by the department. (Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-6a. Public notice of permit actions, public comment period, and public hearings. (a) Public notice and comment period.

(1) Scope and timing. A public notice shall be given by the department when a municipal solid waste landfill permit action has been proposed under K.A.R. 28-29-6 or when a public hearing has been scheduled pursuant to subsection (b) of this regulation.

(A) Public notice shall be required for a draft permit or any proposed significant modifications to a permit by the department.

(B) Public notice shall be required for any public hearing on a permit action.

(C) A public notice shall not be required when suspension, denial or revocation, or non-significant modification of a permit is proposed by the department.

(D) A public notice may describe more than one permit action or hearing.

(E) Each public notice shall be published not less than 30 days prior to the hearing or proposed action.

(2) Procedures.

(A) Each public notice shall be published in the Kansas register.

(B) Where a proposed action or hearing may generate significant local interest, a public notice shall also be published in a newspaper having major circulation in the vicinity of the proposed action or hearing.

(3) Contents of public notice. Each public notice issued under this regulation shall contain the following information:

(A) The name and address of the office processing the permit action for which notice is being given;

(B) the name and location of the facility for which the permit action is proposed;

(C) a map of the facility for which the permit action is proposed;

(D) a brief description of the activity to be conducted at the facility for which the permit action is proposed;

(E) the name, address, and telephone number of the person from whom interested persons may obtain or review additional information;

(F) the time and place of any hearing that will be held; and

(G) a brief description of the comment procedures outlined in subsections (b) and (c) of this regulation.

(b) Public comments. During the public comment period provided in subsection (a) of this regulation, any interested person may submit written comments. All comments, except those concerning determinations by local government units that the proposed permit action conforms with the official plan, shall become a part of the permit rec-

ord and shall be considered in making a final decision on the proposed permit action.

(c) Public hearings. If the department determines there is sufficient local interest in a proposed permit action, a public hearing may be scheduled. All written and verbal comments received during a public hearing provided in subsection (a) of this regulation shall become a part of the permit record and be considered in making a final decision on the proposed permit action.

(d) Response to comments. A response to comments shall be issued at the time any final permit decision is issued. The response shall be available to the public and shall:

(1) Specify what, if any, changes were made to the proposed action as a result of public comment; and

(2) briefly respond to any significant comments received during the public comment period. (Authorized by K.S.A. 65-3406; amended by L. 1993, Ch. 274, Sec. 2; implementing K.S.A. 65-3401; effective March 21, 1994.)

28-29-7. Conditions of permits. (a) When granting a permit, the secretary shall consider and stipulate: the types of solid wastes which may be accepted or disposed, special operating conditions, procedures, and changes necessary to comply with these and other state or federal laws and regulations.

(b) When the department determines that a solid waste has or may have value as a recoverable resource, a permit may require or may be modified to require segregation of the materials, processing, separate disposal, and marking to allow future retrieval of the materials.

(c) The department may specify conditions or a date upon which each permit will expire. (Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-8. Modifications of permits. (a) The permittee shall notify the department in writing at least thirty (30) days before any proposed modification of operation or construction from that described in the plan of operation or permit. The permittee shall not proceed with the modification until the department provides written approval.

(b) The department may at any time modify a permit or any term or condition of a permit to include: special conditions required to comply with the requirements of these regulations; to avoid hazards to public health, or the environment or to abate a public nuisance; or to include modifications proposed by the permittee and approved by the department. Permits may be modified when:

(1) The permittee is not able to comply with the terms or conditions of the permit due to an act of God, a strike against someone other than the permittee, material shortage, or other conditions over which the permittee has little or no control; or

(2) New technology that can provide significantly better protection for health and environmental resources of the state becomes available.

(c) The permittee shall take prompt action to comply with the new special conditions, or within fifteen (15) days of receipt of notification of the new special conditions, request a hearing before the secretary in accordance with K.S.A. 65-3412. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-9. Suspension of permits. (a) A permit shall be suspended by the department when in the opinion of the secretary this action is necessary to protect the public health or welfare, or the environment. The secretary shall notify the permittee of the suspension and the effective date. At the time of giving this notice, the secretary shall identify items of noncompliance with the requirements of these regulations or with conditions of the permit and shall specify deficiencies which the permittee shall correct, actions which the permittee shall perform, and the date or dates by which the permittee shall submit a plan detailing corrective action taken or to be taken in order to achieve compliance.

(b) The suspension shall remain in effect until the deficiencies are corrected to the satisfaction of the secretary or until the secretary makes a final determination based on the outcome of a hearing requested by the permittee under the provision of K.S.A. 65-3412 or amendments of that statute. The determination may result in termination of the suspension, continuation of the suspension, or modification or revocation of the permit.

(c) Permits shall be suspended for failure to pay the permit fee required by K.S.A. 65-3407 or amendments of that statute. (Authorized by

K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-10. Denial or revocation of permits. (a) A permit may be denied or revoked for any of the following reasons:

(1) Misrepresentation or omission of a significant fact by the permittee either in the application for the permit or in information subsequently reported to the department;

(2) Improper functioning or operation of processing facility or the disposal area that causes pollution or degradation of the environment or the creation of a public health hazard or a nuisance;

(3) Violation of any provision of K.S.A. 65-3401 *et seq.* or these rules and regulations or other restrictions set forth in the permit or in a variance;

(4) Failure to comply with the official plan; or

(5) Failure to comply with an order or a modification to a permit issued by the secretary.

(b) Any person aggrieved by the denial or revocation of a permit may request a hearing under the provision of K.S.A. 65-3412 or amendments of that statute. (Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-11. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-12. Notification of closure, closure plans, and long-term care. (a) Notification of closure. All permittees shall notify the department in writing at least 60 days before closure.

(b) Closure plans. Persons desiring to obtain a permit shall file a site closure plan at the time a permit application is submitted. The closure plan shall delineate the finished construction of the processing facility or disposal area after closure. Closure plans for disposal areas shall also provide for long-term care when wastes are to remain at the area after closure. The plan shall be updated at the time of permit renewal or at the time notice of modification is submitted in accordance with K.A.R. 28-29-8(a), or at the time the notice of closure is submitted.

(c) If wastes are to remain at the disposal area after closure, the closure plan may be required by the department to be prepared by a professional engineer licensed to practice in Kansas. Upon completion of all the procedures provided for in the closure plan, the engineer shall certify that the disposal area was closed in accordance with the plan.

(d) Closure plan contents. The closure plan shall include the following when determined applicable by the secretary:

(1) Plans for the final contours, type and depth of cover material, landscaping, and access control;

(2) final surface water drainage patterns and runoff retention basins;

(3) plans for the construction of liners, leachate collection and treatment systems, gas migration barriers or other gas controls;

(4) cross sections of the site that delineate the disposal or storage locations of wastes. The cross sections shall depict liners, leachate collection systems, the waste cover, and other applicable details;

(5) plans for the post-closure operation and maintenance of liners, leachate and gas collection and treatment systems, cover material, runoff retention basins, landscaping, and access control;

(6) removal of all solid wastes from processing facilities;

(7) plans for monitoring and surveillance activities after closure;

(8) recording of a detailed site description, including a plot plan, with the department. The plot plan shall include the summaries of the logs or ledgers of waste in each cell, depth of fill in each cell, and existing conditions;

(9) a financial plan for utilization of the surety bond or cash bond required by K.S.A. 65-3407; and

(10) an estimate of the annual post-closure and maintenance costs.

(e) Long-term care. The owner of a solid waste disposal area, where the wastes are not removed as a part of the closure plan, shall provide long-term care for a period of at least 30 years following approval by the department of completion of the procedures specified in the closure plan. At the time of application for, or at the time of closure of, a solid waste disposal area permit, additional periods of long-term care may be specified by the secretary as the secretary deems necessary to protect public health or welfare, or the environment. (Authorized by K.S.A. 1996 Supp. 65-3406, as amended by L. 1997, Ch. 139, Sec. 1; implementing K.S.A. 1996 Supp. 65-3406, as amended

by L. 1997, Ch. 139, Sec. 1, and 65-3407, as amended by L. 1997, Ch. 140, Sec. 4; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982; amended July 10, 1998.)

28-29-13. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-14. (Authorized by K.S.A. 65-3406; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-15. (Authorized by K.S.A. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-16. Inspections. (a) The secretary or any duly authorized representative of the secretary, at any reasonable hour of the day, having identified themselves and giving notice of their purpose, may:

(1) Enter a factory, plant, construction site, solid waste disposal area, solid waste processing facility, or any environment where solid wastes are generated, stored, handled, processed, or disposed, and inspect the premises and gather information of existing conditions and procedures;

(2) Obtain samples of solid waste from any person or from the property of any person, including samples from any vehicle in which solid wastes are being transported;

(3) Drill test wells on the affected property of any person holding a permit or liable for a permit under K.S.A. 65-3407 or amendments of that statute and obtain samples from the wells;

(4) Conduct tests, analyses, and evaluations of solid waste to determine whether the requirements of these regulations are otherwise applicable to, or violated by, the situation observed during the inspection;

(5) Obtain samples of any containers or labels; and

(6) Inspect and copy any records, reports, information, or test results relating to wastes generated, stored, transported, processed, or disposed.

(b) If during the inspection, unidentified or unpermitted waste storage or handling procedures are discovered, the department's representative may instruct the operator of the facility to retain and properly store solid or hazardous wastes, pertinent records, samples, and other items. These materials shall be retained by the operator until the identification and handling of the waste is approved by the department.

(c) When obtaining samples, the department's representative shall allow the facility operator to collect duplicate samples for separate analysis. Analytical data that might reveal trade secrets shall be treated as confidential by the department, when requested by the owner. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-17. (Authorized by K.S.A. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked, E-82-8, April 10, 1981; revoked May 1, 1982.)

28-29-17a. This regulation shall be revoked on and after February 24, 2000. (Authorized by K.S.A. 1983 Supp. 65-3406; implementing K.S.A. 1983 Supp. 65-3406, 65-3407; effective, E-82-8, April 10, 1981; effective May 1, 1982; amended, T-84-41, Dec. 21, 1983; amended May 1, 1984; revoked Feb. 24, 2000.)

28-29-17b. This regulation shall be revoked on and after February 24, 2000. (Authorized by K.S.A. 1983 Supp. 65-3406; implementing K.S.A. 1983 Supp. 65-3406, 65-3407; effective May 1, 1982; amended, T-84-41, Dec. 21, 1983; amended May 1, 1984; revoked Feb. 24, 2000.)

28-29-18. (Authorized by K.S.A. 1983 Supp. 65-3406; implementing K.S.A. 1983 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982; amended, T-84-41, Dec. 21, 1983; amended May 1, 1984; revoked March 22, 2002.)

28-29-19. Monitoring required. As a condition for issuing a permit, the secretary may require the approval, installation, and operation of environmental quality monitoring systems before the acceptance of solid wastes for storage, processing, or disposal. Approval of the monitoring system(s) will be based on the following:

(a) The location of monitoring wells, air monitoring stations, and other required sampling points;

(b) Plans and specifications for the construction of the monitoring systems;

(c) Frequency of sampling; and

(d) Analyses to be performed. (Authorized by K.S.A. 1981 Supp. 65-3406; implementing K.S.A. 1981 Supp. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-20. Restrictive covenants and easements. (a) Permitted soild waste disposal areas. Each owner of a solid waste disposal area that is required to have a permit and where wastes will remain at the solid waste disposal area after closure may be required by the secretary to execute a restrictive covenant or easement, or both. The restrictive covenant with the register of deeds' stamp or the easement, or both, shall be submitted to the department before the permit is issued.

(b) Solid waste disposal areas without a permit. Each owner of a solid waste disposal area approved by the secretary under K.S.A. 65-3407c, and amendments thereto, may be required by the secretary to execute a restricitive covenant.

(c) Restrictive covenant. If required, the owner shall execute and file with the county register of deeds a restrictive covenant to run with the land that fulfills the following requirements:

(1) Covers all areas that have been or will be used for waste disposal;

(2) specifies the location of the solid waste disposal area. Acceptable methods to determine the location shall include the following:

(A) Obtaining a legal description by measuring from the property boundaries;

(B) obtaining a legal description by measuring from a permanent survey marker or benchmark; and

(C) obtaining the latitude and longitude, accurate to within five meters, using a global positioning system;

(3) specifies the uses that may be made of the solid waste disposal area after closure;

(4) requires that use of the property after closure be conducted in a manner that preserves the integrity of waste containment systems designed, installed, and used during operation of the solid waste disposal areas, or installed or used during the postclosure maintenance period;

(5) requires the owner or tenant to preserve and protect all permanent survey markers and benchmarks installed at the solid waste disposal area;

(6) requires the owner or tenant to preserve and protect all environmental monitoring stations installed at the solid waste disposal area;

(7) requires subsequent property owners or tenants to consult with the department during planning of any improvement to the site and to receive approval from the department before commencing any of the following:

(A) Excavation or construction of permanent structures;

(B) construction of drainage ditches;

(C) alteration of contours;

(D) removal of waste materials stored on the site;

(E) changes in vegetation grown on areas used for waste disposal;

(F) production, use, or sale of food chain crops grown on land used for waste disposal; or

(G) removal of security fencing, signs, or other devices installed or used to restrict public access to waste storage or solid waste disposal areas; and

(8) provides terms whereby modifications to the restrictive covenant or other land uses may be initiated or proposed by property owners.

(d) Easement. If required, the owner shall execute an easement allowing the secretary, or the secretary's designee, to enter the premises to perform any of the following:

(1) Complete items of work specified in the site closure plan;

(2) perform any item of work necessary to maintain or monitor the area during the postclosure period; or

(3) sample, repair, or reconstruct environmental monitoring stations constructed as part of the site operating or postclosure requirements.

(e) Conveyance of easement, title, or other interest to real estate. Each offer or contract for the conveyance of easement, title, or other interest to real estate used for the long-term storage or disposal of solid waste shall contain a complete disclosure of all terms, conditions, and provisions for long-term care and subsequent land uses that are imposed by these solid waste regulations or the solid waste disposal area permit. The conveyance of title, easement, or other interest in the property shall not be consummated without adequate and complete provisions for the continued maintenance of waste containment and monitoring systems.

(f) Permanence. All covenants, easements, and other documents related to this regulation shall

be permanent, unless extinguished by agreement between the property owner and the secretary.

(g) Fees. All document-recording fees shall be paid by the property owner.

(h) Federal government applicants and owners.

(1) For federal government applicants and owners, the term "restrictive covenant" shall be replaced with "notice of restrictions" throughout this regulation.

(2) The restrictions shall be recorded in the base master plans or similar documents.

(3) If property that is owned by the federal government and that has a notice of restrictions filed according to this regulation is transferred to an entity other than the federal government, at the time of transfer the owner shall file a restrictive covenant that meets the requirements of this regulation. (Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3406, 65-3407; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982; amended May 30, 2003.)

28-29-20a. Laboratory certification. All monitoring analyses required under K.A.R. 28-29-19, and amendments to it, shall be conducted by a laboratory certified or approved by the department to perform these analyses. Laboratories desiring to be certified to perform these analyses shall comply with all conditions, procedures, standards, and fee requirements specified in K.A.R. 28-15-35 and 28-15-37, and amendments to them. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-82-8, April 10, 1981; effective May 1, 1982.)

PART 2.—STANDARDS FOR MANAGEMENT OF SOLID WASTES/COMPOSTING

28-29-21. Storage of solid wastes. (a) *General.* The owner or occupant or both of any premise, business establishment, or industrial plant shall provide sanitary storage for all solid waste not classified as hazardous wastes produced on his or her property which meets standards set forth in these regulations and the official plan for the area. All solid waste shall be stored so that it: does not attract disease vectors; does not provide shelter or a breeding place for disease vectors; does not create a health or safety hazard; is not unsightly; and the production of offensive odors is minimized. Each premise shall be provided with a sufficient number of acceptable containers to accommodate all solid waste materials other than bulky wastes that accumulate on the premises between scheduled removals of these materials. On premises where the quantity of solid wastes generated is sufficient to make the use of individual storage containers impractical, bulk containers may be used for storage of refuse. The bulk container may be equipped with compaction equipment and shall be a size, design, and capacity compatible with the collection equipment. Containers shall be constructed of durable metal or plastic material, be easily cleaned, and be equipped with tight-fitting lids or doors that can be easily closed and opened.

(b) *Specific storage standards.*

(1) Garbage and putrescible wastes shall be stored in:

(A) Rigid containers that are durable, rust resistant, nonabsorbent, water tight, and rodent proof. The container shall be easily cleaned, fixed with close-fitting lids, fly-tight covers, and provided with suitable handles or bails to facilitate handling;

(B) Rigid containers equipped with disposable liners made of reinforced kraft paper or polyethylene or other similar material designed for storage of garbage;

(C) Nonrigid disposable bags designed for storage of garbage. The bag shall be provided with a wallhung or free standing holder which supports and seals the bag; prevents insects, rodents, and animals from access to the contents; and prevents rain and snow from falling into the bag; or

(D) Other types of containers meeting the requirements of 16 Code of Federal Regulations Chapter II Subchapter B, part 1301 in effect June 13, 1977, and paragraph (a) of this regulation and that are acceptable to the collection agency.

(2) Mixed refuse. When putrescible wastes and nonputrescible refuse are stored together, the container shall meet the standards and requirements of paragraph (b)(1) of this regulation.

(3) Nonputrescible bulky wastes. The wastes shall be stored temporarily in any manner that does not create a health hazard, fire hazard, rodent harborage, or permit any unsightly conditions to develop, and is in accordance with any locally adopted regulations. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-22. Standards for collection and transportation of solid wastes. (a) Frequency of collection. Solid waste, excluding bulky wastes, shall be removed from the storage containers on residential premises and places of public gathering in accordance with these regulations at least once each week. Garbage and putrescible materials shall be removed from commercial or industrial properties as often as necessary to prevent nuisance conditions but at least once a week. Trash and other combustible materials, free of putrescible material, shall be removed from commercial and industrial properties as often as is necessary to prevent overfilling of the storage facilities or the creation of fire hazards. Bulky wastes, free of putrescible wastes, shall be removed from properties as often as necessary to prevent nuisance conditions from occurring.

(b) Collection equipment. All vehicles and equipment used for collection and transportation of solid waste shall be designed, constructed, maintained, and operated in a manner that will prevent the escape of any solid, semi-liquid, or liquid wastes from the vehicle or container. Collection vehicles shall be maintained and serviced periodically, and should receive periodic safety checks. Safety defects in a vehicle shall be repaired before the vehicle is used.

(c) Solid waste shall not be stored after collection in a collection vehicle for more than 12 hours unless the vehicle is parked in an area in which the land use is predominately industrial or light industrial. Solid wastes shall not be stored overnight in a collection vehicle parked in an area in which the land use is predominantly residential.

(d) Solid wastes shall not be unloaded from any collection vehicle unless the collection vehicle is a satellite vehicle unloading into a larger vehicle or the unloading point is a permitted processing facility, transfer station or disposal area, except the unloading may be done to facilitate repairs, to extinguish a fire, or for other emergency. When a vehicle is unloaded due to a emergency situation solid waste shall be reloaded and removed promptly, after the emergency no longer exists.

(e) The person operating the collection system shall provide for prompt cleanup of all spillages caused by the collection operation.

(f) The person operating the collection system shall provide for prompt collection of any waste materials lost from the collection vehicles along the route to a disposal area or processing facility. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-23. Standards for solid waste processing facilities and disposal areas. All solid waste disposal areas and solid waste processing facilities shall be located, designed, operated and maintained in conformity with the following standards: (a) *Acceptable methods of disposal.* Nonhazardous solid wastes, industrial solid wastes, and residues from solid waste processing facilities shall be disposed of in a sanitary landfill. Nonputrescible rubble and demolition waste material such as brick, mortar, broken concrete, and similar materials produced in connection with the construction or demolition of buildings or other structures, may be disposed of at a construction and demolition landfill.

(b) *Acceptable methods for processing.* Combustible solid wastes may be burned in incinerators that conform with the provisions of the air quality control act, K.S.A. 65-3001 *et seq.* and the regulations adopted under those statutes. Solid wastes may be shredded, separated, and consolidated at shredding, separation, and transfer stations for which a permit has been issued by the secretary. Animal manures, sludges, and solid wastes with high organic content may be processed into compost at an approved composting plant for which a permit has been issued by the secretary.

(c) *Planning and design.* Planning, design, and operation of any solid waste processing facility or disposal area, including, but not limited to, sanitary landfills, incinerators, compost plants, transfer stations, and other solid waste disposal areas or processing facilities, shall conform with appropriate design and operation standards of the department.

(d) *Location.* Location of all solid waste disposal areas and solid waste processing facilities shall conform to applicable state laws, and county or city zoning regulations and ordinances. All locations for solid waste disposal areas and processing facilities shall be reviewed and approved by the department before any site development is started. Solid waste disposal areas or processing facilities shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species or cause or contribute to the taking of any endangered or threatened

species as defined by K.S.A. 35-501 *et seq.* and K.A.R. 23-17-2. Sites disposing of putrescible wastes shall not be located in areas where the attraction of birds can cause a significant bird hazard to low flying aircraft. A minimum separation of twenty-five (25) feet shall be maintained between a disposal operation and any pipeline, underground utility, or electrical transmission line easement. Sanitary landfills shall not be located within the one hundred (100) year frequency floodplain unless protected by flood control levees and other appurtenances designed to prevent washout of solid waste from the site.

(e) *Access roads.* Access roads to the disposal area or processing facility shall be of all-weather construction and negotiable at all times by trucks and other vehicles. Load limits on bridges and access roads shall be sufficient to support all traffic loads which will be generated by use of the area or facility.

(f) *Reports required.* Operators of all solid waste disposal areas and processing facilities shall maintain suitable records of volumes or tonnage of solid wastes received, land area used, population served, area served, and any other information required by the conditions of the permit. All information shall be summarized and reported to the department on forms furnished by the department.

(g) *Air quality.* The operator of every solid waste disposal area or solid waste processing facility shall conform to all applicable provisions of K.S.A. 65-3001 *et seq.*, any regulations adopted under those statutes, and any local regulations pertaining to air quality.

(h) *Communication.* Two-way communications shall be available to all solid waste processing facilities or disposal areas.

(i) *Fire protection.* Arrangements shall be made for fire protection services when a fire protection district or other public fire protection service is available. When this service is not available, practical alternate arrangements shall be provided at all sites. In case of accidental fires at the site, the operator shall be responsible for initiating and continuing appropriate fire fighting methods until all smoldering, smoking, and burning ceases. All disruption of finished grades, or covered or completed surfaces, shall be covered and regraded upon completion of fire fighting activities.

(j) *Limited access.* Access to a solid waste disposal area or processing facility shall be limited to hours when an attendant or operating personnel are at the site. A gate or barrier and fencing approved by the department shall be erected to prevent access to the solid waste disposal area or processing facility during hours when the area or facility is closed. Access by unauthorized vehicles or pedestrians shall be prohibited.

(k) *Hours of operation.* Hours of operation and other limitations shall be prominently posted at the entrance of the disposal area or facility.

(l) *Salvage.* Salvage or reclamation of materials shall be permitted only when facilities specifically designed for salvaging or processing solid wastes are provided, and when the salvage materials are controlled to prevent interference with prompt, sanitary disposal of solid wastes. All salvage operations shall be conducted in a manner that will not create a nuisance.

(m) *Safety.* An operational safety program approved by the department shall be provided for employees at solid waste processing facilities and disposal areas.

(n) *Disease vector control.* Solid waste processing facilities and disposal areas shall be operated in a manner which will prevent the harborage or breeding of insects or rodents. Whenever supplemental disease vector control measures are necessary, these measures shall be promptly carried out.

(o) *Aesthetics.* Odors and particulates, including dust and litter, shall be controlled by daily application of cover material, sight screening or other means to prevent damage or nuisance. Construction and demolition landfills or other solid waste disposal areas receiving only nonputrescible waste materials may apply cover material at a less frequent rate if approved by the department.

(p) *Gas control.* The concentration of explosive gasses generated by the decomposition of solid waste disposed of on the site shall not exceed 25 percent of the lower explosive limit in on site structures (excluding gas control or recovery system components) or at facility property line. As used in this section "lower explosive limit" means the lowest percent by volume of a mixture of methane which will propogate a flame in air at 25° C and atmospheric pressure. Toxic or asphyxiating gases in concentrations harmful to humans, animals, or plant life shall not be allowed to migrate off site or accumulate in facility structures.

(q) *Water pollution.* Solid waste processing facilities and disposal areas, which include a point source of discharge of pollutants or solid wastes to off-site surface waters, shall comply with the

terms of a permit issued under K.S.A. 65-164 *et seq.* Facilities shall be designed to prevent nonpoint source pollution discharges violating applicable legal requirements implementing the Kansas statewide water quality management plan in effect on November 1, 1981 approved under section 208 of Public Law 92-500 (the Clean Water Act) as amended. Solid waste disposal areas and processing facilities shall be designed and operated so as to prevent a discharge of dredge or fill material that is in violation of section 404 of PL 92-500 (the clean water act), as in effect on November 1, 1981. Solid waste shall not be placed in unconfined waters which are subject to free movement on the surface, in the ground or within a larger body of water. If ground water which passes beneath a disposal facility is currently used as a public drinking water supply or is designated by the state of Kansas for future use as a drinking water supply, the naturally occurring ground water quality beyond the disposal site property boundary shall not be degraded. If ground water which passes beneath a disposal area or processing facility is currently used or designated by the state for purposes other than as a drinking water supply, the ground water beyond the disposal area property boundary shall be maintained at a quality as specified in the disposal area permit.

(r) *Maps required.* The operator shall maintain a log of commercial or industrial solid wastes received including sludges, liquids, or barreled wastes. The log shall indicate the source and quantity of waste and the disposal location. The areas used for disposal of these wastes and other large quantities of bulk wastes shall be clearly shown on a map and referenced to the boundaries of the tract or other permanent markings.

(s) *Disposal of sewage and industrial liquids or sludges.* Sewage or industrial solid waste liquids or sludges shall not be disposed in a sanitary landfill designed for the disposal of mixed refuse until the department has been notified and specific arrangements for handling the wastes have been approved by the department.

(t) *Disposal of hazardous waste.* Hazardous waste shall not be disposed of in a sanitary landfill. For the purposes of this subsection, "hazardous waste" means any waste determined by the secretary, under section 1 of chapter 251 of the 1981 session laws of Kansas, to be a hazardous waste and listed by the secretary as a hazardous waste in K.A.R. 28-31-3.

(u) The provisions of 40 Code of Federal Regulations Part 257.3-5 (application to land used for food chain crops), as in effect on September 23, 1981, and part 257.3-6 (disease), as in effect on September 23, 1981, are incorporated by reference. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-23a. Standards for solid waste transfer stations. (a) Applicability. Each solid waste transfer station shall be subject to the requirements of this regulation.

(b) Design requirements.

(1) Each solid waste transfer station processing, tipping, sorting, storage and compaction area shall be subject to the following design requirements, unless an alternate design is approved by the director.

(A) Each processing, tipping, sorting, storage and compaction area shall be located in an enclosed building or covered area.

(B) Each unloading area shall be of adequate size and design to allow for:

(i) efficient unloading from collection vehicles; and

(ii) unobstructed movement of vehicles.

(C) Each unloading and loading area shall be constructed of concrete or asphalt paving material.

(D) Each solid waste transfer station shall have sufficient capacity to store two days worth of solid waste in the event of an interruption in transportation or disposal service. The capacity of any trailer parked within the boundaries of the permitted site may be included as a part of the two day capacity.

(E) Each solid waste transfer station shall be large enough to segregate special wastes, including medical waste and asbestos, if special wastes will be managed at the transfer station.

(2) Each solid waste transfer station structure shall be subject to the following design requirements, unless an alternate design is approved by the director.

(A) Each enclosed structure shall be equipped with an exhaust system capable of removing accumulations of noxious or flammable gases.

(B) Each structure shall be constructed of materials that will not absorb odors or liquids from the waste.

(C) Each structure shall have a main doorway

effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-25. Standards for solid waste processing facilities. (a) Incinerators. All incinerators used for combustion of solid wastes shall be designed and operated in conformity with K.S.A. 65-3001 *et seq.* and rules and regulations adopted under those statutes. All emission control devices, disposal of incinerator residues, and treatment of wastewater shall be approved by the department.

(b) Other methods of solid waste handling, processing, and disposal. Before any disposal area or processing facility, or any method of solid waste handling, processing, or disposal, not provided for in these regulations, is practiced or placed into operation, complete plans, specifications, design data, land-use plans, and proposed operation procedures shall be submitted to the department for review and permit issuance in accordance with K.A.R. 28-29-6. (Authorized by and implementing K.S.A. 1981 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; amended, E-82-8, April 10, 1981; amended May 1, 1982.)

28-29-25 a. Small yard waste compost-ing sites. This regulation shall apply to each yard waste composting site that has a composting area of one-half acre or less, but this regulation shall not apply to backyard composting. Hay, straw, and manure may be added to yard waste only for the purpose of adjusting the carbon-to-nitrogen ratio of the compost mix. The additives shall not exceed 10 percent by volume of the total mixture without the written approval of the department. Other materials may be added to the yard waste only with the written approval of the department.

(a) Site design. The owner or operator of each yard waste composting site shall design and construct the composting site to meet all of the following requirements.

(1) Composting surface and drainage.

(A) Storm water run-on shall be prevented from entering the receiving, processing, curing, or storage areas by the use of berms or other physical barriers.

(B) The operation shall not cause a discharge of pollutants into waters of the state, in accordance with K.S.A. 65-164, and amendments thereto.

(2) Site access.

(A) At each site that composts yard waste that is brought in from off-site, the following infor-mation shall be posted on one or more signs:

(i) Site name;

(ii) site hours;

(iii) a list of the materials appropriate for composting; and

(iv) the name and telephone number of an emergency contact person.

(B) Unauthorized dumping shall be discour-aged by access control.

(b) Site operations. The owner or operator of each yard waste composting site shall perform the following:

(1) Minimize odors;

(2) control disease vectors, dust, litter, and noise; and

(3) remove all finished compost within 18 months of the completion of the composting process.

(c) Site closure. The owner or operator of each yard waste composting site shall perform the following:

(1) Notify the department, in writing, at least 60 days before closure; and

(2) remove all materials from the site within six months of the last receipt of compostable material.

(d) Registration. Each owner or operator of a small yard waste composting site shall submit registration information to the department on a form provided by the department, unless the composting operation is located at a confined feeding facility that has a valid permit issued by the department. (Authorized by and implementing K.S.A. 1998 Supp. 65-3406; effective Oct. 1, 1999.)

28-29-25 b. Yard waste composting facilities. This regulation shall apply to each facility that composts yard waste and has a composting area larger than one-half acre. Hay, straw, and manure may be added to yard waste only for the purpose of adjusting the carbon-to-nitrogen ratio of the compost mix. The additives shall not exceed 10 percent by volume of the total mixture without the written approval of the department. Other materials may be added to the yard waste only with the written approval of the department.

(a) Facility design. The owner or operator of each yard waste composting facility shall design and construct the facility to meet the following requirements.

(1) Composting surface and drainage.

(A) Storm water run-on shall be prevented

amendments thereto, has been added or eliminated.

(C) Non-permitted recycling services have been added or eliminated.

(3) One or more counties have been added to the plan.

(4) One or more counties have withdrawn from the plan.

(5) A change to the implementation schedule or financing methods specified in the SWM plan has occurred or will occur.

(6) Revisions are required as part of the five-year review to extend the planning horizon to 10 years.

(b) If the approved SWM plan does not meet the requirements of the solid waste management statutes or regulations, or both, a revision of the approved SWM plan may be required by the secretary. If a revision is required, written notice shall be provided by the secretary to each county commission, or the governing body of the designated city, covered by the SWM plan.

(c) Each revised SWM plan shall be reviewed by the official land-use planning agency and each official comprehensive planning agency within the area covered by the SWM plan.

(d) Each revised SWM plan shall be adopted according to the procedures specified in K.A.R. 28-29-78(b) and (d), except for regional SWM plans revised at unscheduled intervals, which shall be adopted in accordance with K.S.A. 65-3405 and amendments thereto. Adoption of the revised SWM plan by the county commission or commissions shall be conducted in an open meeting and shall provide an opportunity for public input.

(e) The county commission, the governing body of the designated city, or the SWM com-mittee shall submit the revised SWM plan to the secretary for consideration for approval in accord-ance with K.A.R. 28-29-79.

(f) The county commission, or the governing body of the designated city, shall ensure that approved revisions of the SWM plan are incorporated in public copies of the plan maintained in accordance with K.A.R. 28-29-77. (Authorized by K.S.A. 65-3406; implementing K.S.A. 65-3405; effective Jan. 1, 1972; amended, E-79-22, Sept. 1, 1978; amended May 1, 1979; amended March 5, 2004.)

28-29-83. (Authorized by K.S.A. 1978 Supp. 65-3406; effective, E-79-22, Sept. 1, 1978; effective May 1, 1979; revoked May 10, 1996.)

PART 6.—FINANCIAL REQUIREMENTS

28-29-84. Permit renewal; solid waste permit fees. (a) General provisions. Each permit issued by the department for any solid waste disposal facility or area, processing facility, incinerator, transfer station, composting plant or area and reclamation facility may be renewed on or before the anniversary date of the permit each year in the following manner.

(1) Each solid waste facility operating in Kansas pursuant to a valid existing permit shall submit to the department, on or before the anniversary date of the permit, a report of the permitted activities on forms provided by the department.

(2) The annual permit renewal fee shall accompany the report. Action to approve the renewals of the permit shall not begin until such time as a properly completed report and the appropriate annual permit renewal fee are received by the department.

(b) Failure to submit. Failure to submit a complete annual report and the annual permit renewal fee on or before the anniversary date of the permit each year may subject the permit holder to denial, revocation, or suspension of the permit.

(c) Fee schedule. The fee for a permit to operate a solid waste disposal area or facility shall be as follows.

(1) The fee for an application for a proposed facility for which no permit has previously been issued by the department, or for reapplication due to loss of the permit resulting from departmental action, including revocation, denial or suspension shall be:

Incinerator	$5,000.00
Industrial solid waste disposal area	$3,000.00
Municipal solid waste disposal area	$5,000.00
Processing facility	$2,000.00
Reclamation facility	$2,000.00
Solid waste compost facility	$ 250.00
Transfer station	$1,000.00

(2) Each facility or disposal area operating pursuant to a valid, current permit issued by the department shall be required to pay an annual permit renewal fee. The annual permit renewal fees shall be:

Incinerator	$1,000.00
Industrial solid waste disposal area	$1,000.00
Municipal solid waste disposal area	$2,000.00
Processing facility	$1,000.00
Reclamation facility	$1,000.00
Solid waste compost facility	$ 250.00
Transfer station	$ 500.00

(d) Construction and demolition landfills.

(1) The fee for an application for a proposed construction and demolition disposal facility for which no permit has previously been issued by the department or as otherwise set forth in these regulations shall be as follows:

(A) each facility whose permit application projects receipt of less than 1,000 tons annually: $250.00;

(B) each facility whose permit application projects receipt of more than 1,000 and less than 10,000 tons annually: $500.00; and

(C) each facility whose permit application projects receipt of more than 10,000 tons annually: $1,000.00.

(2) Each facility operating pursuant to a valid, current permit issued by the department shall be required to pay an annual permit renewal fee. The annual permit renewal fee shall be as follows:

(A) for each facility receiving less than 1,000 tons annually: $125.00;

(B) for each facility receiving more than 1,000 and less than 10,000 tons annually: $250.00; and

(C) for each facility receiving more than 10,000 tons annually: $500.00.

(3) Fees for each facility reapplying for a permit due to loss of the permit resulting from departmental action, including revocation, denial or suspension shall be determined in accordance with paragraph (d)(1) of this regulation based on the tonnage received the 12 months prior to the revocation, denial or suspension of the permit.

(4) To determine the annual fee due, the construction and demolition disposal facility may determine the volume of waste received during the previous year and convert this volume to an equivalent weight basis using the following conversion factor: 1 cubic yard = 1,250 pounds.

(e) Multiple activities. Any person conducting more than one of the activities listed in K.A.R. 28-29-84(c)(1) at one location shall pay a single fee. This fee shall be in the amount specified for the activity having the highest fee of those conducted. (Authorized by K.S.A. 1993 Supp. 65-3406, as amended by L. 1994, Ch. 283, sec. 2; implementing K.S.A. 1993 Supp. 65-3407, as amended by L. 1994, Ch. 283, sec. 3; effective, T-28-3-15-93, March 15, 1993; effective May 17, 1993; amended Aug. 28, 1995.)

28-29-85 St at solid wast tonnage fees. (a) General provisions. The operator of each solid waste disposal area in Kansas shall pay to the department a tonnage fee for each ton or equivalent volume of solid waste received and disposed of at the facility during the preceding reporting period. The fee shall be paid each reporting period until the facility no longer receives waste and begins departmentally approved closure activities. Municipal solid waste disposal areas receiving 50,000 tons or more of solid waste annually shall file the reports required by subsection (b) of this regulation and pay their tonnage fee monthly, on or before the last day of the following month. Municipal solid waste disposal areas receiving less than 50,000 tons of solid waste annually, and all other solid waste disposal areas shall file reports and pay their tonnage fee quarterly, on or before the last day of April, July, October and January.

(b) Certification and late fees. The operator of each solid waste disposal area shall certify, on a form provided by the department, the amount, source and type of solid waste received, processed, recycled, and disposed of during the preceding reporting period. Any operator failing to remit the appropriate tonnage fee and submit the report within 45 days after each reporting period shall pay a late processing fee of one and one-half percent per month on the unpaid balance from the date the fee was due until paid.

(c) Determination of waste tonnages.

(1) Operator estimates. The operator of each municipal solid waste disposal area that receives 50,000 tons or more of solid waste annually shall use actual weight records. The operator of each municipal solid waste disposal area that receives less than 50,000 tons of solid waste annually shall, subject to department approval, use one of the following methods for determining the number of tons of waste disposed of at the solid waste disposal area.

(A) The operator may use actual weight records.

(B) The operator may use actual volume records based upon direct aerial and field survey techniques, using the conversion factor of 1,000 pounds per cubic yard less a department approved deduction for cover material.

(C) The operator may use actual volume records based upon daily logs which record the source, type and measurement or estimate of each load using the conversion factors as specified in subsection (d) of this regulation.

(D) The operator of a landfill serving one county or an identifiable population of less than 20,000 may use a per capita waste generation rate

Policies

Kansas Department of Health and Environment
Bureau of Waste Management Policy 98-05

related to

Requirements for Solid Waste Facility Permit Actions

August 19, 1998

Background

K.A.R. 28-29-6a, Public notice of permit actions, public comment period, and public hearings, requires the department to give public notice when a municipal solid waste landfill (MSWLF) permit action is proposed under K.A.R. 28-29-6, Permits and engineering plans. The public notice is required for draft permits and for significant modifications to permits.

Purpose

This Bureau of Waste Management policy extends the public notice requirement to include the following solid waste permits: industrial landfill, construction/demolition (CD) landfill, and solid waste processing facility, including transfer station, composting facility, and household hazardous waste facility.

Public Notice Requirements

Any proposed solid waste permit at a new site would require a public notice. A change in solid waste management at an existing site would involve the concept of significant modification which is referred to in K.A.R. 28-29-6a. A significant modification is considered to be a 10% or greater increase in volume or capacity of the permitted disposal area or any areal increase in permitted property. The addition of any solid waste activity at a MSWLF that is closed and is in post-closure would be a significant modification.

The following would not be considered significant modifications to a landfill that was closed to MSW but has had continued solid waste activities: the addition of solid waste management activities (a transfer station, compost area, scrap metals area), or the addition of a new disposal cell that is in an area that was previously permitted for MSW.

William L. Bider

William L. Bider
Director, Bureau of Waste Management

8-20-98
Date

Kansas Department of Health and Environment
Bureau of Waste Management Policy 02-02

Related to

Separation from and Monitoring of Groundwater at Solid Waste Landfills

effective March 6, 2002
revised March 20, 2008

Purpose

This Bureau of Waste Management (BWM) policy is intended to clarify the requirements for:

1. Providing a vertical buffer between solid waste landfills and underlying aquifers; and
2. Monitoring groundwater quality at solid waste landfill facilities located in complex hydrogeological settings.
3. Preventing design and construction of an inward gradient landfill.

Background

Kansas Statutes Annotated (K.S.A.) 65-3406(a)(1) authorizes and directs the Kansas Department of Health and Environment (KDHE) to "...adopt such rules and regulations, standards and procedures relative to solid waste management as necessary to protect the public health and environment...". K.S.A. 65-3407(b) requires KDHE to "...make an investigation of the proposed solid waste processing facility or disposal area and determine whether it complies with the provisions of this act and any rules and regulations and standards adopted there under." By precedent BWM has effectively established standards relative to groundwater protection at solid waste landfill facilities. Several key standards are discussed below.

Action

New solid waste disposal units must have a minimum vertical separation of 5 feet from the lowest point of a solid waste disposal area (e.g., bottom of the base of the sump) to the highest predicted groundwater elevation in the uppermost aquifer underlying the disposal area. The minimum vertical separation must be provided by naturally occurring, in-situ soil or geologic material, or approved alternative material. The "uppermost aquifer" means the first saturated zone able to fully recharge within 24 hours after one well volume is removed, and whose boundaries can be identified and mapped from hydrogeologic data. This term includes all hydraulically connected aquifers. It is inappropriate to permit a solid waste landfill where conditions would require groundwater to be pumped from the landfill in perpetuity in order to maintain the integrity of the landfill.

If groundwater monitoring is required at facilities where special conditions exist, the following issues may have to be considered:

1. Seasonal (intermittent) aquifers, that can not be monitored throughout the course of the year, may be excluded from designation as the uppermost aquifer subject to KDHE review and approval of supporting information. These aquifers must have seasonal monitoring devices installed unless otherwise excluded by KDHE.

2. Engineering measures may be used to intercept and divert seasonal groundwater flow around solid waste disposal areas subject to KDHE's review and approval of design plans and supporting information.

3. KDHE may require monitoring of multiple aquifers, whether seasonal or perennial, via wells or other means, as necessary to adequately safeguard human health and the environment at solid waste landfill facilities in accordance with the state regulations.

All groundwater monitoring occurring at solid waste landfill facilities must be performed in accordance with applicable Kansas Administrative Regulations 28-29-100 through 28-29-121.

Alternate criteria may be adopted by KDHE as necessary for compliance with state statutes and regulations, for consistency with approved plans, or due to site-specific conditions or unforeseen circumstances.

March 20, 2008

William L. Bider
Director, Bureau of Waste Management

Kansas Department of Health and Environment
Bureau of Waste Management Policy 04-02
related to

Public Participation in the Landfill Permitting Process

effective December 29, 2004
revised October 12, 2005

Background
Over the past several years, the Kansas public has become more concerned with the permitting of new or expanded solid waste landfills. Historically, the permitting process has not officially involved the public until after the Kansas Department of Health and Environment (KDHE) completed its review of the landfill permit application and announced its intention to issue the permit. As part of those announcements, KDHE also informed the public that comments would be received and evaluated, and a public hearing would be held where verbal comments would be accepted. This process allows KDHE to reevaluate its preliminary decision to issue a permit, but public perception is that KDHE has already made up its mind and comments at this late point have little impact on the issuance of the permit.

Purpose
To improve public participation in the landfill permitting process, a procedure will be implemented to solicit comments earlier in the application review process and to provide some preliminary technical information about the application to the public. These actions will affect KDHE's internal process of reviewing applications. It does not establish any new requirements for local government or for landfill permit applicants; however, these parties would be encouraged to participate in the expanded public process being implemented.

Applicability
The requirement for KDHE to hold these preliminary public participation meetings shall apply to landfills that receive municipal solid waste, construction and demolition waste, industrial waste, and waste tires. Public participation meetings will be held for all new landfills. For existing landfills that propose to expand the horizontal extent of the existing permitted boundary, and for existing landfills that will be significantly modified by expanding landfill permitted capacity by 10 percent or more, meetings will be held when there is strong public interest or concern. Public interest and concern will be assessed based on public comments received by KDHE and by discussion of each specific case with the applicant and with local government officials.

There will be flexibility to hold meetings for other types of solid waste facilities (such as a transfer station, manure or dead animal composting, materials recovery facility, etc.) when strong public interest or concern is expressed or perceived. Public concern will be assessed in the same ways as described in the preceding paragraph.

Action Steps

The following steps will be carried out by KDHE's Solid Waste Permits Section upon receiving a complete application for a new solid waste landfill or significant modification of an existing solid waste landfill. For the purposes of this policy, a complete application means that all major requirements set forth in the KDHE application form have been addressed and local government approvals have been received with respect to zoning and consistency with the local solid waste management plan.

1. Within 10 working days of the KDHE determination that the application is complete, issue a public notice announcing that an application for a landfill has been received. The notice shall include, but not be limited to, the applicant name, the proposed location of the landfill, the type of landfill, the time and date for a public participation meeting to be held at a location near the proposed facility, and the purpose of the meeting. The notice shall be published in one or more local newspapers.

2. Coordinate and hold a public participation meeting within 45 days of the determination that the application is complete. At the meeting, KDHE staff shall present factual information about the proposed facility including, but not limited to, an evaluation of applicable location restrictions, some design and operations details, and a preliminary summary of hydrogeological information about the site. The primary purpose of the public participation meeting is twofold: (1) to answer questions posed by the public to the extent possible based upon KDHE's preliminary review only and (2) to receive public comments that should be considered as part of KDHE's review of the application.

3. In addition to issuing the public notice, send the applicant and appropriate city and county officials letters of invitation to the public participation meeting. The letters of invitation shall be signed by the Director of the Bureau of Waste Management.

William L. Bider

William L. Bider
Director
Bureau of Waste Management

10-12-05

Date

Kansas Department of Health and Environment

Bureau of Waste Management Policy 05-01

related to

Notifying Agencies about Proposed New Solid Waste Facilities and Expansions

effective May 31, 2005
revised December 29, 2005
revised April 15, 2008

Purpose

This Bureau of Waste Management policy is intended to clarify the requirements for applicants seeking solid waste disposal area and/or processing facility permits to notify other government agencies about proposed facilities and to request information from those agencies relative to the site characteristics.

Background

Kansas Statutes Annotated (K.S.A.) 65-3406(a) authorizes and directs the Kansas Department of Health and Environment (KDHE) to:

> (1) Adopt such rules and regulations, standards and procedures relative to solid waste management as necessary to protect public health and environment, prevent public nuisances and enable the secretary to carry out the purposes and provisions of this act.
>
> ...and…
>
> (4) Cooperate with appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out duties under this act.

Kansas Administrative Regulations (K.A.R.) 28-29-23(d) stipulates in part that the:

> Location of all solid waste disposal areas and solid waste processing facilities shall conform to applicable state laws, and county or city zoning regulations and ordinances.

Specific location restrictions in K.S.A. 65-3407(l) and K.A.R. 28-29-23(d), -102, and -302 identify a number of factors to be used by KDHE in determining the appropriateness of a proposed solid waste facility location. Most of those factors are under the primary authority of other government agencies (e.g., flood plains, wetlands, critical habitat, etc.) and/or are an area of knowledge in which other government agencies specialize (e.g., geologic conditions).

Furthermore, other factors that are not specifically identified in statutes and regulations may be important for KDHE to consider in evaluating proposed solid waste facility locations. Examples include active/abandoned gas/oil wells and appurtenances, water supply recharge areas, and other sensitive/protected areas.

In order to learn whether there are potential concerns such as these it is essential for KDHE to receive input from other agencies when new or expanded solid waste facilities are proposed. It is standard practice for this type of "due diligence" research to be performed prior to most types of municipal, residential, commercial, and industrial land development.

Applicability

The agency notification requirements apply to "designated applicants", defined as persons applying for the following:

- a permit for a new solid waste facility
- a significant permit modification (see BWM Policy 98-05)

The notification requirements may be reduced for solid waste processing facilities located at existing facilities or buildings, or in previously disturbed or developed urban areas. In those situations, the Bureau of Waste Management will determine which agencies must be notified by the applicant based on site characteristics (e.g. if wetlands, flood plain, possible historically significant area, etc. appear to be involved, or if the need for agency notification is uncertain).

Action

Based on the authority and justification described above, the Bureau of Waste Management requires every designated applicant to submit evidence that other government agencies have been notified and to submit the responses received from the agencies. To facilitate this process, KDHE recommends that all applicants comply with the specific guidelines that follow:

1. Each designated applicant should, as part of preparing an application: notify the following agencies in writing about the proposed facility; provide a location map and site layout map; and request comments from the agencies as to whether they are aware of any concerns with the proposed facility location, within the scope of their areas of authority and knowledge.

    - Kansas Biological Survey
    - Kansas Corporation Commission
    - Kansas Department of Agriculture - Division of Water Resources
    - Kansas Department of Wildlife and Parks
    - Kansas Geological Survey
    - Kansas State Conservation Commission
    - Kansas State Historical Society
    - Kansas Water Office
    - U.S. Army Corps of Engineers
    - U.S. Fish and Wildlife Service

2. If the applicant is aware of other agencies that would be appropriate to notify with regard to a proposed facility location, then the applicant should submit a similar notification and request for comments to those agencies as well. If the Bureau determines that agencies other than those listed above would have any authority, interest, or knowledge pertaining to a proposed facility location, then the Bureau may require the applicant to submit a notification and request for comments from those agencies at any time during the application review process.

3. Applicants should not request the agencies to "approve" proposed solid waste facilities; only KDHE has the authority to permit solid waste facilities. The requests should be limited to seeking pertinent information that the agencies may have with regard to proposed facility locations. Applicants should not specify what aspects of a proposed facility location the agencies should address; for example, applicants should not indicate an expectation for the Kansas Geological Survey to make a determination on whether a particular location contains "unstable areas". Applicants should not cite solid waste management statutes or regulations in the notifications and request for comments.

4. Suggested wording for notification letters to agencies is provided below. The actual wording of these letters may vary, but should be similar to the suggested wording.

> *Dear [name of agency] staff:*
>
> *We have been retained by [name of landfill applicant] to prepare an application for a landfill permit. One of the requirements is to check with several agencies to determine if they have any information about the proposed site.*
>
> *The proposed [type of] landfill would be located on XX acres in the [quadrant] quarter of [section, township, range] in [county name] county. A location map and preliminary site layout plan are attached. We request a response from your agency indicating any issues you may be aware of regarding this proposed land use.*
>
> *Thank you for your consideration in this matter. If you have any questions about this request, please contact me at [phone number].*
>
> *Sincerely,*
>
> *[signature]*

Applicants shall submit copies of the notifications and copies of the agency responses to the Bureau with solid waste facility applications. The Bureau will also allow applicants to submit copies of responses after an application has been submitted, if the responses were not available at the time the application was submitted. However, the Bureau may wait to act on applications if they are not "complete", e.g. if agency responses have not been submitted.

April 10, 2008

William L. Bider
Director, Bureau of Waste Management

Kansas Department of Health and Environment
Bureau of Waste Management Policy 2014-P1

related to

Permit Renewal and Financial Assurance Requirements for Landfills Operating Postclosure Environmental Monitoring Systems

Purpose
This policy clarifies certain financial and reporting requirements that apply to the owners and operators of solid waste landfills that are operating environmental monitoring systems during the postclosure care period.

Background
The owner or operator (O/O) of each solid waste landfill is responsible for long-term care of the site for at least 30 years after the facility closes. The Kansas Department Health and Environment (KDHE) may extend the postclosure care (PCC) period beyond 30 years if necessary to protect public health and safety or the environment. Bureau of Waste Management (BWM) Policy 2014- P2 provides for the possibility of reducing and/or terminating some PCC activities before the end of the standard 30-year PCC period. The policy also states the criteria that must be met to reduce or terminate particular PCC activities, whether before or after the end of the 30-year PCC period.

Postclosure care activities for all landfill O/O include inspections and maintenance of the final cover system. The O/O of certain landfills are required to operate and maintain postclosure environmental monitoring systems, including: groundwater monitoring; leachate collection; landfill gas control; and other site-specific systems. BWM staff must provide regulatory oversight during the postclosure period, including periodic inspections of the final cover system and more intensive efforts when environmental monitoring continues after closure. Those extra efforts include the review of groundwater, leachate, and gas monitoring reports, inspection of monitoring systems, and reviews of postclosure cost estimates.

Postclosure permit renewal and financial assurance requirements for landfills include the following:

- The O/O of each landfill that is required to operate and maintain postclosure environmental monitoring systems must maintain postclosure financial assurance [KAR 28-29-2101(j)].
- The O/O of each landfill must maintain liability insurance during the postclosure care period in an amount determined by KDHE [KSA 65-3407(h)(3)]. For landfills that are not required to operate postclosure environmental monitoring systems, that amount is typically $0.
- The O/O of each landfill that is operating under a permit issued by KDHE must pay the annual permit renewal fee [KAR 28-29-84]. This includes landfills that are operating postclosure environmental monitoring systems.

Action

Permit Renewal

For each landfill with environmental monitoring systems, the O/O must submit the following items to BWM each year for the duration of the postclosure care period:

- The permit renewal fee;
- A current postclosure cost estimate worksheet;
- A demonstration of financial assurance as required by KAR 28-29-2101 through 28-29-2113;
- A current certificate of liability insurance in accordance with KAR 28-29-2201; and
- An environmental monitoring report.

These items must be submitted to BWM before the annual permit renewal date, which will be the same date that was used for annual permit renewal during the active life of the facility.

The permit renewal fee, financial assurance, and other renewal requirements do not apply to the following landfills unless environmental monitoring becomes a requirement due to emergence of any threats to public health or safety or the environment:

- Landfills with no environmental monitoring activities, except the maintenance and repair of the final cover and/or gas monitoring in structures; and
- Municipal solid waste landfills that closed before the dates listed in KAR 28-29-100, in accordance with their consent agreements.

Calculation of Financial Assurance

- Financial assurance may be determined separately for each unit within the landfill.
- Financial assurance will be determined separately for each postclosure care activity being performed at the landfill or unit.
- If the O/O demonstrates to KDHE that a postclosure care activity can be conducted at a reduced level, the financial assurance for that activity may be correspondingly reduced.
- The O/O must continue to maintain 30 years of financial assurance (rolling 30) for each postclosure care activity until the O/O demonstrates to KDHE that the activity can be terminated in fewer than 30 years.
  - If the O/O can demonstrate that a postclosure care activity can be terminated in fewer than 30 years, the financial assurance for that activity may be based on the predicted termination date for that activity.
  - The predicted termination date must be adjusted, if necessary, based on periodic review and evaluation of data.
- The predicted termination date may be determined before or after closure of the landfill or unit.

This policy will remain in effect until it is revoked or until it is rendered obsolete by future amendments to solid waste law or regulations.

William L. Bider

William L. Bider
Director, Bureau of Waste Management

5-1-14
Date

Appendix B

Referenced Division of Water Resources Statutes and Regulations

Kansas Statutes Annotated (K.S.A.)

82a-301. Permit or consent of chief engineer required to construct, modify or add to dams or other water obstructions; exceptions; definitions. (a) (1) Except as provided in subsections (c) and (d), without the prior written consent or permit of the chief engineer of the division of water resources of the Kansas department of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to:

(A) Construct, modify or add to any dam;

(B) construct, modify or add to any water obstruction in a designated stream; or

(C) change or diminish the course, current, or cross section of any designated stream within this state.

(2) Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer.

(3) Revetments for the purpose of stabilizing a caving bank which are properly placed shall not be construed as obstructions for the purposes of this section.

(b) As used in K.S.A. 82a-301 et seq., and amendments thereto:

(1) "Dam" means any artificial barrier including appurtenant works with the ability to impound water, waste water or other liquids that has a height of 25 feet or more; or has a height of six feet or greater and a storage volume at the top of the emergency spillway elevation of 50 or more acre feet. The height of a dam or barrier shall be measured from the lowest elevation of the streambed, downstream toe or outside limit of the dam to the elevation of the top of the dam.

(2) "Designated stream" means a natural or man-made channel that conveys drainage or runoff from a watershed having an area of:

(A) One or more square miles in zone one, which includes all geographic points located in or east of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick or Sumner counties;

(B) two or more square miles in zone two, which includes all geographic points located west of zone one and in or east of Smith, Osborne, Russell, Barton, Stafford, Pratt or Barber counties; or

(C) three or more square miles in zone three, which includes all geographic points located west of zone two.

(c) (1) The prior written consent or permit of the chief engineer shall not apply to water obstructions that meet the following requirements:

(A) The change in the cross section of a designated stream is obstructed less than 5% and the water obstruction or change is contained within a land area measuring 25 feet or less along the stream length; or

(B) (i) the water obstruction is not a dam as defined in subsection (b);

(ii) the water obstruction is not located within an incorporated area;

(iii) every part of the water obstruction, and any water impounded by such obstruction, is located more than 300 feet from any property boundary; and

(iv) the watershed area above the water obstruction is five square miles or less.

(2) If the water obstruction does not meet the requirements of subsection (c)(1)(B)(iii), but meets all other requirements of subsection (c)(1)(B), such water obstruction may be exempted from the permitting requirements of subsection (a) if the chief engineer determines such water obstruction has minimal impact upon safety and property based upon a review of the information, to be provided by the owner, including:

(A) An aerial photo or topographic map depicting the location of the proposed project, the location of the stream, the layout of the water obstruction, the property lines and names and addresses of adjoining property owners; and

(B) the principal dimensions of the project including, but not limited to, the height above streambed.

(3) Notwithstanding any other provision of this section, the chief engineer may require a permit for any water obstruction described in this subsection if the chief engineer determines such permit is necessary for the protection of life or property.

(d) The prior written consent or permit of the chief engineer shall not be required for construction or modification of a hazard class A dam that:

(1) Has a height of less than 30 feet and a storage volume at the top of the emergency spillway elevation of less than 125 acre feet, and the dam location and dimensions have been registered with the division of water resources in a written form prescribed by the chief engineer; or

(2) is a wastewater storage structure for a confined feeding facility that has been approved by the secretary of health and environment pursuant to K.S.A. 65-171d, and amendments thereto.

History: L. 1929, ch. 203, § 1; L. 1978, ch. 431, § 6; L. 2002, ch. 138, § 2; L. 2011, ch. 67, § 1; L. 2013, ch. 111, § 4; July 1.

82a-301a. Exclusive regulation and supervision of dams and other water obstructions by chief engineer. It is the intent of the legislature by this act to provide for the exclusive regulation of construction, operation and maintenance of all dams or other water obstructions by the state to the extent required for the protection of public safety. All dams or other water obstructions are declared to be under the jurisdiction of the division of water resources of the Kansas department of agriculture and the chief engineer thereof. The chief engineer or his or her authorized representative shall supervise the construction, modification, operation and maintenance of dams or other water obstructions for the protection of life and property.

History: L. 1978, ch. 431, § 1; L. 2004, ch. 101, § 135; July 1.

82a-302. Applications for consent or permit, fees; contents; rules and regulations; permit fees. (a) Except as otherwise provided for general permits, each application for the consent or permit required by K.S.A. 82a-301, and amendments thereto, shall be accompanied by complete maps, plans, profiles and specifications of such construction, modification or addition proposed to be made, the required application fee as provided in subsection (b) unless otherwise exempted, and such other data and information as the chief engineer may require. The chief engineer shall adopt rules and regulations for the issuance of a general permit which may be issued for projects which require limited supervision and review.

(b) (1) The application fee for a permit to construct, modify or add to a dam shall be $200.

(2) The application fee for a permit to construct, modify, or add to a water obstruction or to change or diminish the course, current or cross section of a stream shall be based on the watershed area.

Watershed Area Above the Project	Permit Application Fee
Less than 5 square miles	$100
Between 5 and 50 square miles	$200
More than 50 square miles	$500

(3) The application fee for a general permit shall be $100.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 2014 Supp. 82a-328, and amendments thereto.

History: L. 1929, ch. 203, § 2; L. 1978, ch. 431, § 7; L. 2002, ch. 138, § 3; L. 2010, ch. 17, § 211; L. 2013, ch. 111, § 5; July 1.

82a-303. Same; conditions to permits; unlawful acts. The chief engineer of the division of water resources shall have power to grant or withhold such consent or permit or may incorporate in and make a part of said consent or permit such terms, conditions and restrictions as may be deemed by him or her advisable. It shall be unlawful to: (a) Construct or begin the construction of any dam or other water obstruction, or (b) make or begin any change or addition in any dam or other water obstruction, except in accordance with the terms, conditions and restrictions of such consent or permit, and such rules and regulations as may be adopted by the chief engineer of the division of water resources.

History: L. 1929, ch. 203, § 3; L. 1978, ch. 431, § 8; April 11.

82a-303a. Rules and regulations by chief engineer. The chief engineer of the division of water resources of the Kansas department of agriculture shall adopt and may from time to time amend rules and regulations in order to establish standards for the construction, modification, operation and maintenance of dams and other water obstructions and to administer and enforce the provisions of this act.

History: L. 1978, ch. 431, § 2; L. 2004, ch. 101, § 136; July 1.

82a-303b. Inspection of dams by chief engineer; access to private property; costs of inspection; failure to comply, penalties. (a) (1) In order to secure conformity with adopted rules and regulations and to assure compliance with the terms, conditions or restrictions of any consent or permit granted pursuant to the provisions of K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief engineer or an authorized representative of the chief engineer shall have the power and the duty to inspect any dam or other water obstruction. Upon a finding pursuant to subsection (a) of K.S.A. 82a-303c, and amendments thereto, by the chief engineer that a dam is unsafe, the chief engineer shall order an annual inspection of the dam until it is either in compliance with all applicable provisions of this act, any rules and regulations promulgated pursuant to this act, permit conditions and orders of the chief engineer; or the dam is removed. The safety inspection shall be conducted by the chief engineer or authorized representative and the cost shall be paid by the dam owner. The class and size of a dam shall be defined by rules and regulations adopted by the chief engineer pursuant to K.S.A. 82a-303a, and amendments thereto. Inspection fees are as follows:

Size of Dam	Inspection fee
Class 3	$2,500
Class 4	$4,000

(2) Each hazard class C dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every three years, unless otherwise ordered by the chief engineer.

(3) Each hazard class B dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every five years unless otherwise ordered by the chief engineer.

(4) Within 60 days of the date of inspection, a report of the inspection shall be provided to the chief engineer by the licensed professional engineer who conducted the inspection. The

report shall document the physical condition of the dam, describing any deficiencies observed, an analysis of the capacity of the dam and its spillway works, compliance of the dam with approved plans and permit conditions, changes observed in the condition of the dam since the previous inspection, an assessment of the hazard classification of the dam including a statement that the engineer either agrees or disagrees with the current classification, and any other information relevant to the safety of the dam or specifically requested by the chief engineer.

(5) Upon failure of a dam owner to comply with the applicable inspection interval, the chief engineer or such chief engineer's authorized representative shall conduct a mandatory inspection of the dam and the costs as established by this act for the inspection shall be paid by the owner, in addition to any other remedies provided for violations of this act.

(6) The failure to file a complete and timely report as required by the provisions of this act, or the failure to submit the fees assessed for inspections conducted by the chief engineer or the chief engineer's authorized representative shall be deemed a violation of this act and subject to the penalties provided by K.S.A.82a-305a, and amendments thereto.

(b) For the purpose of inspecting any dam or other water obstruction, the chief engineer or an authorized representative of the chief engineer shall have the right of access to private property. Costs for any work which may be required by the chief engineer or the authorized representative prior to or as a result of the inspection of a dam or other water obstruction shall be paid by the owner, governmental agency or operator of such dam or other water obstruction.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 2014 Supp. 82a-328, and amendments thereto.

History: L. 1978, ch. 431, § 3; L. 2002, ch. 138, § 4; L. 2013, ch. 111, § 6; July 1.

82a-303c. Violations of conditions or restrictions of permit or of rules and regulations; orders of chief engineer; remedial measures; emergency situations. (a) Whenever the chief engineer finds that: (1) The construction, modification, operation or maintenance of a dam or other water obstruction is in violation of adopted rules and regulations or of terms, conditions or restrictions of a permit or consent granted by the chief engineer or, (2) conditions exist in the construction, modification, operation or maintenance of a dam or other water obstruction which may present a hazard to the public's safety, he or she shall issue an order to require the correction of any such violation or condition existing in the construction, modification, operation or maintenance of a dam or other water obstruction by the owner or operator thereof. An order may be issued to require the removal of a dam or other water obstruction. The order shall contain the chief engineer's findings concerning any violation or conditions existing and shall prescribe the corrective action to be taken.

(b) Whenever the condition of any dam or other water obstruction is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to construction, modification, maintenance or operation thereof, or, the passing of imminent floods threaten the safety of any dam or other water obstruction, the chief engineer shall immediately employ any remedial means necessary to protect the safety of life or property. The chief engineer shall continue in full charge and control of any such dam or other water obstruction until the same is rendered safe or the emergency occasioning the remedial action has ceased.

History: L. 1978, ch. 431, § 4; April 11.

82a-305a. Unlawful acts; penalties; injunction. (a) Any person, partnership, association, corporation or agency or political subdivision of the state government who violates any provision of this act or of any rule and regulation or order issued pursuant thereto shall be deemed guilty of a class C misdemeanor. Each day that any such violation occurs after notice of the original violation is served upon the violator by the chief engineer by restricted mail shall constitute a separate offense.

(b) Upon request of the chief engineer, the attorney general shall bring suit in the name of the state of Kansas in any court of competent jurisdiction to enjoin (1) the unlawful construction, modification, operation or maintenance of any dam or other water obstruction, or (2) the unlawful change or diminution of the course, current or cross section of a river or stream. Such court may require the removal or modification of any such dam or other water obstruction by mandatory injunction.

History: L. 1978, ch. 431, § 5; April 11.

82a-307. Cleaning and maintaining banks and channels by county; petition or resolution; access to private property; claims for damages. (a) Upon petition of 50 taxpayers of any county of this state, owning land in the flood plain of any river in such county, or upon enactment of a resolution by the county commission of such county, the board of county commissioners of each county in this state are hereby authorized within their respective jurisdictions to clean and maintain the banks and channels of the streams and watercourses within definitely established bank lines, and to keep such streams free of drift, trees and other debris, for the purpose of reducing floods and overflows. Upon such petition or resolution, the board of county commissioners may remove debris pursuant to this section, but shall not change or diminish the course, current or cross section of any stream.

(b) The board of county commissioners, having obtained written permission from the landowner, may enter upon private property, if necessary, to clean and maintain such streams, doing as little damage as possible thereto. If material damage is done to any property, the commissioners shall allow reasonable compensation therefor if the landowner presents a claim in writing to the board within 60 days from the date of such alleged material damage.

(c) Nothing in this act shall be construed to permit the board of county commissioners of any county to remove or destroy any permanent improvement, including dams and bridges, in and over such streams, providing such improvements, dams or bridges have been lawfully placed thereon.

History: L. 1929, ch. 143, § 2; L. 1931, ch. 318, § 1; L. 1951, ch. 527, § 1; L. 2013, ch. 111, § 7; July 1.

82a-308. Same; expenses and damages; tax levy, use of proceeds. Any expenses incurred in removing such obstructions as are mentioned in K.S.A. 82a-307, and amendments thereto, or damage to private property, shall be paid out of the general fund of the respective counties but if it shall appear that the obstructions were caused by owners of adjoining property, the expenses shall be charged to the adjoining property as a special tax to be levied and collected as other special taxes and assessments. In the event that the general fund of any county shall not be sufficient to bear the cost of the operations mentioned in this section, including the maintenance of such streams or watercourses, then the board of county commissioners of such county may levy an annual tax upon all property in the county for the purpose of creating a fund known as stream maintenance fund from which fund the costs and expenses of the operation herein

provided for shall be paid and for the purpose of paying a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county.

History: L. 1929, ch. 143, § 3; L. 1931, ch. 318, § 3; L. 1970, ch. 100, § 44; L. 1980, ch. 65, § 8; L. 1999, ch. 154, § 47; May 27.

82a-309. Distribution of proceeds from sale of sand products taken from river beds owned by state. (a) Of compensation received for sand products sold pursuant to K.S.A. 70a-102 and amendments thereto, $.0375 per ton sold shall be returned as follows:

(1) If the sand products are taken from the bed of the river at a location which is within the boundaries of a drainage district, the board of directors of the district from which the sand products were taken shall be entitled to receive 2 / 3 of the amount returned and the remaining 1 / 3 shall be divided among the remaining drainage districts in the county, to be used for bank stabilization, soil conservation, or maintenance and operation of flood control systems, in proportion to the frontage on such river.

(2) If the sand products are taken from the bed of the river at a location which is not within the boundaries of a drainage district, the proceeds attributable to such sand products shall be returned to the counties which have adopted this act and have notified, prior to July 1 following the adoption of this act, the director of taxation of such adoption, and through which such river flows, in proportion to the mileage of the river bank in such county. Moneys paid to a county pursuant to this paragraph shall be disbursed or used as follows:

(A) If there are one or more drainage districts organized under the laws of this state which are located in such county along a river that is the property of the state of Kansas and which operate and maintain river flood control improvements in or along such river, the county shall disburse such moneys to each such drainage district, to be used for bank stabilization, soil conservation, or maintenance and operation of flood control systems, in proportion to each district's frontage on such a river.

(B) If there is no drainage district organized under the laws of this state which is located in such county along a river that is the property of the state of Kansas, the county may use the moneys for construction, operation and maintenance of public improvements located along, in or over such a river or for the preservation of land and development and maintenance of public areas along such river or tributaries adjacent to such river.

(b) The unencumbered balance of any moneys which were distributed to a county pursuant to this section as it existed before its amendment on July 1, 1995, and which remain in the county treasury on July 1, 1995, shall be distributed in the manner provided by this section as amended on July 1, 1995.

History: L. 1929, ch. 143, § 4; L. 1931, ch. 318, § 4; L. 1933, ch. 331, § 1; L. 1933, ch. 249, § 6; L. 1937, ch. 387, § 1; L. 1961, ch. 311, § 7; L. 1992, ch. 109, § 2; L. 1995, ch. 238, § 2; L. 1996, ch. 144, § 2; July 1.

82a-311. Same; cost of surveys; how paid; division of balances of proceeds. In any county in this state which, prior to the adoption of this act, has received any of the proceeds from the sale of sand products and which failed to have a survey made, as provided in K.S.A. 82a-307a, which survey was made by drainage districts in said county, the county commissioners are directed to pay to drainage districts which have had the survey made or which shall, within one year after the taking effect of this act have such survey made, the costs of such surveys, and the

balances of said proceeds shall be divided among said drainage districts in proportion to the frontage on such rivers.

History: L. 1937, ch. 387, § 2; March 31.

82a-325. Water projects environmental coordination act; purpose. (a) This act shall be known and may be cited as the water projects environmental coordination act.

(b) In order to protect the environment while facilitating the use, enjoyment, health and welfare of the people of the state of Kansas, it is necessary that the environmental effect of any water development project be considered before such water development project is approved or permitted.

History: L. 1987, ch. 400, § 1; July 1.

82a-326. Water projects environmental coordination act; definitions. When used in this act:

(a) "Water development project" means any project or plan which requires a permit pursuant to K.S.A. 24-126, 24-1213, 82a-301 et seq., and amendments thereto, or the multipurpose small lakes program act;

(b) "environmental review agencies" means the:

(1) Kansas department of wildlife, parks and tourism;

(2) Kansas forest service;

(3) state biological survey;

(4) Kansas department of health and environment;

(5) state historical society;

(6) Kansas department of agriculture division of conservation; and

(7) state corporation commission.

History: L. 1987, ch. 400, § 2; L. 1989, ch. 118, § 192; L. 1991, ch. 290, § 10; L. 1997, ch. 49, § 5; L. 2012, ch. 140, § 134; L. 2013, ch. 111, § 8; July 1.

82a-327. Same; review of proposed project; considerations. (a) Prior to approval or issuance of a permit for a proposed water development project, the permitting agency shall obtain a review of the proposed project for environmental effects by the appropriate state environmental review agencies, and shall consider their comments in determining whether to approve or issue a permit for such project. The permitting agency may condition the approval of or permit for the project in a manner to address the environmental concerns of the environmental review agencies.

(b) In reviewing a proposed water development project, the environmental review agency shall consider:

(1) The beneficial and adverse environmental effects of a proposed project on water quality, fish and wildlife, forest and natural vegetation, historic, cultural, recreational, aesthetic, agricultural and other natural resources;

(2) the means and methods to reduce adverse environmental effects of a proposed project; and

(3) alternatives to a proposed project with significant adverse environmental effects.

(c) Each environmental review agency shall send its written comments on the proposed project within 30 days of receipt of the proposal from the permitting agency.

(d) Nothing in this act shall be construed as prohibiting a permitting agency from approving or issuing a permit if an environmental review agency determines adverse environmental effects will result if the project is approved or permitted. Nothing in this act shall be construed as preempting or duplicating any existing environmental review process otherwise provided or authorized by law.

History: L. 1987, ch. 400, § 3; July 1.

82a-328. Water structures fund. There is hereby created in the state treasury the water structures fund. The chief engineer of the division of water resources, Kansas department of agriculture shall remit all moneys received under K.S.A. 82a-302, 82a-303b and 24-126, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the water structures fund. All expenditures from the water structures fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person designated by the secretary.

History: L. 2002, ch. 138, § 5; July 1.

(d) The district may submit to the chief engineer a written recommendation of an exemption from or a waiver of a regulation. If the district submits such a recommendation, the district shall demonstrate to the chief engineer that the granting of the proposed waiver or exemption will not prejudicially and unreasonably affect the public interest and will not cause impairment of any existing water right. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-706a, and K.S.A. 2002 Supp. 82a-711; effective Oct. 31, 2003.)

Articles 26 to 29.—RESERVED

Article 30.—DAMS

5 -30-1 Approval of or permits for dams. The chief engineer shall not approve or grant a permit for any dam subject to the jurisdiction of the chief engineer under the authority of K.S.A. 1979 Supp. 82a-301 through 305a as amended, unless the applicant also receives prior approval of his or her application to appropriate water for beneficial use to be diverted by means of the dam for which the approval or permit is sought, unless the sole proposed use for the water is for domestic use. (Authorized by K.S.A. 82a-706a, 82a-709; effective May 1, 1980.)

Articles 31 to 39.—RESERVED

Article 40.—DESIGN OF EARTH DAMS

5-40-1. Definitions. As used in K.S.A. 82a-301 through 82a-305a and amendments thereto, in the regulations adopted pursuant to these statutes, and by the chief engineer in administering K.S.A. 82a-301 through 82a-305a and amendments thereto, the following terms shall have the meanings ascribed to them in this regulation, unless the context clearly requires otherwise:

(a) "Application" means the formal document and any required supporting information that are submitted to the chief engineer and request a permit, pursuant to K.S.A. 82a-301 through 82a-305a, and amendments thereto.

(b) "Appurtenant works" means the primary spillway and other conduits through a dam, the valves, the auxiliary spillway, the service spillway, the stilling basin, any constructed outlet channel, all dikes and berms designed and constructed to protect the dam, the drains, and all other features constructed to protect or operate a dam.

(c) "As-built drawings" means the drawings showing a permitted project and all appurtenant works as the project and works were actually built. This term shall include the following:

(1) All deviations from the plans that were approved by the chief engineer;

(2) the location and design of any instruments and monitoring equipment that were installed at the site;

(3) the location and elevation of any benchmarks; and

(4) a certification that the permitted project was constructed as shown on the as-built drawings.

(d) "Authorized representative" means any employee of the chief engineer designated by the chief engineer to perform duties and functions on behalf of the chief engineer.

(e) "Auxiliary spillway" means an open channel that is constructed over or around an embankment for the purpose of conveying safely past the dam the flows that are greater than the primary spillway design discharge and that can be stored in the detention storage. This term is also known as an emergency spillway.

(f) "Benchmark" means a reference point or object of known elevation and location that is not expected to move horizontally or vertically during the life of the project.

(g) "Borrow area" means land, usually located near the dam, from which earth used to construct the embankment will be excavated.

(h) "Breach analysis" means an engineering analysis to determine the areas that would be inundated if a dam failed.

(i) "Channel change" means any project that alters the course, current, or cross section of any stream.

(j) "Chief engineer" means the chief engineer, division of water resources of the Kansas department of agriculture.

(k) "Control section" means the immediate downstream end of the level section of an open-channel earthen spillway. The elevation of the control section is the elevation of the open-channel spillway crest.

(l) "Cutoff collar" means a projecting flange built or installed completely around the outside of a pipe to lengthen the path of seepage along the outer surface of the pipe.

(m) "Cutoff trench" means an excavation under a dam to be later filled with impervious material to prevent or reduce the seepage of water through the foundation of a dam.

(n) "Design discharge" means the maximum rate of flow, expressed in cubic feet per second, released from a dam's spillways for the design storm.

(o) "Design storm" means the precipitation event specified in K.A.R. 5-40-22 that is the minimum precipitation event required to be used to design a particular dam.

(p) "Detention storage" means the volume in the reservoir between the lowest uncontrolled spillway, not including any low-flow augmentation works, and the crest of the auxiliary spillway.

(q) "Detention storm" means the storm described in K.A.R. 5-40-23.

(r) "Easily erodible soils" means soils with a high content of fine sand or silt and with little or no cohesion or plasticity, including fine sand, silt, sandy loam, and silty loam.

(s) "Effective height" means the difference in elevation between the crest of an auxiliary spillway or service spillway and the lowest point of the downstream toe of a dam. If the dam does not have an auxiliary or service spillway, the effective height means the difference in elevation between the top of the dam and the lowest point of the downstream toe of the dam.

(t) "Effective storage" means the volume of storage space in a reservoir below the crest of the auxiliary spillway or service spillway and above the elevation of the downstream toe of the dam at its lowest point. Effective storage shall not be reduced by accounting for accumulated sediment.

(u) "Embankment" means the earthen-fill portion of the dam.

(v) "Emergency action plan" means a formal document that identifies potential emergency conditions at a dam and specifies preplanned actions to be followed to minimize property damage and loss of life if the dam fails.

(w) "Erosion-resistant soils" means cohesive soils with a high clay content and high plasticity, including silty clay, sandy clay, and clay.

(x) "Freeboard" means the vertical distance between the maximum water surface elevation attained during the design storm and the top of the dam.

(y) "General plan" means a plan adopted by a watershed district, drainage district, or similar entity required by statute to be approved by the chief engineer, including any of the plans formulated under K.S.A. 24-901 and K.S.A. 24-1213, and amendments thereto.

(z) "Hazard" means the property or people that could be damaged or endangered by the failure of a dam, including people or property that might be inundated. This term shall include a public or industrial water supply stored in the reservoir created by the dam that would be released if the dam failed.

(aa) "High-impact dams" means all of the following classes of dams:

(1) Size class 4, hazard class A dams;

(2) size classes 3 and 4, hazard class B dams; and

(3) all hazard class C dams, using the definitions of hazard class and size class in K.A.R. 5-40-20 and K.A.R. 5-40-21.

(bb) "Hydraulically most distant point in the watershed" means the point in a watershed from which a raindrop falling at that point takes the longest time to reach the dam.

(cc) "Impervious material" means material that allows a relatively low rate of water movement through its cross section.

(dd) "Inspection year" means the period on and after May 1 of one year through April 30 of the following year. The inspection year shall be named for the calendar year in which the inspection year ends.

(ee) "Inundation area" means the area below a dam that will be inundated with water as determined by conducting a breach analysis meeting the requirements specified in K.A.R. 5-40-24.

(ff) "Invert" means the lowest point on the inside of the outlet of a conduit.

(gg) "Low-flow augmentation works" means any uncontrolled conduit, orifice, or other appurtenant works that slowly release water from storage in a reservoir, or bypass low flow through a reservoir.

(hh) "Low-impact dams" means all of the following classes of dams:

(1) Size classes 1, 2, and 3, hazard class A dams; and

(2) size classes 1 and 2, hazard class B dams, using the definitions of hazard class and size class in K.A.R. 5-40-20 and K.A.R. 5-40-21.

(ii) "Maintenance" means the actions or upkeep performed on a dam or its appurtenances to compensate for wear and tear on the dam and appurtenances and to preserve the dam and appurtenances so that the dam and appurtenances function properly until they are removed, including woody vegetation control; grass seeding; burrowing animal control; repair of minor erosion, cracks, animal burrows, and minor settling; care

of pipes, piezometers, drains, valves, gates, and other mechanical devices; replenishment of riprap; and removal of debris from spillways.

(jj) "Modification" means any change in a dam or its appurtenances that involves a change to or significant disturbance of the embankment, an alteration of the flow characteristics of a spillway, a change in the storage capacity or freeboard, or any other significant alteration in the functioning of the dam.

(kk) "Navigable stream" means any of the following:

(1) The Arkansas river;

(2) the Missouri river; or

(3) the Kansas river.

(ll) "One percent-chance storm" means a rainfall event that has a one percent chance of being equaled or exceeded one or more times in a year.

(mm) "Owner of a dam" means the owner or owners of the land upon which a dam and appurtenant works are constructed unless an easement authorizes another person or entity to construct and maintain a dam on that easement. With such an easement, the holder of the easement shall be considered to be the owner of the dam.

(nn) "Perennial stream" means a stream, or part of a stream, that flows continuously during all of the calendar year, except during an extreme drought.

(oo) "Permanent pool" means the storage space in a reservoir below the elevation of the lowest uncontrolled spillway, not including any low-flow augmentation works. This term is also known as the "normal pool."

(pp) "Permit" means the consent or other formal document issued by the chief engineer that authorizes the construction, repair, or modification of a dam, channel change, or stream obstruction, and its operation and maintenance.

(qq) "PMP" means the probable maximum precipitation that can occur in a precipitation event as prescribed by K.A.R. 5-40-31.

(rr) "Prejurisdictional dam" means any of the following:

(1) A dam constructed before May 28, 1929;

(2) a dam constructed by an agency or political subdivision of state government, other than a county, city, town, or township, before April 11, 1978; or

(3) a dam constructed before July 1, 2002 that is 25 or more feet in height and impounds less than 30 acre-feet of water at the top of the dam.

(ss) "Primary spillway" means the uncontrolled outlet device through a dam that provides the initial outlet for storm flows, usually consisting of either of the following:

(1) A riser structure in combination with an outlet conduit; or

(2) a canopy or hooded inlet structure in combination with an outlet conduit.

This term is also known as a "principal spillway."

(tt) "Rainfall excess" means that part of the rain in a given storm that falls at intensities exceeding the infiltration capacity of the land and that is the volume of the rain available for direct runoff.

(uu) "Reservoir" means the area upstream from a dam that contains, or can contain, impounded water.

(vv) "Repair" means any action, other than maintenance, taken to restore a dam and its appurtenant works to their original permitted condition.

(ww) "Service spillway" means an open-channel spillway constructed over or around a dam embankment to convey safely past the dam all flows entering the reservoir that cannot be stored in the reservoir behind a dam that does not have a primary spillway.

(xx) "Size factor" means the effective height of the dam, expressed in feet, multiplied by the effective storage of the reservoir, expressed in acre-feet.

(yy) "Stilling basin" means an open structure or excavation at the outlet of a spillway that dissipates the energy of fast-moving water being discharged from the spillway to protect the streambed below a dam from erosion.

(zz) "Stream" means any watercourse that has a well-defined bed and well-defined banks and that has a watershed above the point marking the site of the project that exceeds the following number of acres in the zones specified:

(1) Zone three: 640 acres for all geographic points within any county west of a line formed by the adjoining eastern boundaries of Phillips, Rooks, Ellis, Rush, Pawnee, Edwards, Kiowa, and Comanche counties;

(2) zone two: 320 acres for all geographic points within any county located east of zone three and west of a line formed by the adjoining eastern boundaries of Republic, Cloud, Ottawa, Saline, McPherson, Reno, Kingman, and Harper counties; and

(3) zone one: 240 acres for all geographic points within any county located east of zone two.

The flow of a stream is not necessarily continuous and can occur only briefly after a rain in the watershed. If the site of the project has been altered so that a determination of whether the well-defined bed and banks did exist is not possible, it shall be presumed that the bed and banks did exist if the watershed acreage criteria specified in this subsection have been met, unless the owner of the project conclusively demonstrates that the well-defined bed and banks did not exist when the project site was in its natural state and had not been altered by human activity.

(aaa) "Stream obstruction" means any project or structure that is wholly or partially placed or constructed in a stream and that does not meet the definition of a dam in K.S.A. 82a-301 and amendments thereto.

(bbb) "Time of concentration" means the time required for runoff to flow from the hydraulically most distant point in the watershed to the watershed outlet once the soil has become saturated and minor depressions have been filled.

(ccc) "Trash rack" means a protective device installed on the inlet of a primary spillway to prevent trash and other debris from obstructing the primary spillway without obstructing the flow of water.

(ddd) "Watershed" means all of the area draining toward a selected point on a stream.

(eee) "Wing dike" means an earthen or rock structure below the toe of a dam that is constructed to protect the embankment from erosion.

(fff) "Zone," in an earthen dam, means a segment of earthen fill containing similar materials.

(ggg) "Zoned fill" means an embankment divided into two or more zones to make the best use of available materials. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 1, 1983; amended May 1, 1987; amended, T-5-12-30-91, Dec. 30, 1991; amended Feb. 17, 1992; amended Sept. 22, 2000; amended May 18, 2007.)

5-40-2. Dams; plans and specifications. The plans required by K.S.A. 82a-302, and amendments thereto, to construct, repair, or modify a dam shall include sufficient views to show all features in three dimensions and in sufficient detail to instruct a competent contractor to construct, repair, or modify the dam by viewing the plans and specifications. All plans with multiple pages shall include an index describing the location of required views within the plans. The views and maps specified in this regulation shall be shown. Specific details shall be listed under the view that is typically most appropriate, but they may be displayed on another view to improve the legibility of the plans if sufficient detail is provided in the plans to describe each feature in three dimensions. The required plans shall include the following:

(a) Plan views of the dam and dam site, which shall include both abutments of the dam, the area downstream to the point where the auxiliary spillway or service spillway flows enter the receiving channel, and the area upstream of the upstream toe of the dam to where the borrow area will be permitted. All elevations shown on plans shall be referenced to the same datum as the benchmarks described on the plans. The following details shall be shown, if applicable:

(1) The location of the axis of the dam, showing stationing and top width limits;

(2) the toe of the upstream and downstream slopes;

(3) the location of the centerline and the limits of each open-channel spillway;

(4) the location of the primary spillway and any stilling basin;

(5) the location of each berm;

(6) the location of slope protection;

(7) the location of borings, test holes, and test pits;

(8) the location of intakes, outlets, valves, and valve wells;

(9) the location, description, and elevation of each benchmark;

(10) the location, description, and details of all foundation drains;

(11) the location and limits of each borrow area; and

(12) the location and topography of the area where the auxiliary spillway discharge returns to the receiving stream;

(b) a map of the drainage pattern above and below the dam site drawn to an appropriate scale. The map shall show the following:

(1) The location of the watercourse across which the dam is to be built and the point where the centerline of the dam crosses the centerline of the stream specified in latitude and longitude, or in feet north and west of the southeast corner of the section;

(2) the location of the dam and the outline of the reservoir;

(3) the boundary of the watershed, shown by a

line enclosing the entire area that will drain into the reservoir;

(4) section lines, with sections properly identified; and

(5) the size of the drainage area in acres or square miles;

(c) a topographic map of the dam site and reservoir area, which shall be shown to a scale that provides sufficient detail to clearly show the required features and to locate them in the field, but in no case is less than 1 to 3,600. The elevation of each contour shall be clearly noted on the map. The following details shall be shown:

(1) The location of the dam; and

(2) the following topography:

(A) The contours at two-foot intervals. For dams more than 20 feet in height, contours may be spaced at greater intervals, but the interval shall not exceed four feet;

(B) the contour equivalent to the elevation of the lowest uncontrolled spillway inlet, not including any low-flow augmentation works;

(C) the contour equivalent to the maximum water surface reached during the design storm;

(D) the contour equivalent to the elevation of the top of the dam;

(E) construction ingress and egress routes to the dam and reservoir;

(F) the name and address of each person owning any of the following:

(i) The land on which the dam and its appurtenances, including the auxiliary spillway or service spillway, down to the location where the spillway discharges back to the receiving stream, will be constructed;

(ii) ingress and egress routes to the dam and reservoir;

(iii) the reservoir site up to the top of the dam elevation; and

(iv) the borrow areas if they are located outside the reservoir site;

(G) if the reservoir area is divided between more than one landowner, the property lines, which shall be shown on the topographic map of the reservoir;

(H) roads, railroads, pipeline crossings, and any other prominent features in the vicinity;

(I) the boundary line for each easement; and

(J) the limits of each borrow area;

(d) the cross-section view of the valley at the dam site, which shall be shown along the centerline of the dam with the same stationing as that used on the plan view. The following shall be shown:

(1) The elevation to which the top of the dam is to be maintained and the elevation to which the dam is to be initially constructed in order to provide an adequate settlement allowance;

(2) the location and elevation of the auxiliary spillway or service spillway at the centerline of the dam;

(3) the original surface of the ground, including the streambed, up to the elevation of the top of the dam;

(4) the proposed elevations of the bottom of the cutoff trench; and

(5) the location of all test holes and the materials encountered in the test holes;

(e) a cross-section view perpendicular to the centerline of the dam at the lowest point on the downstream toe extending to the limits of the fill being placed. If the cross section is variable, a typical section shall be shown for each reach of similar cross section with a proper description of the reach by stationing. Additional typical cross sections along the centerline of the primary spillway and the centerline of any other outlets shall be shown. Cross sections of the dam shall include the following:

(1) The elevations of the shoulders and centerline of the dam and the width of the top of the dam;

(2) the elevation of the top of any berm, the elevation of the outside shoulder of any berm, and the top width of any berm;

(3) the slopes of upstream and downstream faces of the dam;

(4) the elevation, location, and type of slope protection;

(5) the zones of the embankment;

(6) the dimensions to which the dam is to be constructed to provide an adequate allowance for settlement;

(7) the elevation, location, and dimensions of the planned cutoff trench; and

(8) the elevation of the downstream toe of the dam at its lowest point;

(f) the following information concerning each open-channel spillway:

(1) A plan view showing the location and stationing along the centerline of the spillway, together with the location of the control section;

(2) cross sections showing side slopes and dimensions of the spillway, and the original surface

of the ground up to the point where the spillway sides intersect the original ground surface;

(3) a profile along the centerline of the spillway, extending from the point upstream where the profile of the spillway intersects natural ground through the control section to the streambed below the dam. The stationing on the profile shall correspond to that on the plan view. The station and elevation of the breaks in the grade of the spillway shall be shown. This profile shall show the existing ground elevation, proposed grade of the bottom of the spillway, elevation of slope protection on the side slopes, and geologic logs of the borings required in the auxiliary spillway or service spillway by K.A.R. 5-40-40, superimposed on the profile through which the spillway is excavated; and

(4) the data necessary to stake out any curves;

(g) the following information concerning the primary spillway:

(1) The profile along the centerline of the spillway, extending from the intake to the outlet, showing the size, dimensions, and locations of seepage control features. This profile shall show existing ground elevations and the proposed grade of the spillway;

(2) the plan, profile, and cross-section views of the stilling basin, primary spillway supports, and other features;

(3) the geologic logs of the borings done in the vicinity of the primary spillway shall be superimposed on the profile;

(4) the location and type of all bedding materials;

(5) a table of pipe grades for all concrete pipes; and

(6) conduit joint details;

(h) the number of acres enclosed by each contour within the reservoir area and the total storage capacity of the reservoir in acre-feet at the elevation of each contour, which shall be determined and tabulated on the plan. The data shall be compiled for all contours in the reservoir up to the elevation of the top of the dam. Computations of capacity shall be based on the natural topography of the reservoir basin but may include the volume of any excavation in the reservoir made during construction of the dam;

(i) a curve or table showing the discharge capacities, in cubic feet per second, of all spillways through a range of surface water elevations from the lowest spillway inlet elevation to the top of the dam elevation, which shall be developed and shown on the plans or in the design report;

(j) the following information, which shall be shown on the plans in plan view, profile, and cross section:

(1) Drain details, including foundation drains;

(2) permanent erosion control protection, including riprap; and

(3) details of stilling basins, outlets, and other appurtenant structures; and

(k) the following information, which shall be shown on either the plans or the specifications:

(1) A table of gradation for each drain; and

(2) a table of gradation of the bedding of the riprap. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended May 18, 2007.)

5-40-2a. Benchmarks. (a) At least two permanent benchmarks shall be installed for future reference at each dam. Each benchmark shall be located according to the following criteria:

(1) In an area where the benchmark will not be disturbed, destroyed, or inundated after the dam is complete; and

(2) along the centerline of the dam on either end of the dam, if practical, and in undisturbed soil.

(b) On high-impact dams, each permanent benchmark shall also meet the following criteria:

(1) Be installed in a hole that meets the following criteria:

(A) Is 12 inches in diameter; and

(B) is at least 42 inches deep or is drilled to bedrock, whichever is less;

(2) be constructed of one or more steel reinforcing bars at least ⅜ inch in diameter and 36 inches in length or the length of the depth of the hole, whichever is less. The reinforcing bar or bars shall be placed in the hole and the hole backfilled with concrete rounded off flush with the ground;

(3) be capped by a metal survey marker; and

(4) be either marked by a witness post or survey marker sign or tied to at least two objects in the vicinity by distance and bearing.

(c) On low-impact dams, each permanent benchmark shall also meet the following minimum requirements:

(1) Be constructed of a reinforcing bar that is 36 inches long, one-half inch in diameter, and driven flush with the surface of the ground;

(2) be installed at a location protected from grazing animals and vehicular traffic; and

(3) be either marked by a witness post or survey marker sign or tied to at least two objects in the vicinity by distance and bearing.

(d)(1) The elevation and horizontal location of each permanent benchmark shall be shown on the as-built drawings or the construction inspection report. The location of each permanent benchmark shall be described in reference to centerline stationing and offset from the centerline. The elevation of each permanent benchmark for all of the following classes of dams shall be referenced to the national geodetic vertical datum of 1988, or other acceptable national vertical datum, to a tolerance of plus or minus 0.5 foot:

(A) Class size two, hazard classes B and C;

(B) class size three dams; and

(C) class size four dams.

(2) The elevation of each benchmark for class sizes one and two, hazard class A dams may be referenced to an assumed datum.

(e) Horizontal control shall be referenced to the Kansas state plane coordinate system as set forth in K.S.A. 58-20a01 et seq., and amendments thereto. The location of each benchmark shall be shown on the as-built drawings or the notice of completion by using either of the following:

(1) The plane coordinate values consisting of a northing and an easting from the appropriate monumented point according to K.S.A. 58-20a03, and amendments thereto; or

(2) the feet distances north or south, and east or west, from the nearest or most convenient section corner. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-2b. Design reports. (a) The application for each permit to construct, repair, or modify a dam shall be accompanied by a design report prepared by the engineer who designed the new dam or the repair or modification of an existing dam. The design report shall document every major design element of the dam, the conditions that must be addressed in the construction of the project, and the manner in which those conditions will be addressed. The design report shall document the design process, including references to each design method and computer program utilized in the design, and shall include the following:

(1) The design of any slope protection for the embankment and the auxiliary or service spillway. If no slope protection is provided, the report shall provide justification for not having slope protection;

(2) documentation of the determination of the hazard class;

(3) a report of the geotechnical investigation, including the results of the testing required in K.A.R. 5-40-40 through K.A.R. 5-40-42, and all boring logs not shown on the plans;

(4) documentation of the embankment design based upon the geotechnical investigation;

(5) documentation of the hydrological evaluation, including the determination of the composite curve number and drainage area;

(6) if a proposed dam is part of a general plan, the report shall evaluate whether the proposed dam conforms to the general plan;

(7) the design of the foundations, including the proposed depth of the cutoff trench;

(8) the design of the drains, including size, material gradation, interface with soil, and outlets;

(9) the design of the pipe bedding, including documentation that the loading and deflection conditions are met;

(10) the stilling basin design;

(11) documentation of the flood routing or routings;

(12) the gradation of the material in the diaphragm and the design of the diaphragm; and

(13) any other relevant information required by the chief engineer.

(b) In addition to those items required in subsection (a), the design report for each high-impact dam shall include the following:

(1) The auxiliary spillway or service spillway analysis required by K.A.R. 5-40-56(c), if applicable, or K.A.R. 5-40-57(a);

(2) a slope stability analysis; and

(3) an embankment settlement analysis. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-3. Specifications. (a) Each applicant shall submit specifications with the application for a permit to construct a dam. The specifications shall address every major element in the construction of the dam and the materials used to construct the dam. The specifications shall be clear, legible, and sufficiently detailed to ensure that the dam and appurtenant works will be properly constructed and shall meet the requirements of sound engineering principles and commonly accepted

engineering practices. The specifications shall state the minimum quality of materials and workmanship that is acceptable and the required materials tests and testing frequency. The specifications shall cover the following:

(1) The excavation procedures;

(2) the placement and compaction of earthen fill;

(3) the dewatering process;

(4) concrete and reinforcing steel requirements and placement;

(5) the materials for and placement of all conduits;

(6) the materials for and placement of permanent erosion control measures;

(7) drains and seepage control, including aggregate requirements; and

(8) seeding and fencing.

The specifications shall also include an index. The specifications may be submitted electronically in a form and manner prescribed by the chief engineer.

(b) A copy of the plans and specifications that have been approved by the chief engineer shall be accessible at the construction site at all times during construction. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 1, 1983; amended May 1, 1987; amended May 18, 2007.)

5-40-4. Preparer of maps, plans, profiles, reports, and specifications. In addition to the requirements of the Kansas state board of technical professions, the requirements in this regulation shall apply. (a) Each map, plan, profile, report, and specification submitted to the chief engineer for approval shall be prepared by, or under the supervision of, a person who is competent in the design and construction of channel changes or stream obstructions, as appropriate.

(b) Maps, plans, profiles, reports, and specifications for any dam shall be prepared by, or under the supervision of, a licensed professional engineer who is competent in the design and construction of dams.

(c) Maps, plans, profiles, reports, and specifications for any channel change or stream obstruction project on a navigable stream or a stream having a mean annual flow of 100 cubic feet per second or more at the proposed location of the project shall be prepared by a licensed professional engineer who is competent in the design of that type of project.

(d) No provision of this regulation, and no decision made by the chief engineer pursuant to this regulation, shall alter the responsibilities or duties of any licensee of the Kansas state board of technical professions to comply with that board's requirements. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended Sept. 22, 2000; amended May 18, 2007.)

5-40-5. Determining the capacity of a reservoir. (a) The capacity of each proposed reservoir shall be determined as specified in K.A.R. 5-40-2(h).

(b) The capacity of each existing reservoir shall be determined by using the procedure specified in K.A.R. 5-40-2(h) for contours above the water surface. The engineer determining the reservoir capacity shall demonstrate the validity of the method that the engineer selects to extrapolate the data for contours below the water surface. The capacity of an existing reservoir shall not be reduced by including the accumulated sediment. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301 and 82a-303a; effective May 1, 1983; amended May 18, 2007.)

5-40-5a. Determining the height of a dam or barrier. To determine the height of a dam or barrier pursuant to K.S.A. 82a-301(b) and amendments thereto, that measurement shall be made as follows: (a) The height of a dam or barrier that extends across the natural bed of a stream or watercourse shall be the vertical distance measured from the bed of the stream or watercourse at the downstream toe of the dam or barrier to the lowest elevation on the top of the dam or barrier, excluding any open-channel spillway and any anomalous low points.

(b) The height of a dam or barrier that does not extend across the natural bed of a stream or watercourse shall be the vertical distance measured from the lowest elevation of the outside limit of the dam or barrier to the lowest elevation on the top of the dam or barrier, excluding any open-channel spillway and any anomalous low points.

(c) The height of a proposed barrier or dam shall be measured from the planned top of the dam, excluding any allowance for settlement. (Authorized by K.S.A. 2006 Supp. 82a-303a; imple-

menting K.S.A. 2006 Supp. 82a-301 and 82a-303a; effective May 18, 2007.)

5-40-6. Waiver and stricter requirements. (a) The chief engineer may waive any of the regulations adopted under articles 40, 41, 42 and 43 if it is shown to the satisfaction of the chief engineer that the waiver of the regulation will not pose a hazard to the public safety and that the waiver is in the public interest.

(b) The chief engineer may also invoke any jurisdiction granted by statute and impose stricter requirements than required by rules and regulations where such jurisdiction or additional requirements are necessary to protect the public interest, protect the public safety or prevent damage to property. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1983; amended May 1, 1987.)

5-40-7. Other maps, plans, profiles, data and specifications. The applicant shall also submit any other maps, plans, profiles and specifications of the dam, channel change or obstruction and any other data which the chief engineer may require. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-302; effective May 1, 1983; amended May 1, 1987.)

5-40-8. Acceptable application. (a) To be acceptable for filing, each application for a permit to construct, modify, or repair a dam, other stream obstruction, or channel change shall be accompanied by the statutorily required filing fee and shall contain all of the following:

(1) One copy of the completed application on a form prescribed by the chief engineer and signed by the applicant;

(2) two copies of the maps, plans, specifications, and profiles for a proposed or existing dam that meet the requirements of these regulations or one copy of the maps, plans, specifications, and profiles for any other stream obstruction or channel change that meet the requirements of these regulations; and

(3) for a proposed or existing dam, one copy of the design report that meets the requirements of these regulations.

(b) If the applicant fails to meet the requirements of subsection (a), the applicant shall be notified by the chief engineer of the deficiencies in writing and given 60 days from the time the notice is postmarked to submit the required items. If the required items are not submitted within 30 days after the chief engineer's notice is postmarked, a reminder letter shall be sent to applicant again requesting the required items.

(c) Any applicant may submit a request for an extension of time to provide a complete application. The applicant shall submit the request for extension of time before the deadline to submit the items. The request shall also include a justification for the extension of time and an estimate of the time needed to submit the required items.

(d) If the required items are not submitted within 60 days after the chief engineer's notification of deficiency, or within any authorized extension of time, the application shall be dismissed and the application fee forfeited.

(e) If the dismissed application was for the construction, repair, or modification of an existing illegal, unpermitted dam, the removal of the dam shall be ordered by the chief engineer.

(f) If an application is dismissed pursuant to this regulation, within 30 days of the date of dismissal the applicant may apply to have the application reinstated. The application may be reinstated by the chief engineer for good cause shown by the applicant. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301, 82a-302, and 82a-303a and K.S.A. 82a-303c; effective May 1, 1983; amended May 18, 2007.)

5-40-9. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-302; effective May 1, 1983; amended May 1, 1985; amended May 1, 1986; revoked May 18, 2007.)

5-40-10. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-302; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; revoked May 18, 2007.)

5-40-11. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-302 and 82a-303; effective Sept. 22, 2000; revoked May 18, 2007.)

5-40-12. As-built drawings. (a) Each permit shall be conditioned by the chief engineer to require as-built drawings for each category listed in subsection (b) to be submitted within 90 days of the completion of the dam, repairs, or modifications, or any extension of time authorized by the chief engineer for good cause. The drawings shall be prepared by a person qualified to prepare the original plans and specifications pursuant to K.A.R. 5-40-4.

(b) As-built drawings shall be submitted for each of the following categories:

(1) All high-impact dams;

(2) any dam, if required by the chief engineer as a condition of the permit to build, repair, or modify the dam; and

(3) any dam, if required by the chief engineer as the result of an approval of a change in the approved plans requested by the applicant during construction.

(c) The as-built drawings shall show all the features of the structure included in the approved plans as those features were constructed. A legibly marked-up copy of the approved plans shall be acceptable as as-built drawings.

(d) A profile of the bottom of the cutoff trench as constructed shall be shown on the as-built drawings. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 82a-303 and 82a-303a; effective May 1, 1987; amended May 18, 2007.)

5-40-13. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987; revoked May 18, 2007.)

5-40-14. Testing a principal spillway pipe installation in a dam; applicability. (a) For the purpose of testing the leakage rate of principal spillway pipe installation in a dam, an applicant shall conduct a static pressure test of each principal spillway installation constructed of corrugated metal pipe.

(b) A static pressure test shall be required only of a principal spillway installation made of corrugated metal pipe, unless the chief engineer determines that testing principal spillway pipe made of other materials or testing other pipes used in the construction of dams is necessary to protect public safety, life, or property. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303b; effective Sept. 22, 2000.)

5-40-15. Testing a principal spillway pipe installation in a dam; general procedures. The following general procedures shall apply to all static pressure tests required by K.A.R. 5-40-14: (a) The applicant shall conduct the test before backfilling around and over the principal spillway pipe and after laying the pipe on the grade line and connecting the pipe according to the approved plans and the manufacturer's requirements.

(b) The applicant, the applicant's representative, or the contracting officer shall make arrangements for the chief engineer, or a person designated by the chief engineer, to be present during the test.

(c) The applicant shall place a watertight plug in the downstream end of the pipe. The plug shall be sufficient to withstand a pressure of three pounds per square inch for the duration of the test. The plug shall be equipped with an acceptable means of draining the water out of the pipe after completion of the test.

(d) The applicant shall fill the pipe with water up to an elevation of 10 feet above the flow line at the pipe outlet, or up to the principal spillway inlet elevation, whichever is less, unless a different elevation is required by the test method described in K.A.R. 5-40-16(b).

(e) The applicant shall note the exact elevation of the water surface at the time the test begins. At the end of the prescribed test duration, the applicant shall measure the water surface elevation.

(f) The applicant shall use one of the test methods described in K.A.R. 5-40-16 to determine whether the water leakage rate is acceptable.

(g) If the leakage rate determined by either of the methods described in K.A.R. 5-40-16 is not acceptable, the applicant shall determine the source of the leakage and correct the leakage. After correction, the applicant shall perform another test in accordance with K.A.R. 5-40-15 and K.A.R. 5-40-16.

(h) If the leakage rate determined by either of the methods described in K.A.R. 5-40-16 is acceptable, the applicant shall drain and backfill the pipe in the manner prescribed by the approved plans and specifications. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303b; effective Sept. 22, 2000.)

5-40-16. Testing a principal spillway pipe installation in a dam; allowable leakage rate, test methods. The allowable leakage rate for a principal spillway pipe installation in a dam shall not exceed 1,000 gallons per inch diameter of pipe per mile of pipe per day. The applicant shall use one of the following test methods in determining whether the allowable leakage rate has been exceeded:

(a) The applicant shall use the following test method procedure for a drop inlet structure if the starting and ending elevation of the water is within the vertical drop structure and above the top of the barrel:

(1) Calculate the allowable leakage rate in gal-

lons per minute for the pipe being tested based on the following formula:

The allowable leakage rate in gallons per minute = 0.000132 × d × l where:

d diameter of the tested pipe in inches

l length of the tested pipe in feet

If the allowable leakage rate in gallons per minute is determined to be less than one, then it shall be assumed for the purposes of the test that the allowable leakage rate in gallons per minute is one.

(2) Conduct the test for 15 minutes.

(3) If the allowable leakage rate is one gallon per minute, the applicant may use the following table to determine the allowable drop in the elevation of the water in the riser.

Nominal diameter of riser (inches)	Allowable drop (feet)
18	1.13
20	0.83
24	0.64
30	0.41
36	0.28

(4) If the measured drop in the riser exceeds the corresponding allowable drop in paragraph (a)(1) above, the allowable leakage rate has been exceeded, which shall not be acceptable. If the measured drop in the riser is less than or equal to the corresponding allowable drop in paragraph (a)(1) above, the allowable leakage rate has not been exceeded and shall be acceptable.

(b) The applicant shall use the following test method procedure for all other types of installations, including canopy inlets:

(1) If filling the pipe with water up to an elevation of 10 feet above the outlet puts water within the vertical riser below the top of the barrel, the elevation shall be reduced below the bottom of the vertical riser before the test begins.

(2) The allowable drop in elevation is a function of the allowable leakage rate, test duration, and the diameter and slope of the pipe. The allowable drop in the pipe in feet shall be calculated by use of the following formula:

$$\frac{\text{allowable rate (gallons per minute)} \times \text{test duration (minutes)} \times \text{slope (\%)}}{[\text{diameter (inches)}]^2 \times 4.08}$$

(3) The minimum test duration shall be 15 minutes. If the above formula results in an allowable drop of less than 0.1 foot in 15 minutes, the test duration shall be extended so that the allowable drop is greater than 0.1 feet.

(4) The water surface elevation drop shall be measured by means of a clear plastic tube installed in the plug at the downstream end of the principal spillway pipe. Any other means of measuring the drop in elevation shall be approved by the chief engineer in advance of the test.

(5) If the measured drop is greater than the allowable drop as calculated in paragraph (b)(2), the allowable leakage rate has been exceeded, which shall not be acceptable. If the allowable drop is less than or equal to the allowable drop as calculated in paragraph (b)(2), the allowable leakage rate has not been exceeded, which shall be acceptable. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303b; effective Sept. 22, 2000.)

5-40-20. Hazard classes of dams. (a) The hazard classes of dams shall be determined from the following based on the location of the dam, the hazards found within the inundation area, and the impact of a failure of a dam:

(1) A "hazard class A dam" shall mean a dam located in an area where failure could damage only farm or other uninhabited buildings, agricultural or undeveloped land including hiking trails, or traffic on low-volume roads that meet the requirements for hazard class A dams as specified in subsections (b) and (c).

(2) A "hazard class B dam" shall mean a dam located in an area where failure could endanger a few lives, damage an isolated home, damage traffic on moderate-volume roads that meet the requirements for hazard class B dams as specified in subsections (b) and (c), damage low-volume railroad tracks, interrupt the use or service of a utility serving a small number of customers, or inundate recreation facilities, including campground areas intermittently used for sleeping and serving a relatively small number of persons.

(3) A "hazard class C dam" shall mean a dam located in an area where failure could result in any of the following:

(A) Extensive loss of life;

(B) damage to more than one home;

(C) damage to industrial or commercial facilities;

(D) interruption of a public utility serving a large number of customers;

(E) damage to traffic on high-volume roads that meet the requirements for hazard class C dams as specified in subsections (b) and (c) or a high-volume railroad line;

(F) inundation of a frequently used recreation facility serving a relatively large number of persons; or

(G) two or more individual hazards described in hazard class B.

(b) If there is a road across any part of the embankment or a spillway, including the auxiliary spillway or service spillway channel down to the receiving stream, the daily vehicular traffic shall be considered in determining the hazard classification, in addition to the criteria specified in subsection (a). The hazard classifications specified in this subsection shall be used if these classifications are more stringent than the hazard classifications required by subsection (a).

Hazard class	Vehicles per day
A	0 through 100
B	101 through 500
C	more than 500

(c) If any road in the inundation area does not meet the criteria of subsection (b), the daily vehicular traffic shall be considered in determining the hazard classification, in addition to the criteria specified in subsection (a). The hazard classifications specified in this subsection shall be used if these classifications are more stringent than the hazard classifications otherwise required by subsection (a).

Hazard class	Vehicles per day
A	0 through 500
B	501 through 1,500
C	more than 1,500

(Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-21. Class sizes of dams. (a) Each dam that the chief engineer has authority to regulate pursuant to K.S.A. 82a-301 et seq., and amendments thereto, with an effective height of less than 25 feet and an effective storage of less than 50 acre-feet shall be considered to be a class size 1 dam. The class size of all other dams shall be determined from the following table:

Class size	Size factor
2	less than 3,000
3	3,000 through 30,000
4	more than 30,000

(b) Each existing permitted dam and each dam for which an application was submitted before the effective date of this regulation shall continue to have the effective height measured from the flow line of the stream at the centerline of the dam. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-22. Design requirements for construction of a dam. Each dam constructed shall meet or exceed the design requirements specified in the table in this regulation. The minimum top of the dam elevation shall be the maximum water surface elevation determined by routing the design storm specified in the following table, using the methodology specified in K.A.R. 5-40-30 through K.A.R. 5-40-33, through the reservoir and the dam's spillways, plus the minimum freeboard shown in the following table. The minimum floor width of the open-channel spillway shall be the minimum floor width shown in the following table.

Dam size class	Hazard class	Precipitation for design storm	Minimum freeboard in feet	Minimum floor width of open-channel spillway in feet
1	A	2% chance	1	20
	B	0.25 PMP	2	
	C	0.40 PMP	3	
2	A	1% chance	2	30
	B	0.25 PMP	2	
	C	0.40 PMP	3	
3	A	1% chance	3	40
	B	0.30 PMP	3	
	C	0.40 PMP	3	
4	A	0.25 PMP	3	40
	B	0.30 PMP	3	
	C	0.40 PMP	3	

(Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-23. Detention storage. (a) To determine the minimum required detention storage, the applicant shall show that the computed runoff from the detention storm can be stored in the reservoir and discharged through the primary spillway without any flow being discharged through

the auxiliary spillway. The elevation of the auxiliary spillway control section shall be set so that the computed runoff from the detention storm specified in the following table and determined from the procedures in K.A.R. 5-40-30 through K.A.R. 5-40-33 does not result in discharge through the auxiliary spillway.

Hazard class	Size	Purpose	Minimum detention storm
A	1, 2	Flood control	4% chance
A	3	Flood control	4% chance
A	4	Flood control	2% chance
Hazard class	**Size**	**Purpose**	**Minimum detention storm**
B	All	Flood control	2% chance
C	All	Flood control	2% chance
A	1, 2	All uses other than flood control	50% chance
A	3	All uses other than flood control	50% chance
A	4	All uses other than flood control	20% chance
B	All	All uses other than flood control	20% chance
C	All	All uses other than flood control	20% chance

Each dam that has flood control as a purpose shall meet the detention storm requirements for a flood control structure. A dam that is not constructed for flood control purposes and whose auxiliary spillway meets the requirements for a service spillway in K.A.R. 5-40-57 shall not be required to meet any minimum detention storm requirement in the table in this subsection.

(b) Each dam shall have a primary spillway and an auxiliary spillway, unless a service spillway meeting the requirements of K.A.R. 5-40-57 is provided. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-24. Dam breach analysis. A dam breach analysis shall be conducted on each proposed dam as specified in this regulation. If a dam breach analysis is required for an existing dam, the analysis shall be conducted in the same manner as that specified in this regulation for a proposed dam. (a) To determine the appropriate water surface elevation in the reservoir when the breach begins, the breach analysis shall route the appropriate design duration one percent-chance storm determined by K.A.R. 5-40-31 through the reservoir. The routing shall begin by assuming that the water surface elevation is at the elevation of the lowest uncontrolled spillway inlet, not including any low-flow augmentation works. The antecedent moisture condition (AMC) used to determine the runoff shall be determined according to K.A.R. 5-40-32. The minimum water surface elevation used to begin the breach analysis shall be the greater of the following:

(1) The water surface elevation determined by routing the required design duration one percent-chance storm through the reservoir; or

(2) the elevation of the crest of the auxiliary spillway.

Routing the storm through the reservoir may account for the discharge of the primary spillway and any open-channel spillways. If the dam does not have an open-channel spillway, the water surface elevation used shall be the elevation of the top of the dam or the elevation resulting from using PMP as the runoff event, whichever is lower.

(b) The breach discharge shall be determined by using the peak breach discharge criteria section on pages 1-1 through 1-2 in "earth dams and reservoirs," TR-60, dated July 2005, published by the conservation engineering division of the natural resources conservation service, and hereby adopted by reference, unless the applicant receives written approval of the chief engineer to use a model that is more appropriate for a particular dam. The breach discharge hydrograph shall be determined by methods in NRCS TR-66, third edition, "simplified dam-breach routing procedure," dated September 1985, which is hereby adopted by reference, including the appendices. If another model is used, the following breach modeling assumptions shall be used, unless the applicant demonstrates to the chief engineer that more appropriate assumptions should be used:

(1) The parameters shall support the assumption of a rapidly developing breach that is either an overtopping failure or a spillway failure caused by intense, localized erosion beginning at the downstream end of the auxiliary spillway or service spillway and working its way upstream.

(2) If the breach model has breach width as a variable, the minimum bottom width of the breach shall be twice the height of the dam. If there is a well-defined physical floodplain, the height of the dam may be measured from the top of the low bank of the stream to the top of the dam for the purpose of determining the minimum breach width.

(3) If the side slopes of the breach are a parameter of the model, vertical side slopes shall be used.

(4) If the breach model has breach time as a variable, the maximum breach time shall be one minute per foot of height of the dam.

(c) The breach discharge shall be routed downstream using a hydraulic flow model in accordance with sound engineering principles and commonly accepted engineering practices. An unsteady state hydraulic flow model shall be used if it is necessary to model existing hydraulic structures in the inundation area. In all other instances, a steady state hydraulic flow model may be used.

(d) The inundation area analyzed shall meet both of the following requirements:

(1) Be from the downstream toe of the dam and the control section of any open-channel section of any open-channel spillway, downstream to the point where the crest of the breach wave intersects the flood level of the peak discharge of the one percent-chance storm, assuming that the dam was not in place; and

(2) be analyzed to the point at which there are no more hazards downstream.

The peak discharge of the one percent-chance storm may be determined by any of the methods provided in K.A.R. 5-42-5 or the appropriate published flood insurance study for the stream receiving the discharge from the breach of the dam.

(e) If there is more than one dam on a stream, it shall be assumed that the most upstream dam is breached first and that the peak flow of that breach arrives at the next downstream dam at the same time the peak water surface elevation from the inflow of the one percent-chance storm from the uncontrolled portion of the lower dam's drainage area occurs. An appropriate model may be used to demonstrate when the peaks will occur for an entire system of dams, in which case the water surface elevation modeled shall be used.

(f) If there are dams on separate tributaries above the dam being analyzed, the modeling assumption specified in subsection (e) shall be applied only to the tributary that has the upstream dam whose breach results in the greatest computed breach discharge at the dam being analyzed.

(g) If digital elevation data is used in the analysis of the breach, the data used shall have a root mean square error of 2.5 meters or less.

(h) Cross sections for modeling purposes shall be taken at appropriate locations, but in no case shall the intervals be greater than 2,640 feet measured along the floodplain of the watercourse. Cross sections shall be generally perpendicular to the direction of flow and the contour lines that the cross sections intersect. Cross sections may be broken into several connected segments as needed to meet the requirements of this subsection.

(i) Each bridge and any other hydraulic structure that has a significant hydraulic effect shall be included in the analysis.

(j)(1) The applicant shall submit a contour map of the valley with contour intervals of 10 feet or less and a scale of not less than 1:24,000, which shall show the following:

(A) The inundation area determined from the breach;

(B) the location of each existing hazard; and

(C) each cross section entered in the hydraulic flow model with a label identifying the cross section.

(2) The following items shall be shown on the contour map or on separate documentation:

(A) The elevation of each existing hazard;

(B) the water surface elevation at each existing hazard;

(C) the elevation of the streambed at the point nearest each existing hazard; and

(D) a tabular report including the following information for each cross section:

(i) The label identifying each cross section shown on the map;

(ii) the elevation of the maximum water surface attained during the breach;

(iii) the peak discharge; and

(iv) the computed width of the water surface.

(3) If there are more than 10 hazards in any 2,640-foot reach in the flood inundation area, the information required in paragraph (j)(2) may be noted only for the hazard in that reach that is closest to the maximum water surface elevation measured vertically and the hazard in that reach that is farthest from the maximum water surface elevation measured vertically.

(k) The applicant shall submit one copy of each data file used to perform each analysis in electronic form along with identification of the computer programs used to perform the analysis and any model documentation needed for the chief engineer to review the analysis. (Authorized by K.S.A. 2007 Supp. 82a-303a; implementing K.S.A. 2007 Supp. 82a-302 and 82a-303a; effective May 18, 2007; amended Oct. 3, 2008.)

5-40-26. Request to issue or reconsider hazard class determination. (a)(1) If an owner or applicant does not agree with the hazard classification determined for a dam, the owner or ap-

plicant may file a request for reconsideration of the hazard class determination.

(2) Each request for reconsideration shall be submitted in writing and shall indicate the following:

(A) The owner's or applicant's proposed hazard classification;

(B) the basis of that proposal; and

(C) an explanation of why the owner or applicant believes that the determination of the hazard classification by the chief engineer is incorrect. The request shall also contain documentation and analysis that support the request.

(3) Each request for reconsideration shall be filed with the chief engineer within 15 days after the owner or applicant is served with written notice of the hazard classification by the office of the chief engineer or within any extension of time authorized by the chief engineer in writing.

(b) Each request for reconsideration shall be reviewed by the chief engineer, and a final written determination of the hazard classification shall be made by the chief engineer.

(c) If the chief engineer has not issued a written notice of the hazard classification, the owner or applicant may request a written notice after the owner or applicant has been informed verbally of the proposed hazard classification by the chief engineer. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-30. Time of concentration. (a) Except as specified in subsections (b) and (c), the time of concentration (T_c) shall be determined by using one of the methods specified in chapter 15, "travel time, time of concentration and lag," in the natural resources conservation service (NRCS) national engineering handbook, part 630, dated August 1972, which is hereby adopted by reference.

(b) For drainage areas of not more than three square miles, the time of concentration (T_c) may be determined by use of the Kirpich formula, which is as follows:

$$T_c = \left(\frac{11.9L^3}{H} \right)^{0.385}$$

Where

T_c = the time of concentration, in hours

L = the longest distance that water has to travel in the drainage basin, in miles

H = the maximum elevation difference in the drainage basin, in feet.

(c) In addition to the methods specified in subsections (a) and (b), the applicant may determine T_c based on sound engineering principles and commonly accepted engineering practices if the applicant obtains the prior written consent of the chief engineer. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-31. Design duration rainfall depth. (a) If the time of concentration is six hours or less, a duration of six hours shall be used for all design storms. The appropriate six-hour storm depth, in inches, shall be selected from the following table.

County	Probability of occurrence in any year					
	50%	20%	4%	2%	1%	PMP
Allen	2.7	3.5	4.8	5.4	6.1	28.0
Anderson	2.7	3.5	4.8	5.3	6.0	27.8
Atchison	2.6	3.4	4.5	5.1	5.7	27.2
Barber	2.4	3.2	4.4	5.0	5.7	27.3
Barton	2.3	3.0	4.1	4.8	5.3	26.6
Bourbon	2.7	3.5	4.8	5.4	6.0	28.1
Brown	2.5	3.2	4.4	5.0	5.6	27.0
Butler	2.6	3.4	4.7	5.3	6.0	27.7
Chase	2.6	3.4	4.6	5.2	5.9	27.5
Chautauqua	2.7	3.5	4.9	5.5	6.2	28.3
Cherokee	2.8	3.6	5.0	5.5	6.2	28.5
Cheyenne	1.8	2.4	3.4	3.8	4.3	24.7
Clark	2.2	3.0	4.1	4.7	5.3	26.7
Clay	2.5	3.2	4.3	5.0	5.5	26.8
Cloud	2.4	3.1	4.2	4.8	5.4	26.6
Coffey	2.7	3.5	4.7	5.3	6.0	27.8
Comanche	2.3	3.1	4.2	4.9	5.5	27.0
Cowley	2.6	3.4	4.8	5.4	6.1	28.0
Crawford	2.8	3.6	4.9	5.4	6.1	28.3
Decatur	1.9	2.6	3.6	4.2	4.6	25.3
Dickinson	2.5	3.2	4.4	5.1	5.6	27.1
Doniphan	2.5	3.2	4.5	5.0	5.6	27.0
Douglas	2.6	3.4	4.6	5.2	5.8	27.5
Edwards	2.2	2.9	4.1	4.7	5.3	26.7
Elk	2.7	3.5	4.8	5.4	6.1	28.1
Ellis	2.1	2.9	3.9	4.6	5.0	26.2
Ellsworth	2.3	3.1	4.2	4.9	5.4	26.7
Finney	2.0	2.6	3.8	4.3	4.8	26.8
Ford	2.1	2.8	4.0	4.6	5.1	26.4
Franklin	2.7	3.5	4.7	5.2	5.9	25.8
Geary	2.5	3.2	4.4	5.1	5.7	27.1
Gove	2.0	2.6	3.7	4.3	4.7	25.7
Graham	2.0	2.7	3.8	4.4	4.8	25.8

County	Probability of occurrence in any year					
	50%	20%	4%	2%	1%	PMP
Grant	1.9	2.6	3.7	4.2	4.7	25.6
Gray	2.0	2.7	3.9	4.4	4.9	26.1
Greeley	1.8	2.5	3.4	3.9	4.4	25.0
Greenwood	2.7	3.5	4.8	5.3	6.1	27.8
Hamilton	1.8	2.5	3.5	4.0	4.5	25.2
Harper	2.5	3.3	4.5	5.2	5.9	27.5
Harvey	2.5	3.3	4.5	5.1	5.8	27.4
Haskell	2.0	2.7	3.8	4.3	4.8	25.9
Hodgeman	2.1	2.8	3.9	4.5	5.0	26.3
Jackson	2.6	3.4	4.5	5.1	5.7	27.2
Jefferson	2.6	3.4	4.6	5.1	5.8	27.3
Jewell	2.3	2.9	4.0	4.7	5.1	26.3
Johnson	2.6	3.4	4.6	5.2	5.8	27.5
Kearny	1.9	2.6	3.6	4.1	4.6	25.5
Kingman	2.4	3.2	4.4	5.1	5.7	27.3
Kiowa	2.2	2.9	4.2	4.8	5.4	26.7
Labette	2.8	3.6	5.0	5.5	6.2	28.4
Lane	2.0	2.7	3.7	4.3	4.8	25.8
Leavenworth	2.6	3.4	4.6	5.1	5.8	27.4
Lincoln	2.3	3.0	4.2	4.8	5.3	26.6
Linn	2.7	3.5	4.8	5.3	6.0	27.9
Logan	1.9	2.5	3.6	4.1	4.6	25.3
Lyon	2.6	3.4	4.6	5.2	6.0	27.5
Marion	2.5	3.3	4.5	5.2	5.8	27.3
Marshall	2.5	3.2	4.3	4.9	5.5	26.8
McPherson	2.5	3.2	4.4	5.1	5.7	27.1
Meade	2.1	2.8	4.0	4.6	5.1	26.3
Miami	2.7	3.5	4.7	5.2	5.9	27.7
Mitchell	2.3	3.0	4.1	4.7	5.2	26.4
Montgomery	2.8	3.5	5.0	5.5	6.2	28.3
Morris	2.6	3.4	4.5	5.1	5.8	27.3
Morton	1.9	2.5	3.6	4.1	4.6	25.4
Nemaha	2.5	3.2	4.4	5.0	5.6	26.9
Neosho	2.7	3.5	4.9	5.5	6.1	28.2
Ness	2.1	2.8	3.9	4.5	4.9	26.1
Norton	2.0	2.6	3.7	4.3	4.7	25.6
Osage	2.6	3.4	4.6	5.2	5.9	27.5
Osborne	2.2	2.9	4.0	4.6	5.1	26.2
Ottawa	2.4	3.1	4.3	4.9	5.4	26.8
Pawnee	2.2	2.9	4.1	4.7	5.2	26.6
Phillips	2.1	2.8	3.8	4.4	4.9	25.8
Pottawatomie	2.5	3.2	4.4	5.0	5.6	27.0
Pratt	2.3	3.1	4.3	4.9	5.5	27.0
Rawlins	1.9	2.5	3.5	4.0	4.5	25.0
Reno	2.4	3.2	4.4	5.0	5.7	27.2
Republic	2.3	3.0	4.1	4.8	5.3	26.4
Rice	2.4	3.1	4.3	4.9	5.5	26.9
Riley	2.5	3.2	4.4	5.0	5.6	27.0
Rooks	2.1	2.8	3.9	4.5	4.9	26.0
Rush	2.2	2.9	4.0	4.6	5.1	26.4
Russell	2.2	2.9	4.1	4.7	5.2	26.5
Saline	2.4	3.1	4.3	5.0	5.5	26.9
Scott	1.9	2.6	3.6	4.2	4.7	25.5
Sedgwick	2.5	3.3	4.6	5.2	5.9	27.5
Seward	2.0	2.7	3.8	4.4	4.9	26.0
Shawnee	2.6	3.4	4.6	5.1	5.8	27.4
Sheridan	2.0	2.6	3.7	4.2	4.7	25.5
Sherman	1.8	2.4	3.4	3.9	4.4	24.8
Smith	2.2	2.9	3.9	4.6	5.0	26.1
Stafford	2.3	3.0	4.2	4.9	5.4	26.9
Stanton	1.9	2.5	3.6	4.1	4.5	25.3
Stevens	1.9	2.6	3.7	4.3	4.7	25.8
Sumner	2.6	3.4	4.7	5.3	6.0	27.8
Thomas	1.9	2.5	3.5	4.1	4.5	25.2
Trego	2.0	2.7	3.8	4.4	4.9	25.9
Wabaunsee	2.6	3.4	4.5	5.1	5.8	27.3
Wallace	1.8	2.4	3.4	3.9	4.4	24.9
Washington	2.4	3.1	4.2	4.9	5.4	26.6
Wichita	1.9	2.5	3.5	4.1	4.5	25.3
Wilson	2.7	3.5	4.9	5.4	6.1	28.1
Woodson	2.7	3.5	4.8	5.4	6.1	28.0
Wyandotte	2.6	3.4	4.6	5.1	5.8	27.4

(b) If the time of concentration of the watershed, or any subwatershed being used to develop the inflow hydrograph, is more than six hours, the ratio for the time equal to or greater than the computed time of concentration shall be selected from the following table. Linear interpolation shall be acceptable. That ratio shall be multiplied by the depth of the six-hour rainfall in the table in subsection (a). The resulting depth is the design duration rainfall depth.

Relative increase in rainfall amount for storm durations over six hours

Time (hours)	100-year ratio	PMP ratio
6	1.000	1.000
6.5	1.019	1.013
7	1.035	1.025
7.5	1.051	1.037
8	1.066	1.048
8.5	1.081	1.058
9	1.094	1.068
9.5	1.108	1.078
10	1.120	1.087
10.5	1.132	1.096
11	1.144	1.104
11.5	1.155	1.112

Time (hours)	100-year ratio	PMP ratio
12	1.166	1.120
13	1.187	1.134
14	1.207	1.148
15	1.225	1.161
16	1.243	1.173
17	1.259	1.185
18	1.275	1.196
20	1.305	1.217
22	1.333	1.236
24	1.359	1.254

(c) If the drainage area exceeds 10 square miles, the rainfall depth obtained from the table in subsection (a) may be reduced by the ratio shown in the table in this subsection. The ratio for the zone in which the dam is located and a drainage area less than or equal to the actual drainage area above the dam shall be selected. The use of linear interpolation shall be acceptable. That ratio shall be multiplied by the depth of rainfall from the table in subsection (a). The result is the design duration rainfall depth. The ratios in subsection (b) and this subsection may be used together, if subsections (b) and (c) both apply.

Drainage area (sq. mi.)	Reduction ratio		
	Zone 1	Zone 2	Zone 3
10	1.00	1.00	1.00
12	0.99	0.99	0.98
15	0.97	0.95	0.93
17	0.96	0.94	0.91
20	0.94	0.91	0.88
22	0.93	0.90	0.86
25	0.92	0.88	0.83
27	0.92	0.87	0.82
30	0.91	0.86	0.80
35	0.90	0.84	0.77
40	0.88	0.82	0.75
45	0.87	0.80	0.72
50	0.86	0.78	0.70
60	0.84	0.75	0.65
70	0.82	0.72	0.62
80	0.80	0.70	0.59
90	0.79	0.68	0.57
100	0.78	0.67	0.55

Zone 1, zone 2, and zone 3 shall have the meanings specified in K.A.R. 5-40-1 under the definition of a "stream." (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-32. Determination of rainfall excess. (a) Rainfall excess shall be determined by using the natural resource conservation service (NRCS) runoff curve number method.

(b) The antecedent moisture condition (AMC) to be used when determining the curve number for the design storm shall be one of the following:

(1) For zone one, the curve number determined using AMC III;

(2) for zone two, the curve number determined by averaging the AMC II and AMC III curve numbers; or

(3) for zone three, the curve number determined using AMC II.

Zone one, zone two, and zone three shall have the meanings specified in K.A.R. 5-40-1 under the definition of a "stream."

(c) If the drainage basin is in two zones, the curve number may be weighted based on the drainage area within each zone.

(d) AMC II shall be used in determining the rainfall-runoff relationship used to compute the required detention storage. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-33. Hydrographs. The rainfall excess determined in K.A.R. 5-40-32 shall be used to determine the time-discharge relationship of inflow to the reservoir for the detention storm and design storm using the techniques described in chapter 16, "hydrographs," in the natural resource conservation service (NRCS) national engineering handbook, part 630, dated March 2007, which is hereby adopted by reference. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-40. Geotechnical investigation of all dams. (a) Each applicant shall ensure that a sufficient geotechnical investigation is performed on the proposed site for each dam to design the dam in accordance with the regulations of the chief engineer and with sound engineering principles and commonly accepted engineering practices. The materials under the proposed dam, open-channel spillway, and borrow area shall be investigated before design and submission of the application for a permit to construct a dam. If unusual or unexpected foundation conditions are encountered in the investigations required in this regulation, additional geotechnical investigation and soil mechanics testing shall be performed as necessary to design and construct the dam in accordance with the regulations of the

chief engineer and with sound engineering principles and commonly accepted engineering practices.

(b) The geotechnical investigation specified in these regulations shall be designed by a licensed professional competent in geotechnical investigation and analysis for dams.

(c) The geotechnical information specified in these regulations shall be included in the engineering design report and submitted with the proposed construction plans. The report shall contain a general description of the geotechnical investigation, including the method used for sampling.

(d) The soils sampled in all of the geotechnical investigations shall be classified by using field classification methods and the uniform soil classification system.

(e) The dam design shall make appropriate accommodations for the geology discovered in the investigation.

(f)(1) The foundation of the dam shall be investigated to a depth of not less than one-half the height of the dam at the location of the test hole plus five feet.

(2) If unweathered bedrock is encountered before reaching the sampling depth required in paragraph (f)(1), the sampling shall be done to the unweathered bedrock.

(g) The static water level in each test hole shall be recorded.

(h) A sufficient number of test holes shall be made in each open-channel spillway to determine the stability of the spillway crest and the outlet channel down to the streambed elevation.

(i) A sufficient number of test holes in the borrow area shall be made to determine the amount of suitable material available and to classify the soil to be used in the embankment. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-41. Geotechnical investigation of a low-impact dam. (a) In addition to meeting the requirements of K.A.R. 5-40-40, each low-impact dam shall have a sufficient number of properly placed test holes to be representative of the geology under the proposed dam embankment, with an average of at least one test hole each 200 feet along the centerline of the dam and at least three test holes.

(b) Except as specified in subsection (d) and K.A.R. 5-40-74, each existing unpermitted, illegal dam shall have the same level of geotechnical investigation as that required for a proposed new dam, except that testing the borrow area shall not be required, before a permit will be issued. In addition, the condition of the following shall be determined:

(1) All conduits passing through the embankment;

(2) the embankment in the vicinity of the conduits; and

(3) the rest of the embankment, including any slides, seeps, saturated areas, sloughs, and other visible anomalies in the embankment.

(c) If there are any signs of instability in the embankment, the stability of the slope of the existing embankment shall be analyzed according to the requirements of K.A.R. 5-40-46(c).

(d) An existing unpermitted, illegal low-hazard dam that is class size 1, 2, or 3, for which a qualified professional has conducted an inspection and submitted to the chief engineer a report of that investigation demonstrating that a geotechnical investigation is not necessary to protect the public safety and property, shall not be required to have the geotechnical investigation required by subsection (b). (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-42. Geotechnical investigation of a high-impact dam. (a) In addition to meeting the requirements of K.A.R. 5-40-40, each proposed high-impact dam shall have at least the following number of geotechnical test holes:

(1) A sufficient number of properly placed test holes to be representative of the geology under the proposed dam embankment, with an average of at least one test hole every 100 feet along and as close to the centerline of the dam as practical and a minimum of three test holes; and

(2) a test hole as close as practical to the anticipated location of the following:

(A) The base of the drop inlet; and

(B) the support of the outlet pipe.

(b) At least one representative sample of undisturbed soil shall be tested to determine shear strength parameters, permeability, and compressability.

(c) The geotechnical investigation shall determine the following for at least one representative sample:

(1) Atterberg limits;

(2) the settlement characteristics of the pro-

posed embankment materials and the foundation of the dam;

(3) the Proctor compaction curves of soils;

(4) gradation tests of foundation materials, especially where drain systems could be located; and

(5) any other properties necessary to design a dam to meet the requirements of the regulations of the chief engineer, sound engineering principles, and commonly accepted engineering practices.

(d) Each existing unpermitted, illegal dam shall have the same level of geotechnical investigation as that required for a proposed dam, except that testing the borrow area shall not be required, before a permit may be issued. In addition, the following properties shall be determined:

(1) The condition of all conduits passing through the embankment and the condition of the embankment in the vicinity of the conduits;

(2) the in situ density of the existing embankment and its foundation;

(3) the condition of the embankment, including any slides, seeps, saturated areas, sloughs, and other visible anomalies in the embankment; and

(4) a slope stability analysis of the existing embankment, which shall be performed according to the requirements of K.A.R. 5-40-46. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-43. Cutoff trench. (a) Each dam shall have a cutoff trench. The cutoff trench shall meet all of the following requirements:

(1) Have side slopes no steeper than one horizontal unit to one vertical unit;

(2) have a bottom width of 10 or more feet as necessary to meet the compaction requirements of K.A.R. 5-40-44;

(3) be constructed to the depth justified in the design report based on the findings in the geotechnical report, unless observations by the inspecting engineer during construction justify a different depth;

(4) be backfilled with the most impervious material available at the site. If no impervious material is available at the site, then this material shall be procured off-site;

(5) be backfilled with material that is contiguous to and homogeneous with the most impervious zone within the dam, if the dam is designed as a zoned fill;

(6) be constructed in lifts that shall not exceed nine inches for each lift; and

(7) be constructed of a material that has been brought to acceptable moisture content.

(b) The material placed in the cutoff trench shall be placed according to the same specifications as those required for the embankment in K.A.R. 5-40-44. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-44. Embankment. (a) The minimum top width of an embankment shall be determined from the following table:

Height of dam (in feet)	Minimum top width (in feet)
less than 20	10
20 through 24.9	12
25 through 39.9	14
40 or greater	15

(b) The top of the dam shall be sloped toward the reservoir, unless special measures are taken to adequately control erosion on the downstream side of the dam.

(c) The height of each lift in the embankment and cutoff trench shall be no more than nine inches, unless the dam is designed as a zoned fill. If the dam is designed as a zoned fill, the lifts outside the cutoff trench and most impermeable zone may be larger if geotechnical data is provided that shows that adequate compaction can be achieved using lifts in excess of nine inches.

(d) The material in each low-impact embankment and cutoff trench shall be brought to a moisture content that can be compacted in accordance with this subsection. Each application for a low-impact dam shall contain specifications requiring adequate compaction. The minimum compaction required shall be achieved by one of the following:

(1) Using a sheepsfoot roller until the feet cease to push into the fill material and start to walk across the compacted surface;

(2) using the controlled movement of rubber-tired earth-moving equipment so that every point on the surface of each lift is traversed by not less than one tread track of the equipment; or

(3) using another method that achieves the compaction required by this subsection.

(e) Each high-impact dam shall include the following in its specifications for earth placement in the embankment and cutoff trench:

(1) The minimum and maximum allowable levels of soil moisture;

(2) the compaction standards;

(3) a provision for testing the soils placed during construction; and

(4) a means to ensure that the compaction standards approved by the chief engineer are met during construction.

(f) In addition to the requirements of subsections (d) and (e), the specifications for hand-compacted fill around each conduit in the embankment shall meet the following requirements:

(1) Set a maximum lift of one-third the diameter of the outside of the conduit. However, no lift shall exceed four inches; and

(2) specify a minimum distance around the conduit for hand compaction. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-45. Allowance for settlement of an earthen dam. (a) A detailed soil mechanics investigation report shall be submitted as part of the design report for each high-impact dam. An appropriate allowance for settlement shall be made based on the results in the soil mechanics report.

(b) If a detailed soil mechanics investigation report is not submitted for a low-impact dam, at least five percent of the height of the dam shall be allowed for settlement of the embankment.

(c) An allowance for settlement on each dam may be made by steepening the side slopes during construction and adding to the height of the embankment as needed to increase the height of the dam. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-46. Side slopes of an earthen dam. (a) The side slopes of each earthen dam shall be designed and constructed to be stable and easily maintained.

(b) A slope stability analysis shall be required on each high-impact dam.

(c) If a slope stability analysis is required, the minimum factor of safety shall be based on the steady-state seepage load condition with the water level at the elevation of the lowest open-channel spillway or other uncontrolled spillway with a trash rack that meets the requirements of K.A.R. 5-40-51, as shown in the following table:

Class size	Hazard class	Factor of safety
4	A	1.4
3, 4	B	1.5
1, 2, 3, 4	C	1.5

(d) Each dam whose face is subject to prevailing winds shall be given additional protection from erosion caused by wave action, which may include a flatter side slope, the use of riprap, or the use of grass or vegetation adapted to fluctuating water levels. The design of any slope protection for the embankment and the auxiliary spillway or service spillway shall be shown on the plans. If no slope protection is provided, regardless of the orientation of the dam, the design report shall provide justification for not having slope protection.

(e) The steepest allowable design side slope shall be three horizontal units to one vertical unit on the upstream side of the dam, and two and one-half horizontal units to one vertical unit on the downstream slope of the dam. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-50. Pipes. (a) Each pipe under or through an embankment shall meet the following requirements:

(1) Be capable of withstanding the external load without buckling, cracking, being damaged, or being deformed. The minimum internal diameter of the pipe shall not be reduced by more than the pipe manufacturer's stated allowable, long-term pipe deflection limit and in no case by more than five percent;

(2) be designed to adequately resist flotation;

(3) be impervious to water, with watertight joints and seams;

(4) except for drawdown pipes, be installed with sufficient slope to provide adequate drainage, with a minimum average slope of one percent after settlement. No pipe shall have an adverse grade through any section of pipe;

(5) if the pipe is installed in conjunction with a riser on a high-impact dam, be placed to insure that the requirements of paragraph (a)(4) are met and that all pipe sections are properly aligned after settlement of the foundation and consolidation of the embankment;

(6) have the discharge end extended a sufficient distance beyond the downstream toe of the dam to avoid erosion to the dam;

(7) be adequately supported at the discharge end to prevent deflection when the pipe is flowing full; and

(8) if the pipe is a primary spillway, be sized to evacuate 95 percent of the detention storage in 14 or fewer days.

(b) Steel cylinder-reinforced concrete pipe shall be acceptable for use in any dam if the design computations, plans, and specifications related to

the placement of the pipe meet the minimum requirements of the manufacturer.

(c) In applying the provisions of subsections (c), (e), and (f), the depth of fill over the top of each pipe shall be measured from the top of the embankment after settlement has occurred. Reinforced concrete pipe shall be acceptable for use in a low-impact dam if less than 30 feet of fill will be placed over the pipe and if the design computations, plans, and specifications related to the placement of the pipe meet the minimum requirements of the manufacturer.

(d) Each metal pipe shall be coated with a protective coating adequate to prevent corrosion for the planned life of the dam, or the design report shall include an estimate of the expected life of the pipe, the expected life of the dam, and a plan for replacement of the pipe when it no longer functions as designed.

(e) Corrugated metal pipe shall be acceptable for use in any hazard class A or B dam if no more than 25 feet of fill is placed over the pipe.

(f)(1) Polyvinyl chloride pipe shall be acceptable for use in any dam if the maximum fill over the pipe does not exceed the depth specified in the following table:

Standard dimension ratio (SDR)	Maximum fill over top of pipe (feet)
SDR 17 and thicker	35
SDR 18	31
SDR 21	23
SDR 25	18
SDR 26	16
SDR 28	14

A pipe with walls thinner than SDR 28 shall not be used.

(2) Polyvinyl chloride pipe shall not be placed in high-plasticity soils.

(3) Each portion of polyvinyl chloride pipe that will be exposed to sunlight shall be protected as recommended by the manufacturer of the pipe or shall be encased in a protective material.

(g) Pipe materials other than those described in subsections (b) through (f) may be used if the applicant demonstrates that all of the following criteria are met:

(1) The pipe material, accounting for any protective measures that will be taken, has a minimum expected life of 25 years if exposed to sunlight or buried in soil with the same characteristics of the soil to be used to construct the dam.

(2) All of the pipe manufacturer's design recommendations are met by the plans and specifications for the dam and are documented in the design report.

(3) All of the pipe manufacturer's recommendations for bedding, supporting, and installing the pipe are included in the specifications for construction of the dam, except those specifications that are demonstrated in the design report to be inapplicable in the construction of the proposed dam.

(4) The design report includes an estimate of the life of the pipe, the life of the dam, and a plan to replace the pipe when it no longer functions as designed if the design life of the pipe is less than that of the dam.

(5) The design report demonstrates that the proposed placement and use of the pipe will meet the requirements of sound engineering principles and commonly accepted engineering practices.

(h) If the estimated life of a pipe is less than the estimated life of the dam, the permit shall contain the condition that the pipe shall be replaced when the pipe no longer functions properly. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-51. Acceptable trash racks for primary spillways. (a) Except as specified in subsection (c), each new or modified primary spillway permitted on or after the effective date of this regulation shall be equipped with an acceptable trash rack, as specified in subsection (b).

(b) "Acceptable trash rack" shall mean a trash rack designed and constructed to prevent debris from clogging the inlet of the primary spillway or the primary spillway conduit. Each acceptable trash rack shall be constructed of material of sufficient strength to withstand the impact of the material that could strike the inlet.

(c)(1) Each primary spillway in a dam permitted before the effective date of this regulation shall be equipped with the acceptable trash rack required by the permit and approval of design. If no trash rack was required by the permit and approval of design, no trash rack shall be required unless the primary spillway fails to function properly.

(2) If the applicant demonstrates that there is not sufficient woody vegetation or other debris in the drainage area to justify the installation of an

acceptable trash rack, the requirement to have an acceptable trash rack may be waived.

(d) If a fish screen is installed, the screen shall not impair the functioning of the primary spillway. If a fish screen is proposed, the design report shall demonstrate that the screen is designed in accordance with the standards of subsection (b) and will not impair the functioning of the primary spillway. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-52. Stilling basins. (a) For each new dam, for each primary spillway conduit replacement, and for each existing dam for which the chief engineer determines that it is necessary to protect the integrity of the embankment, each primary spillway conduit with a cross-sectional area in excess of 1.75 square feet shall discharge into one of the following:

(1) A constructed stilling basin below the downstream toe of the dam; or

(2) any other constructed works designed to dissipate energy and prevent erosion.

(b) If a stilling basin is required or constructed, the stilling basin shall be designed to dissipate the energy of the water exiting the conduit so that the stilling basin discharges water to the receiving channel without causing excessive erosion and the stilling basin itself is not damaged by full conduit flow.

(c) The invert of the outlet conduit that discharges into a stilling basin shall be located at least one foot above the tailwater elevation in the stilling basin when water is flowing through the primary spillway at the maximum rate of discharge during the design storm. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-53. Drawdown pipes. (a) Except as specified in subsection (b), each dam shall be equipped with a drawdown pipe that meets the requirements for a pipe as specified in K.A.R. 5-40-50. A valve or gate shall be installed in the pipe so that the controls are accessible and damage from freezing is prevented. Drawdown pipes may be incorporated into the primary spillway.

(b) The installation of a drawdown pipe shall not be required for a low-impact dam if the chief engineer determines that both of the following criteria are met:

(1) The failure to install a drawdown pipe will not prejudicially and unreasonably affect the public interest and the public safety.

(2) The drawdown pipe is not necessary to administer water rights.

(c) Each drawdown pipe shall have the capacity to evacuate 90 percent of the volume of the permanent pool in 14 or fewer days assuming no inflow into the reservoir, but in no case shall the drawdown pipe have an internal diameter of less than four inches. The inlet of the drawdown pipe shall be constructed to reduce the likelihood of plugging. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-54. Control of seepage along a conduit. (a) Each conduit through any portion of a dam below the elevation of the permanent pool shall be constructed to protect the dam from seepage along the conduit by means of cutoff collars or a drainage diaphragm. Cutoff collars may be used only on hazard class A dams that are class sizes one and two.

(b) Each drainage diaphragm shall meet all of the following design criteria:

(1) Be installed so that the largest face is perpendicular to the conduit;

(2) be sized as follows:

(A) If the conduit is circular, the diaphragm shall extend a minimum of two feet or three times the outside diameter of the conduit, whichever is greater, from the outside surface of the conduit horizontally and vertically upward. The diaphragm shall extend vertically downward a minimum of two feet from the outside surface of the conduit;

(B) if the conduit is rectangular, the diaphragm shall extend minimum of two feet or three times the vertical dimension of the conduit, whichever is greater, from the outside surface of the conduit horizontally and vertically upward. The diaphragm shall extend vertically downward a minimum of two feet from the outside surface of the conduit;

(C) a drainage diaphragm shall not be required to penetrate unweathered bedrock; and

(D) the diaphragm shall not be required to extend vertically upward to an elevation higher than the crest of the auxiliary spillway;

(3) have a dimension parallel to the conduit that is at least three feet thick;

(4) except as specified in subsection (d), be located downstream of the centerline of the dam,

downstream of the cutoff trench, and far enough upstream of the toe so that there is a minimum of two feet of fill, measured perpendicular to the surface of the embankment, over the top of the diaphragm after settlement of the embankment; and

(5) have an outlet that provides positive drainage of the diaphragm to the stilling basin or other point below the downstream toe of the dam. The flow line of the outlet shall be no lower than one-half foot above the elevation of the outlet of the stilling basin.

(c) Except as specified in subsection (d), each cutoff collar shall meet all of the following design criteria:

(1) Be constructed of the same or similar material as that of the conduit;

(2) be attached to the conduit with a watertight seal;

(3) be of sufficient size and number to increase the length of the seepage path by at least 15 percent;

(4) be spaced at intervals of at least twice the vertical dimension of the largest collar being used;

(5) be located along the conduit in that portion of the dam that will be saturated;

(6) project a minimum of two feet beyond the outside wall of the conduit; and

(7) be located no closer than two feet from any conduit joint.

(d) If cutoff collars or a drainage diaphragm is located in a zoned fill, the location shall be justified in the design report and established in accordance with sound engineering principles and commonly accepted engineering practices.

(e) If another drain included in the design meets the requirements for a diaphragm in subsection (b), that other drain may be considered to be the diaphragm required by subsection (a).

(f) If the applicant desires to use any other type of seepage control, the applicant shall demonstrate to the chief engineer that the proposed type of seepage control protects the dam from seepage along the conduit and meets the requirements of sound engineering principles and commonly accepted engineering practices. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-55. Earthen auxiliary spillways. Each earthen auxiliary spillway shall meet all of the following requirements: (a) If the design discharge from the auxiliary spillway is directed so that the discharge impinges on the downstream toe of the dam, a wing dike shall be designed and constructed to direct spillway flows away from the downstream toe of the dam.

(b) If the auxiliary spillway is located on the embankment of the dam, adequate armor protection, including articulated blocks, concrete paving, gabion baskets underlain with properly designed bedding, or engineered riprap, shall be placed on the portion of the dam where the auxiliary spillway is located.

(c) The side slopes shall be no steeper than three horizontal units to one vertical unit, unless the spillway is constructed through competent sandstone or limestone.

(d) There shall be at least a 30-foot level section immediately upstream of the control section. Immediately downstream of the control section, the slope of the spillway outlet shall be sufficient to ensure that flows at and above 50 percent of the design storm discharge will flow at a supercritical velocity.

(e) The auxiliary spillway shall be a minimum of three feet deep, as measured from the elevation of the control section to the design top of the dam.

(f) The entrance channel from the reservoir to the level section shall provide a smooth transition that prevents turbulent flow.

(g) The outlet channel shall convey flow to the receiving stream channel with a minimum of erosion.

(h) If a fish screen is installed, the screen shall not impair the functioning of the auxiliary spillway. If a fish screen is proposed, the design report shall demonstrate that the screen will not impair the functioning of the auxiliary spillway. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-56. Maximum design velocity for an auxiliary spillway. (a) The maximum velocity in feet per second during the design storm for water flowing in a vegetated earthen auxiliary spillway shall be determined from the following table:

	Slope of the exit channel			
Vegetation	**Erosion-resistant soils**		**Easily erodible soils**	
	0% to 5%	**5% to 10%**	**0% to 5%**	**5% to 10%**
Bermuda grass and Bahia grass	8	7	6	5
buffalo grass, Kentucky blue grass, smooth brome grass, tall fescue, and reed canary grass	7	6	5	4
sod-forming grass-legume mixtures	5	4	4	3
weeping love grass, yellow bluestem, and native grass mixtures	3.5	3.5	2.5	2.5

(b) The maximum design velocities specified in subsection (a) may be increased by not more than 10 percent if the design frequency of use of the auxiliary spillway is not more than two percent. The maximum design velocities may be increased by not more than 25 percent if the design frequency of use of the auxiliary spillway is not more than one percent.

(c) For exit channel slopes greater than 10 percent, the applicant shall provide analyses showing both of the following:

(1) There is no more than 0.5 foot of erosion depth within 20 feet of the control section for the one-percent chance storm.

(2) The auxiliary spillway does not fail by breaching during the spillway stability design event indicated in the following table:

Hazard class	Size class	Spillway stability design event
A	1, 2, or 3	0.3 PMP
A	4	0.4 PMP
B	1, 2, 3, or 4	0.5 PMP
C	1, 2, 3, or 4	PMP

(d) The provisions of paragraphs (c)(1) and (2) may be used for slopes of 10 percent or less in lieu of the maximum values specified in the table in subsection (a).

(e) The maximum allowable design velocity for water flowing over the following types of materials shall be determined from the following table:

Material	Maximum velocity allowed in feet per second
stratified rock	8.0
sound rock	13.0

(f) Channel lining materials not reliant on vegetation, including concrete, riprap, and grouted riprap, may be used if the applicant demonstrates that the lining will not fail during the spillway stability design event specified in paragraph (c)(2). (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-57. Service spillway design. (a) If a dam will have a service spillway, the spillway shall be designed and constructed with a lining material that meets the following requirements:

(1) Covers the channel floor and walls up to the depth of flow required to bypass the flows of the storm specified as the detention requirement in K.A.R. 5-40-23(a), at a minimum; and

(2) will not fail during the spillway stability design event specified in K.A.R. 5-40-56(c)(2).

(b) Each design report required by K.A.R. 5-40-2b shall include all hydraulic, structural, and geotechnical design information necessary to show that the criteria in subsection (a) are met.

(c) If a fish screen is installed, the screen shall not impair the functioning of the service spillway. If a fish screen is proposed, the design report shall demonstrate that the screen will not impair the functioning of the service spillway. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-70. Construction notification to the chief engineer. Each holder of a permit to construct, or an approval to repair or modify a dam, shall notify the chief engineer at least 48 hours before any of the following stages of construction and shall obtain the approval of the chief engineer before proceeding with each of these stages of construction: (a) Starting construction;

(b) placing backfill in the cutoff trench;

(c) placing backfill around the primary spillway conduit or any other conduit that extends through

the dam embankment and exits the downstream slope; and

(d) starting any stage of construction not specified in this regulation for which the permit requires that the chief engineer shall be notified. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301a and 82a-303a; effective May 18, 2007.)

5-40-71. Inspection during dam construction, repair, and modification. (a) Except as specified in subsection (d), each high-impact dam shall be inspected by an engineer competent in the design of dams, or that engineer's authorized representative, at all times during any construction activity.

(b) Each low-impact dam shall be inspected by an engineer qualified in the design of dams, or that engineer's authorized representative, whenever any of the following conditions is met:

(1) Backfill is being placed in the cutoff trench of a dam.

(2) Conduits and their appurtenances are being placed.

(3) Backfill is being placed around a conduit.

(4) Drain material and outlets are being installed.

(5) Concrete forms and reinforcing steel are being placed.

(6) Concrete is being placed.

(7) Any other stage of construction required by the permit, approved plans, or approved specifications to be inspected occurs.

(c) Before the start of construction, the permit holder shall provide the chief engineer in writing with the name, address, and telephone number of the engineer responsible for the inspection.

(d) The inspecting engineer, or the engineer's authorized representative, shall not be required to be present during any of the following construction activities for a high-impact dam:

(1) The clearing and grubbing of the construction site;

(2) the removal of structures from the reservoir area other than the removal of a dam;

(3) the installation of pollution-control measures, unless required by other authorities;

(4) seeding;

(5) mulching; and

(6) the construction of a fence.

(e) If the inspecting engineer, or the engineer's authorized representative, observes construction activity that is not in compliance with the approved permit, plans, or specifications and the contractor fails to correct the item or items that are not in compliance with the approved permit, plans, or specifications after being notified by the inspector, the inspector shall notify the chief engineer of the noncompliant activity. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301a and 82a-303a; effective May 18, 2007.)

5-40-72. Construction inspection reports. The engineer responsible for the inspection required by K.A.R. 5-40-71 shall, within 30 days of the completion of the construction, repair, or modification of the dam and its appurtenances, submit to the chief engineer an inspection report containing the following items: (a) A notice of completion showing the date on which construction, repair, or modification of the dam and its appurtenances was completed;

(b) a statement indicating one of the following:

(1) The dam and its appurtenances were constructed, repaired, or modified substantially in accordance with the permit and the approved plans and specifications; or

(2) the completed work varied from the permit and the approved plans and specifications. A description of each variation shall be provided;

(c) a final survey of the completed dam and its appurtenances, including the following:

(1) A profile of the top of the dam;

(2) a profile of the centerline of the auxiliary spillway or service spillway;

(3) a cross section at the control section of the auxiliary spillway or service spillway;

(4) a cross section of the dam at its deepest point;

(5) a cross section of the dam at the primary spillway if that section is not near the deepest section of the dam;

(6) the locations and elevations of the inlet and the outlet of the primary spillway;

(7) the location and elevation of each drain outlet; and

(8) the final elevation and coordinates of each permanent benchmark; and

(d) a summary or a copy of the daily inspection logs if required by the permit. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301a and 82a-303a; effective May 18, 2007.)

5-40-73. Emergency action plan. (a) The owner of each hazard class B dam shall create an

emergency action plan (EAP) on a form prescribed by the chief engineer. The owner shall keep the original EAP and submit a copy of the EAP to the chief engineer. The EAP shall address each of the following:

(1) A description of the dam, including the location of the dam and the access roads;

(2) the name, address, and telephone number of the person responsible for notifying local authorities of an emergency;

(3) a map or written description of the area that could be inundated by the type of breach described in K.A.R. 5-40-24;

(4) a list of persons who should be notified in case of an emergency, including the telephone numbers of those persons and their responsibilities; and

(5) the names, addresses, and telephone numbers of each owner of the dam and its appurtenances and those persons responsible for the operation and maintenance of the dam.

(b) Except as specified in subsection (d), the owner of a hazard class C dam shall create and maintain an emergency action plan that meets the recommendations of the "federal guidelines for dam safety: emergency action planning for dam owners," prepared by the interagency committee on dam safety and published by the federal emergency management agency, dated October 1998 and reprinted January 2004, which is hereby adopted by reference. The owner shall submit a copy of the EAP to the chief engineer.

(c) The owner of any dam for which an EAP is required under these regulations shall annually review the EAP to determine if it is still accurate and applicable to the current condition of the dam and current downstream conditions, including the following:

(1) The contact names and related information;

(2) the breach inundation map or a description of the inundation area; and

(3) emergency procedures.

If any material changes are made when updating the EAP, a copy of the revised EAP shall be submitted to the chief engineer.

(d) Any owner of a hazard class C dam may request that the chief engineer allow the owner to submit an EAP that meets only the requirements of subsection (a) in lieu of meeting the requirements of subsection (b). To make this request, the owner shall submit written justification of why an EAP meeting the requirements of subsection (a) is sufficient to protect the public safety. If the chief engineer approves the request, the chief engineer shall reserve the right to later impose the requirements of subsection (b) if downstream conditions change, the condition of the dam deteriorates, or the EAP does not adequately protect the public safety.

(e) The owner of a hazard class B dam shall submit the required EAP within 180 days of written notification by the chief engineer of the requirement.

(f) The owner of a hazard class C dam shall submit the required EAP within 180 days of written notification by the chief engineer that an EAP is required and that an adequate EAP is not on file in the chief engineer's office. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-73a. Discovery of an existing illegal, unpermitted dam. (a) Except when it is necessary to take additional actions to protect the public safety, when the chief engineer becomes aware of an existing illegal, unpermitted dam, the following actions shall be taken by the chief engineer:

(1) Determine the hazard classification and condition of the dam;

(2) notify the owner of the dam of the following, in writing:

(A) The fact that the dam is illegal and unpermitted;

(B) the hazard classification of the dam;

(C) the fact that if the owner desires to keep the dam in existence, the owner shall submit a complete application for a permit for the dam pursuant to K.S.A. 82a-301 and K.S.A. 82a-302, and amendments thereto, within 120 days of the date of the chief engineer's notification;

(D) the condition that the application to obtain a permit for the dam shall meet the requirements of K.A.R. 5-40-8 and K.A.R. 5-40-74;

(E) the fact that failure to apply for a permit within 120 days shall result in the issuance of an order by the chief engineer requiring the owner to submit plans to breach or completely remove the dam; and

(F) the fact that the dam is subject to the provisions of this regulation.

(b)(1) If the owner submits an application for a permit within the time specified in paragraph (a)(2)(C), or within any extension of time authorized by the chief engineer in writing, the appli-

cation shall meet the requirements of K.A.R. 5-40-8 and K.A.R. 5-40-74.

(2) If the owner fails to submit an application for a permit within the time specified in paragraph (a)(2)(C), or within any extension of time authorized by the chief engineer, an order requiring the owner to perform the following shall be issued by the chief engineer:

(A) Submit plans to breach or completely remove the dam; and

(B) bypass inflows and release water from storage so that no more than 15 acre-feet of water is kept in storage in the reservoir while the application for a permit to breach or completely remove the dam is being processed. The application for a permit shall contain all of the information required by K.A.R. 5-40-8 and any other information necessary to properly and safely design and complete the breach or removal. The application shall be submitted within 120 days of the date of the order, or within any extension of time authorized by the chief engineer. The owner shall be required to complete the breach or removal as permitted by the chief engineer within one year of the approval of a permit by the chief engineer, or any extension of time authorized by the chief engineer in writing.

(c) If the chief engineer dismisses an application for an existing illegal, unpermitted dam for any reason, the dismissal of the application shall be accompanied with an order requiring the dam to be breached or removed as provided in paragraph (b)(2).

(d) The order described in paragraph (b)(2) shall be filed by the chief engineer with the register of deeds for the county in which the dam is located.

(e) Each existing illegal, unpermitted dam of which the chief engineer becomes aware, either before or after the adoption of this regulation, shall be subject to this regulation. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301, 82a-302, and 82a-303a; effective May 18, 2007.)

5-40-74. Design criteria for an existing illegal, unpermitted dam. (a) Except as specified in subsection (b), the design criteria specified in this subsection (a) shall be met to obtain a permit from the chief engineer pursuant to K.S.A. 82a-301 et seq., and amendments thereto, for an existing illegal, unpermitted hazard class A dam constructed before May 1, 1984 that has not been modified on or after May 1, 1984. The applicant shall have an engineer who is qualified in dam design and construction conduct an inspection of the dam and prepare a report that includes all of the following:

(1) The date of the inspection and a list of the members of the inspection team;

(2) color photographs documenting the condition of the dam's appurtenances and embankment and any observed deficiencies in the appurtenances and embankment;

(3) a plan view sketch of the dam and its immediate vicinity showing the location from which each photograph was taken and the direction in which it was taken;

(4) a description of the physical condition of the dam and its appurtenances, a list of the deficiencies that were observed, and a description of the severity of each observed deficiency. All deficiencies that may threaten the structural integrity of the dam shall be shown; and

(5) a survey of the dam, documented by a plan view of the dam and cross section drawings, including the following:

(A) Cross sections of the embankment every 200 feet, with each cross section starting from the upstream toe of the dam or the water surface on the upstream side to the toe of the dam on the downstream side of the dam;

(B) a profile of each open-channel spillway from the water surface on the upstream side of the dam to the point where spillway flows enter the receiving stream;

(C) a cross section of each open-channel spillway every 200 feet and at each control section, with a minimum of two cross sections;

(D) the elevation of each primary spillway inlet and outlet;

(E) the elevation of the flow line of the outlet channel; and

(F) the dimensions, locations, and descriptions of materials, workmanship, condition, apparent purpose for, and any other relevant information about all visible appurtenances in sufficient detail to represent the appurtenances in three dimensions;

(6) the dimensions and location of each deficiency noted as required in paragraph (a)(4);

(7) the estimated rate and color of discharge from drain outlets and any seeps;

(8) a determination of the hazard classification of the dam as specified in K.A.R. 5-40-24;

(9)(A) A description of the drawdown valve, if any;

(B) specification of whether the valve was operated during the inspection; and

(C) if the valve could not be operated, an explanation of why it could not be operated;

(10) the name, mailing address, and telephone number of the engineer who conducted the inspection;

(11) the name, mailing address, and telephone number of each current owner of the dam; and

(12) any other information relevant to the safety and integrity of the dam, including any items requested by the chief engineer before the inspection.

(b) If the applicant provides construction plans prepared before construction that show how the dam was to be constructed or modified and that reflect the actual dimensions of the dam as it exists, those plans may be substituted for the survey required in paragraph (a)(5).

(c) If the chief engineer determines from the inspection report that the dam does not pose a threat to public safety or public or private property and that the condition of the dam is sound, an after-the-fact permit may be issued by the chief engineer pursuant to K.S.A. 82a-301 et seq., and amendments thereto.

(d)(1) In order for an existing illegal, unpermitted hazard class A dam constructed or modified on or after May 1, 1984 or an existing illegal, unpermitted hazard class B or C dam to receive a permit from the chief engineer pursuant to K.S.A. 82a-301 et seq. and amendments thereto, the applicant shall demonstrate that the dam meets all of the applicable statutory and regulatory requirements in effect when the application for the permit is filed. The applicant shall provide a survey meeting the requirements of paragraph (a)(5) and a design report that meets the requirements of K.A.R. 5-40-2b. If plans are available that show how the dam was constructed or modified and those plans reflect the actual dimensions of the dam as it exists when the application is filed, the plans may be substituted for the required survey. If a geologic investigation was conducted before construction of the dam and the results of that investigation are available, that investigation may be substituted for the investigation and report required by K.A.R. 5-40-40 through K.A.R. 5-40-42.

(2) If the applicant cannot determine that the chief engineer's requirements for the following design or actual construction properties were met without significantly disturbing the embankment but the applicant demonstrates that the dam was built in a manner appropriate to the standards in effect when the dam was constructed, then a permit may be issued if the chief engineer determines that the dam does not pose a hazard to public safety:

(A) The location, dimensions, and composition of the backfill materials to fill the cutoff trench;

(B) the location, dimensions, and construction of cutoff collars, drains, or other seepage control;

(C) the allowance for settlement of an earthen dam;

(D) specification of whether the primary spillway pipe was tested;

(E) the specifications used; and

(F) documentation of any construction inspections. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301a, 82a-302, and 82a-303a; effective May 18, 2007.)

5-40-75. Maintenance of dams. Each owner of a dam that the chief engineer has authority to regulate pursuant to K.S.A. 82a-301 et seq., and amendments thereto, shall operate and maintain the dam in a manner that protects the public safety, complies with the terms of any permit of the chief engineer, and ensures the integrity of the dam. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301a and 82a-303a; effective May 18, 2007.)

5-40-76. Repair or modification of a permitted or prejurisdictional dam. (a) The repair or modification of a permitted or prejurisdictional dam shall meet the requirements of both of the following:

(1) The statutes and the regulations in effect when the application for repair or modification is filed; and

(2) any additional criteria specified by the chief engineer that are necessary to ensure the integrity of the dam and its appurtenances.

(b) At the time of the repair or modification, the applicant shall bring the dam and all of its appurtenances into conformance with the requirements of the statutes and regulations in effect at the time of the application for repair or modification, unless both of the following conditions are met:

(1) The applicant demonstrates that bringing any feature of the dam and its appurtenances into compliance is not feasible or is unduly burdensome.

(2) The chief engineer determines that failing to bring any feature of the dam into compliance with one or more requirements applicable to that feature will not significantly affect the public safety.

(c) Each application to repair or modify a dam or its appurtenances shall include a design report on the repair or modification, including a section describing the condition of the dam at the time of the application. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-77. Easements for dams. (a) Each applicant that applies for a permit to construct a dam, modify a dam in a manner that will raise the top of the dam, or modify the dam in any other way that will increase the backwater effect of the dam or the flow of water from the dam to the receiving stream shall demonstrate either of the following to the chief engineer:

(1) The applicant owns the site of the dam and appurtenant works, the land that will be inundated, and the land over which discharge from the dam's spillways will flow.

(2) The applicant has easements or other legal authority to perform the following for the design life of the dam:

(A) Construct and maintain the dam;

(B) inundate all of the land upstream from the dam to the top of the dam elevation; and

(C) discharge water from the spillways to a stream channel and the associated floodplain adequate to convey the discharge from the design storm.

(b) For permitted dams for which a modification is proposed, an easement or other legal authority shall be required only for the effects caused by the modification. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302, K.S.A. 82a-303, and K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-90. Requirements for a dam safety inspection report. Each dam safety inspection report required by K.S.A. 82a-303b, and amendments thereto, shall document the observations made during the inspection and the engineer's opinion of the condition of the dam and shall include all of the following:

(a) An executive summary briefly describing the overall condition of the dam as found during the inspection;

(b) the date of the inspection and a list of the members of the inspection team;

(c) color photographs documenting the condition of the dam appurtenances and embankment and any observed deficiencies in the appurtenances and embankment;

(d) a plan view sketch of the dam and the vicinity, showing the location where each photograph was taken and the direction in which the photograph was taken;

(e) a description of the physical condition of the dam and its appurtenances, a list of any deficiencies that were observed, and a plan view sketch of the dam and its appurtenances showing the location of those deficiencies. The deficiencies that shall be shown shall include those that meet any of the following conditions:

(1) Violate the permit or approved plans or any approved modifications of the permit or approved plans;

(2) threaten the structural integrity of the dam; or

(3) threaten the safety of people or property above or below the dam;

(f) survey and other documenting data if the engineer observes any changes from previously documented conditions in the dam or its appurtenances that could jeopardize the integrity of the dam, including any changes in the profile or cross section of the dam, profile, or cross section of any open-channel spillway, and areas of settlement or erosion;

(g) a description of the severity of each observed deficiency and the engineer's opinion about the urgency of remedying each deficiency;

(h) a summary of the engineer's review of the adequacy of the emergency action plan, including a review of any updates since the last inspection;

(i) the estimated rate and color of discharge from drain outlets and any seeps;

(j) a statement indicating whether the engineer agrees or disagrees with the hazard classification of the dam, including the reasons why the engineer agrees or disagrees with that classification;

(k) a map drawn to a scale of 1:24,000 or larger showing the location of any hazards added, removed, or not previously shown downstream of the dam, in addition to those identified in previous reports, that would require a modification of the emergency action plan or might change the hazard classification of the dam;

(l) any significant changes in the capacity of the reservoir;

(m) any significant changes in the capacity of any spillway;

(n) a statement indicating whether there have been any significant changes in the watershed and an estimate of the impact of those changes on the design hydrology;

(o) the name, mailing address, and telephone number of the engineer;

(p) the name, mailing address, and telephone number of each current owner of the dam;

(q) observations or readings from all instrumentation required by the permit, the approved plans, the approved specifications, or the chief engineer;

(r)(1) A description of the drawdown valve, if any; and

(2) specification of whether the drawdown valve was operated during the inspection and, if the valve could not be operated, an explanation of why it could not be operated; and

(s) any other information relevant to the safety of the dam, including any items requested by the chief engineer before the inspection. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-91. Schedule for inspection of hazard class C dams. Each hazard class C dam shall be inspected every third inspection year after the inspection year in which the initial inspection was completed. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-92. Schedule for inspection of hazard class B dams. Each hazard class B dam shall be inspected every fifth inspection year after its initial inspection. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-93. Schedule for inspection of dams. The initial and follow-up dam safety inspections required by K.S.A. 82a-303b, and amendments thereto, for any dam completed on or after July 1, 2002, shall be conducted and a report shall be filed with the chief engineer in accordance with the following schedule: (a) Each permitted hazard class C dam shall be inspected in the third inspection year after the inspection year in which the dam is completed and every third inspection year thereafter.

(b) Each permitted hazard class B dam shall be inspected in the fifth inspection year after the inspection year in which the dam is completed and every fifth inspection year thereafter.

(c) Each unpermitted class B or class C hazard dam completed on or after July 1, 2002, shall be inspected in accordance with a schedule approved by the chief engineer as necessary to protect the public safety.

(d) Each dam that had its hazard class increased by the chief engineer on or after July 1, 2002, shall initially be inspected by the chief engineer in the inspection year in which the hazard class is increased.

(e) If the dam was reclassified as a hazard class B dam, the dam shall be inspected every fifth inspection year after the inspection year in which the hazard class was changed.

(f) If the dam was reclassified as a hazard C dam, the dam shall be inspected every third inspection year after the inspection year in which the hazard class was changed. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-94. Revision of schedule of inspections. For good cause shown, including a change in hazard class or repair or modification of a dam, the dam safety inspection schedule may be revised by the chief engineer and a new inspection cycle may be started. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-100. Request to be included on the list of independent engineers qualified to review applications. (a) Each licensed professional engineer who desires to be placed on the list of licensed professional engineers approved to review applications for the permit required by K.S.A. 82a-301 et seq., and amendments thereto, shall submit a request to the chief engineer on a form prescribed by the chief engineer.

(b) Any engineer may request approval in one or more of the following areas:

(1) Dam design;

(2) channel design; and

(3) the design of stream obstructions other than dams.

(c) A team of persons may be qualified to be a reviewer for a project. The qualifications of each team member shall be submitted, and one person shall be designated as the supervising reviewer. The supervising reviewer shall meet the minimum requirements for an individual reviewer. The

other members of the review team shall not be required to meet the minimum requirements for an individual reviewer. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-101. Information to be submitted with a request to be a reviewer. (a) Each engineer who wants to be included on the list of licensed professional engineers approved to review applications under the obstructions in streams act, as authorized by K.S.A. 82a-302, and amendments thereto, shall submit that request on a form prescribed by the chief engineer and shall designate each area of review for which the engineer or a team of engineers desires to be approved.

(b) All of the following information shall be included on each request for each area in which the engineer seeks to be approved:

(1) The type and license number of each current license from the Kansas state board of technical professions;

(2) relevant education, including graduate and postgraduate schools attended, degrees received, and professional development work; and

(3) work experience in the requested area of expertise, including the following:

(A) The number of years of experience as an engineering intern;

(B) the number of years of experience as an engineer; and

(C) the approximate number of projects for which the engineer met the following criteria:

(i) Was responsible for the project;

(ii) performed substantive design tasks;

(iii) had quality assurance, quality control, or project review responsibilities; and

(iv) performed construction supervision or inspection; and

(D) the project name, the location, a brief description of the project, and a brief description of the engineer's responsibilities for one or two projects for which the engineer met the following criteria:

(i) Had responsible charge or performed significant portions of the design; or

(ii) provided quality control, quality assurance, project review, construction supervision, or construction inspection duties. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-102. Minimum requirements to be an individual reviewer. To be an individual reviewer, each person shall meet both of the following qualifications: (a) Have a current professional engineer's license from the Kansas state board of technical professions; and

(b) have a minimum of five years of relevant work experience in the area for which approval is sought. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-103. Conflict of interest. A reviewer shall not be eligible to review any of the following: (a) Any project in which the reviewer has participated in the project's design in any way;

(b) any project designed by any other employee of the reviewer's current employer; or

(c) any other project for which the reviewer has a conflict of interest with the owner of the dam, the designer of the dam, or the state of Kansas. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-104. Notification of approval or disapproval to be a reviewer. Within 60 days of the receipt in the office of the chief engineer of a completed request pursuant to K.A.R. 5-40-101, the requester shall be notified by the chief engineer of whether that individual has been approved in each requested area. If the chief engineer has not approved the request for each area of review requested, the requester shall be notified by the chief engineer of the reason or reasons that each request has been denied. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-105. Procedure for independent review of an application to construct a dam or other water obstruction. (a) When an applicant provides a copy of that individual's application to an approved reviewer pursuant to K.S.A. 82a-302 and amendments thereto, the applicant shall also submit the following to the chief engineer:

(1) The original application;

(2) all documentation required for an acceptable application as specified in K.A.R. 5-40-8;

(3) the statutorily required filing fee; and

(4) the name, address, and telephone number of the reviewer.

(b) The review required by the water projects environmental coordination act, K.S.A. 82a-325 et seq. and amendments thereto, shall be initiated by the chief engineer after the chief engineer receives the application.

(c) Within 37 days after the review specified in subsection (b) is initiated by the chief engineer, any comments received from the environmental review agencies shall be sent by the chief engineer to the reviewer. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-106. Report of findings of independent reviewer. (a) When a reviewer completes the review of an application pursuant to K.S.A. 82a-302 and amendments thereto, the reviewer shall submit a report of that review to the chief engineer. The report shall be properly sealed by the reviewing engineer as directed by the Kansas state board of technical professions.

(b) Each complete report shall include the following:

(1) An opinion as to whether the application meets the requirements of K.S.A. 82a-301 et seq., and amendments thereto, the regulations that implement these statutes, sound engineering principles, and commonly accepted engineering practices;

(2) the basis for that opinion, including any analyses that were performed, and the supporting data;

(3) an evaluation of the comments from the environmental review agencies that were furnished to the reviewer by the chief engineer and a recommendation about how to address all adverse comments;

(4) a recommendation about whether any request by the applicant to waive one or more regulations should be approved and the basis for approving or denying the waiver; and

(5) a recommendation about whether the chief engineer should approve or deny the permit and any conditions that the chief engineer should impose on the permit.

(c) The recommendations shall not be binding on the chief engineer. The chief engineer shall maintain the final authority to approve or deny all applications. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

Article 41.—DESIGN OF CHANNEL CHANGES

5 -41-1. Channe l change s; plans and spe cifications. Plans for a channel change shall include the following: (a) A general location map or aerial photograph, showing the present alignment of the stream, location of the proposed channel change, section lines, property lines with names and addresses of adjoining landowners, drainage area, a north arrow, a bar scale, and any other prominent features;

(b) a detailed plan view of the project with stationing shown, including as many other views as necessary to fully describe the project;

(c) a profile drawing along the centerline of the proposed new channel. This profile shall extend five times the channel width upstream and an equivalent distance downstream from each end of the new channel. The stationing shown on the plan view shall correspond to stationing on the profile drawing. This drawing shall show the pres-ent ground surface, the present stream bed, and the grade line of the proposed new channel;

(d) cross sections of the existing stream at locations immediately above and below the proposed channel change. The location of these cross sections shall be described and shown on the plans. The elevations of the top of the existing banks and bottom of the channel shall be shown;

(e) at least one permanent bench mark conveniently located for use after construction, except for grassed waterways constructed for the purpose of conveying runoff without causing erosion or flooding. The location, description, and elevation of the permanent bench mark, to which all elevations are referred, shall be shown on the plans. The designer shall reference the project bench mark to the current national geodetic vertical datum, to a tolerance of plus or minus ½ foot on all channel changes involving perennial streams and where detailed floodplain data are available. Project datum shall be acceptable on all other channel changes; and

(f) a cross-sectional drawing of the proposed new channel, including dimensions. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-302; effective May 1, 1987; amended Sept. 22, 2000.)

5 -41-2 Channe l change s; wate r veloc-ity. The new channel shall have a conveyance ca-pacity equal to or greater than the old channel. The water velocity after the completion of the

Appendix C

Referenced Department of Administration Statutes

Kansas Statutes Annotated (K.S.A.)

77-415. Definitions; citation of act; exclusions; effect of certain adjudications and orders; guidance documents. (a) K.S.A. 77-415 through 77-438, and amendments thereto, shall be known and may be cited as the rules and regulations filing act.

(b) (1) Unless otherwise provided by statute or constitutional provision, each rule and regulation issued or adopted by a state agency shall comply with the requirements of the rules and regulations filing act. Except as provided in this section, any standard, requirement or other policy of general application may be given binding legal effect only if it has complied with the requirements of the rules and regulations filing act.

(2) Notwithstanding the provisions of this section:

(A) An agency may bind parties, establish policies, and interpret statutes or regulations by order in an adjudication under the Kansas administrative procedure act or other procedures required by law, except that such order shall not be used as precedent in any subsequent adjudication against a person who was not a party to the original adjudication unless the order is:

(i) Designated by the agency as precedent;

(ii) not overruled by a court or later adjudication; and

(iii) disseminated to the public in one of the following ways:

(a) Inclusion in a publicly available index, maintained by the agency and published on its website, of all orders designated as precedent;

(b) publication by posting in full on an agency website in a format capable of being searched by key terms; or

(c) being made available to the public in such other manner as may be prescribed by the secretary of state.

(B) Any statement of agency policy may be treated as binding within the agency if such statement of policy is directed to:

(i) Agency personnel relating to the performance of their duties.

(ii) The internal management of or organization of the agency.

No such statement of agency policy listed in clauses (i) and (ii) of this subparagraph may be relied on to bind the general public.

(C) An agency may provide forms, the content or substantive requirements of which are prescribed by rule and regulation or statute, except that no such form may give rise to any legal right or duty or be treated as authority for any standard, requirement or policy reflected therein.

(D) An agency may provide guidance or information to the public, describing any agency policy or statutory or regulatory requirement except that no such guidance or information may give rise to any legal right or duty or be treated as authority for any standard, requirement or policy reflected therein.

(E) None of the following shall be subject to the rules and regulations filing act:

(i) Any policy relating to the curriculum of a public educational institution or to the administration, conduct, discipline, or graduation of students from such institution.

(ii) Any parking and traffic regulations of any state educational institution under the control and supervision of the state board of regents.

(iii) Any rule and regulation relating to the emergency or security procedures of a correctional institution, as defined in subsection (d) of K.S.A. 75-5202, and amendments thereto.

(iv) Any order issued by the secretary of corrections or any warden of a correctional institution under K.S.A. 75-5256, and amendments thereto.

(F) When a statute authorizing an agency to issue rules and regulations or take other action specifies the procedures for doing so, those procedures shall apply instead of the procedures in the rules and regulations filing act.

(c) As used in the rules and regulations filing act, and amendments thereto, unless the context clearly requires otherwise:

(1) "Board" means the state rules and regulations board established under the provisions of K.S.A. 77-423, and amendments thereto.

(2) "Environmental rule and regulation" means:

(A) A rule and regulation adopted by the secretary of agriculture, the secretary of health and environment or the state corporation commission, which has as a primary purpose the protection of the environment; or

(B) a rule and regulation adopted by the secretary of wildlife, parks and tourism concerning threatened or endangered species of wildlife as defined in K.S.A. 32-958, and amendments thereto.

(3) "Person" means an individual, firm, association, organization, partnership, business trust, corporation, company or any other legal or commercial entity.

(4) "Rule and regulation," "rule," and "regulation" means a standard, requirement or other policy of general application that has the force and effect of law, including amendments or revocations thereof, issued or adopted by a state agency to implement or interpret legislation.

(5) "Rulemaking" shall have the meaning ascribed to it in K.S.A. 77-602, and amendments thereto.

(6) "Small employer" means any person, firm, corporation, partnership or association that employs not more than 50 employees, the majority of whom are employed within this state.

(7) "State agency" means any officer, department, bureau, division, board, authority, agency, commission or institution of this state, except the judicial and legislative branches, which is authorized by law to promulgate rules and regulations concerning the administration, enforcement or interpretation of any law of this state.

History: L. 1965, ch. 506, § 1; L. 1977, ch. 321, § 1; L. 1978, ch. 120, § 24; L. 1978, ch. 386, § 1; L. 1980, ch. 303, §1; L. 1981, ch. 364, § 1; L. 1981, ch. 157, § 3; L. 1981, ch. 365, § 1; L. 1982, ch. 385, § 2; L. 1982, ch. 386, § 1; L. 1982, ch. 142, § 26; L. 1983, ch. 307, § 1; L. 1989, ch. 282, § 1; L. 1991, ch. 276, § 1; L. 1995, ch. 171, § 1; L. 1996, ch. 43, § 4; L. 1997, ch. 160, § 42; L. 2008, ch. 25, § 1; L. 2010, ch. 95, § 1; L. 2011, ch. 14, § 1; L. 2012, ch. 47, § 122; L. 2013, ch. 2, § 1; July 1.

77-415a. Secretary of state to file and publish rules and regulations; adoption of rules and regulations. The secretary of state shall file and publish all rules and regulations as provided by article 4 of chapter 77 of the Kansas Statutes Annotated. The secretary of state may adopt rules and regulations necessary to carry out its duties under this act.

History: L. 1988, ch. 366, § 1; L. 2010, ch. 95, § 2; July 1.

77-415b. Rules and regulations continued in effect. All rules and regulations of state agencies which are in force and effect at the time this act takes effect shall continue to be effective and shall be deemed to be duly filed with the secretary of state as provided for by this act until revised, amended, revoked or nullified pursuant to law.

History: L. 1988, ch. 366, § 2; L. 2010, ch. 95, § 3; July 1.

77-416. Filing rules and regulations; numbering; citation of statutory authority; economic impact statement; documents adopted by reference; review of economic impact statement by director of the budget; environmental benefit and economic impact statement; authority of secretary of state. (a) Every state agency shall file with the secretary of state every rule and regulation adopted by it and every amendment and revocation thereof in the manner prescribed by the secretary of state. Each rule and regulation shall include a citation to the statutory section or sections being implemented or interpreted and a citation of the authority pursuant to which it, or any part thereof, was adopted. Every rule and regulation filed in the office of the secretary of state shall be accompanied by a copy of the economic impact statement required by subsection (b) and a copy of the environmental benefit statement if required by subsection (d). A copy of any document adopted by reference in a rule and regulation shall be available from the state agency which adopted the rule and regulation upon request by any person interested therein. The state agency, under the direction of the secretary of state, shall number each section with a distinguishing number and, in making a compilation of the rules and regulations, the sections shall be arranged in numerical order. A decimal system of numbering shall be prohibited.

(b) (1) At the time of drafting a proposed rule and regulation or amendment to an existing rule and regulation, the state agency shall consider the economic impact of such proposed rule and regulation or amendment upon all governmental agencies or units and all persons which will be subject thereto and upon the general public. Prior to giving notice of a hearing on a proposed rule and regulation, the state agency shall prepare an economic impact statement that shall include:

(A) A brief description of the proposed rules and regulations and what is intended to be accomplished by their adoption;

(B) whether the proposed rule and regulation is mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and whether the proposed rules and regulations exceed the requirements of applicable federal law;

(C) a description of the cost, the persons who will bear the costs and those who will be affected by the proposed rules and regulations, including the agency proposing the rules and regulations, other governmental agencies or units, private citizens and consumers of the products or services which are the subject of the rules and regulations or the enforcement thereof; and

(D) a description of any less costly or less intrusive methods that were considered by the state agency for achieving the stated purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations. The state agency may consult with other state agencies when preparing the economic impact statement.

(2) The state agency shall consult with the League of Kansas municipalities, Kansas association of counties and the Kansas association of school boards, as appropriate, when preparing the economic impact statement of a proposed rule and regulation which increases or decreases revenues of cities, counties or school districts or imposes functions or responsibilities on cities, counties or school districts which will increase their expenditures or fiscal liability.

(3) The state agency shall reevaluate and, when necessary, update the statement at the time of filing a rule and regulation with the secretary of state. If a public hearing was held prior to the adoption of the rule and regulation, a state agency at the time of filing a rule and regulation with the secretary of state shall include as a part of the economic impact statement a statement specifying the time and place at which the hearing was held and the attendance at the hearing. A

copy of the current economic impact statement shall be available from the state agency upon request by any party interested therein.

(c) Upon request of the state rules and regulations board, the joint committee on administrative rules and regulations or the chairperson of either committee or board, the director of the budget shall review the economic impact statement prepared by any state agency and shall prepare a supplemental or revised statement. If possible, the supplemental or revised statement shall include a reliable estimate in dollars of the anticipated change in revenues and expenditures of the state. It also shall include a statement, if determinable or reasonably foreseeable, of the immediate and long-range economic impact of the rule and regulation upon persons subject thereto, small employers and the general public. If, after careful investigation, it is determined that no dollar estimate is possible, the statement shall set forth the reasons why no dollar estimate can be given. Every state agency is directed to cooperate with the division of the budget in the preparation of any statement pursuant to this subsection when, and to the extent, requested by the director of the budget.

(d) At the time of drafting a proposed environmental rule and regulation or amendment to an existing environmental rule and regulation, the state agency shall consider the environmental benefit of such proposed rule and regulation or amendment. Prior to giving notice of a hearing on a proposed rule and regulation, the state agency shall prepare an environmental benefit statement that shall include a description of the need for and the environmental benefits which will likely accrue as the result of the proposed rule and regulation or amendment. The description shall summarize, when applicable, research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rule and regulation or amendment. When specific contaminants are to be controlled by the proposed rule and regulation or amendment, the description shall indicate the level at which the contaminants are considered harmful according to currently available research. The state agency may consult with other state agencies when preparing the environmental benefit statement. The state agency shall reevaluate and, when necessary, update the statement at the time of filing a rule and regulation with the secretary of state. A copy of the current environmental benefit statement shall be available from the state agency upon request by any party interested therein.

(e) In addition to the requirements of subsection (b), the economic impact statement for all environmental rules and regulations shall include:

(1) A description of the capital and annual costs of compliance with the proposed rules and regulations, and the persons who will bear those costs;

(2) a description of the initial and annual costs of implementing and enforcing the proposed rules and regulations, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs;

(3) a description of the costs which would likely accrue if the proposed rules and regulations are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the rules and regulations; and

(4) a detailed statement of the data and methodology used in estimating the costs used in the statement.

History: L. 1965, ch. 506, § 2; L. 1976, ch. 415, § 1; L. 1977, ch. 321, § 2; L. 1979, ch. 304, § 1; L. 1980, ch. 304, § 1; L. 1981, ch. 366, § 1; L. 1982, ch. 386, § 2; L. 1983, ch. 307, § 2; L. 1984, ch. 346, § 1; L. 1988, ch. 366, § 29; L. 1994, ch. 232, § 4; L. 1995, ch. 171, § 2; L. 2001, ch. 11, § 1; L. 2008, ch. 25, § 2; L. 2010, ch. 95, § 4; July 1.

77-417. Duties of secretary of state. (a) The secretary of state shall:

(1) Endorse on each rule and regulation filed, the time and date of the filing thereof;

(2) maintain a file of such rules and regulations for public inspection;

(3) keep a complete record of all amendments and revocations of rules and regulations;

(4) index the rules and regulations so filed; and

(5) publish the rules and regulations as hereinafter provided.

(b) The secretary of state shall have the discretion to return to the appropriate state agency or to otherwise dispose of any document or other material which had been adopted previously by reference and filed with the secretary of state.

History: L. 1965, ch. 506, § 3; L. 1977, ch. 321, § 3; L. 1988, ch. 366, § 30; L. 2010, ch. 95, § 5; July 1.

77-418. Filing rules and regulations, form. All rules and regulations adopted by every state agency shall be filed with the secretary of state in a form and manner approved by the secretary of state.

History: L. 1965, ch. 506, § 4; L. 1977, ch. 321, § 4; L. 1979, ch. 304, § 2; L. 1980, ch. 304, § 2; L. 1988, ch. 366, § 31; L. 2010, ch. 95, § 6; July 1.

77-419. Revival or amendment of regulations; filing and publication. To revive or amend a rule and regulation, the new rule and regulation shall contain the entire section revived or amended, and any section so amended shall be revoked. For the purpose of filing in the office of the secretary of state and for submission to the joint committee on administrative rules and regulations as provided in K.S.A. 77-426, and amendments thereto, a rule and regulation amending an existing regulation shall indicate the new matter contained therein by underlining or printing in italics the new matter, and material to be deleted from such rule and regulation shall be shown in strike-through type. The secretary of state in preparing such rules and regulations for publication in the Kansas administrative regulations shall omit all material shown in strike-through type. The secretary of state shall not file any regulation which amends or revives a regulation unless the regulation so amending or reviving conforms to the provisions of this section.

History: L. 1965, ch. 506, § 5; L. 1974, ch. 421, § 5; L. 1975, ch. 484, § 1; L. 1975, ch. 485, § 1; L. 1975, ch. 486, § 1; L. 1977, ch. 321, § 5; L. 1988, ch. 366, § 32; L. 2010, ch. 95, § 7; July 1.

77-420. Approval of rules and regulations by secretary of administration and attorney general; requirements for filing with secretary of state. (a) Every rule and regulation proposed to be adopted by any state agency, before being submitted to the attorney general under this section, shall be submitted to the secretary of administration for approval of its organization, style, orthography and grammar subject to such requirements as to organization, style, orthography and grammar as the secretary may adopt. Every rule and regulation submitted to the secretary of administration under this subsection (a) shall be accompanied by a copy of any document which is adopted by reference by the rule and regulation. Every rule and regulation approved by the secretary of administration under this subsection (a) shall be stamped as approved and the date of such approval shall be indicated therein.

(b) Every rule and regulation proposed by any state agency which has been approved by the secretary of administration as provided in subsection (a) before being adopted or filed shall be

submitted to the attorney general for an opinion as to the legality of the same, including whether the making of such rule and regulation is within the authority conferred by law on the state agency. The attorney general shall promptly furnish an opinion as to the legality of the proposed rule and regulation so submitted. Every rule and regulation submitted to the attorney general under this subsection (b) shall be accompanied by a copy of any document which is adopted by reference by the rule and regulation. Every rule and regulation approved by the attorney general under this subsection (b) shall be stamped as approved and the date of such approval shall be indicated therein.

(c) No rule and regulation shall be filed by the secretary of state unless:

(1) The organization, style, orthography and grammar have been approved by the secretary of administration;

(2) the rule and regulation has been approved in writing by the attorney general as to legality;

(3) the rule and regulation has been formally adopted by the state agency after it has been approved by the secretary of administration and the attorney general and is accompanied by a certified or other formal statement of adoption when adoption is by an executive officer of a state agency, or by a certified copy of the roll call vote required for its adoption by K.S.A. 77-421, and amendments thereto, when adoption is by a board, commission, authority or other similar body;

(4) the rule and regulation to be filed is accompanied by a copy of the economic impact statement as provided by K.S.A. 77-416, and amendments thereto; and

(5) the rule and regulation to be filed is accompanied by a copy of the environmental benefit statement required by K.S.A. 77-416, and amendments thereto, if applicable.

History: L. 1965, ch. 506, § 6; L. 1972, ch. 354, § 1; L. 1977, ch. 321, § 6; L. 1979, ch. 304, § 3; L. 1980, ch. 304, § 3; L. 1982, ch. 386, § 3; L. 1983, ch. 307, § 3; L. 1985, ch. 307, § 1; L. 1988, ch. 366, § 33; L. 1995, ch. 171, § 3; L. 2010, ch. 95, § 8; July 1.

77-420a. Adoption of rules and regulations. No rule and regulation shall be adopted prior to the effective date of the statute authorizing its adoption, but prior to the effective date of such statute, the proposed rule and regulation may be submitted to the secretary of administration and to the attorney general for approval as required by K.S.A. 77-420, and amendments thereto, and notice of the proposed rule and regulation may be given and a hearing held thereon in the manner provided by K.S.A. 77-421, and amendments thereto.

History: L. 1998, ch. 82, § 4; L. 2001, ch. 11, § 1; July 1.

77-421. Notice and hearing; adoption procedure; new rulemaking, when required. (a) (1) Except as provided by subsection (a)(2), subsection (a)(3) or subsection (a)(4), prior to the adoption of any permanent rule and regulation or any temporary rule and regulation which is required to be adopted as a temporary rule and regulation in order to comply with the requirements of the statute authorizing the same and after any such rule and regulation has been approved by the secretary of administration and the attorney general, the adopting state agency shall give at least 60 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations established by K.S.A. 77-436, and amendments thereto. The notice shall be provided to the secretary of state and to the chairperson, vice chairperson, ranking minority member of the joint committee and legislative research department and shall be published in the Kansas register. A complete copy of all proposed rules and regulations and the complete economic impact statement required by K.S.A.

77-416, and amendments thereto, shall accompany the notice sent to the secretary of state. The notice shall contain:

(A) A summary of the substance of the proposed rules and regulations;

(B) a summary of the economic impact statement indicating the estimated economic impact on governmental agencies or units, persons subject to the proposed rules and regulations and the general public;

(C) a summary of the environmental benefit statement, if applicable, indicating the need for the proposed rules and regulations;

(D) the address where a complete copy of the proposed rules and regulations, the complete economic impact statement, the environmental benefit statement, if applicable, required by K.S.A. 77-416, and amendments thereto, may be obtained;

(E) the time and place of the public hearing to be held; the manner in which interested parties may present their views; and

(F) a specific statement that the period of 60 days' notice constitutes a public comment period for the purpose of receiving written public comments on the proposed rules and regulations and the address where such comments may be submitted to the state agency. Publication of such notice in the Kansas register shall constitute notice to all parties affected by the rules and regulations.

(2) Prior to adopting any rule and regulation which establishes seasons and fixes bag, creel, possession, size or length limits for the taking or possession of wildlife and after such rule and regulation has been approved by the secretary of administration and the attorney general, the secretary of wildlife, parks and tourism shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(3) Prior to adopting any rule and regulation which establishes any permanent prior authorization on a prescription-only drug pursuant to K.S.A. 39-7,120, and amendments thereto, or which concerns coverage or reimbursement for pharmaceuticals under the pharmacy program of the state medicaid plan, and after such rule and regulation has been approved by the secretary of administration and the attorney general, the secretary of health and environment shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

(4) Prior to adopting any rule and regulation pursuant to subsection (c), the state agency shall give at least 60 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of notice constitutes a public comment period on such rules and regulations.

(b) (1) On the date of the hearing, all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing. At the time it adopts or amends a rule and regulation, the state agency shall prepare a

concise statement of the principal reasons for adopting the rule and regulation or amendment thereto, including:

(A) The agency's reasons for not accepting substantial arguments made in testimony and comments; and

(B) the reasons for any substantial change between the text of the proposed adopted or amended rule and regulation contained in the published notice of the proposed adoption or amendment of the rule and regulation and the text of the rule and regulation as finally adopted.

(2) Whenever a state agency is required by any other statute to give notice and hold a hearing before adopting, amending, reviving or revoking a rule and regulation, the state agency, in lieu of following the requirements or statutory procedure set out in such other law, may give notice and hold hearings on proposed rules and regulations in the manner prescribed by this section.

(3) Notwithstanding the other provisions of this section, the secretary of corrections may give notice or an opportunity to be heard to any inmate in the custody of the secretary with regard to the adoption of any rule and regulation.

(c) (1) The agency shall initiate new rulemaking proceedings under this act, if a state agency proposes to adopt a final rule and regulation that:

(A) Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and

(B) is not a logical outgrowth of the rule and regulation as originally proposed.

(2) For the purposes of this provision, a rule and regulation is not the logical outgrowth of the rule and regulation as originally proposed if a person affected by the final rule and regulation was not put on notice that such person's interests were affected in the rule making.

(d) When, pursuant to this or any other statute, a state agency holds a hearing on the adoption of a proposed rule and regulation, the agency shall cause written minutes or other records, including a record maintained on sound recording tape or on any electronically accessed media or any combination of written or electronically accessed media records of the hearing to be made. If the proposed rule and regulation is adopted and becomes effective, the state agency shall maintain, for not less than three years after its effective date, such minutes or other records, together with any recording, transcript or other record made of the hearing and a list of all persons who appeared at the hearing and who they represented, any written testimony presented at the hearing and any written comments submitted during the public comment period.

(e) No rule and regulation shall be adopted by a board, commission, authority or other similar body except at a meeting which is open to the public and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted by a board, commission, authority or other similar body unless it receives approval by roll call vote of a majority of the total membership thereof.

History: L. 1965, ch. 506, § 7; L. 1967, ch. 485, § 1; L. 1972, ch. 354, § 2; L. 1976, ch. 415, § 2; L. 1977, ch. 321, § 7; L. 1978, ch. 120, § 25; L. 1980, ch. 304, § 4; L. 1981, ch. 324, § 33; L. 1982, ch. 386, § 4; L. 1983, ch. 307, § 4; L. 1987, ch. 362, § 1; L. 1988, ch. 366, § 34; L. 1995, ch. 171, § 4; L. 1998, ch. 82, § 1; L. 2002, ch. 180, § 9; L. 2010, ch. 95, § 9; L. 2011, ch. 14, § 2; L. 2012, ch.16, § 38; L. 2012, ch. 166, § 21; July 1.

77-421b. Proposed rules and regulations; copy for joint committee. As soon as possible after the filing of any proposed rules and regulations by a state agency as required by subsection (a) of K.S.A. 77-421, and amendments thereto, the secretary of state shall submit to the joint committee on administrative rules and regulations one copy of the proposed rules and

regulations. Upon completion of the sixty-day comment period required by K.S.A. 77-421, and amendments thereto, the secretary of state may discard copies of the proposed rules and regulations that are subject to the comment period.

History: L. 1995, ch. 93, § 2; July 1.

77-422. Temporary rules and regulations; requirements and grounds for adoption; numbering; effective date; expiration. (a) A rule and regulation may be adopted by a state agency as a temporary rule and regulation if the state agency and the state rules and regulations board finds that the preservation of the public peace, health, safety or welfare necessitates or makes desirable putting such rule and regulation into effect prior to the time it could be put into effect if the agency were to comply with the notice, hearing and publication requirements of this act or prior to the effective date prescribed by K.S.A. 77-426, and amendments thereto.

(b) Temporary rules and regulations may be adopted without the giving of notice and the holding of a hearing thereon.

(c) (1) A temporary rule and regulation shall take effect:

(A) After approval by the secretary of administration and the attorney general as provided by K.S.A. 77-420, and amendments thereto;

(B) after approval by the state rules and regulations board as provided by K.S.A. 77-423, and amendments thereto; and

(C) upon filing with the secretary of state.

(2) The effective date of all or specific parts of a temporary rule and regulation may be delayed to a date later than its filing date if the delayed effective date of such rule and regulation, or specific parts thereof, is clearly expressed in the body of such rule and regulation.

(3) A temporary rule and regulation shall be effective for a period not to exceed 120 days except that, for good cause, a state agency may request that a temporary rule and regulation may be renewed one time for an additional period not to exceed 120 days.

(d) A temporary rule and regulation which amends an existing rule and regulation shall have the effect of suspending the force and effect of the existing rule and regulation until such time as the temporary rule and regulation is no longer effective. In such case, at the time the temporary rule and regulation ceases to be effective, the existing permanent rule and regulation which was amended by the temporary rule and regulation shall be in full force and effect unless such existing rule and regulation is otherwise amended, revoked or suspended as provided by law.

(e) Temporary rules and regulations shall be numbered in accordance with the numbering arrangement approved by the secretary of state and otherwise shall conform to the approval, adoption and filing requirements of this act, insofar as the same can be made applicable.

History: L. 1965, ch. 506, § 8; L. 1974, ch. 421, § 1; L. 1975, ch. 484, § 2; L. 1975, ch. 485, § 2; L. 1975, ch. 486, § 2; L. 1976, ch. 415, § 3; L. 1977, ch. 321, § 8; L. 1980, ch. 304, § 5; L. 1981, ch. 366, § 2; L. 1981, ch. 324, § 34; L. 1985, ch. 307, § 2; L. 1986, ch. 361, § 1; L. 1988, ch. 366, § 35; L. 1998, ch. 82, § 2; L. 2010, ch. 95, § 11; July 1.

77-423. State board; creation; membership; powers and duties. There is hereby created a state rules and regulations board consisting of the attorney general or the attorney general's designee, the secretary of state or the secretary of state's designee, the secretary of administration or the secretary of administration's designee, the chairperson of the joint committee on administrative rules and regulations or a member of the joint committee designated by the chairperson from the same house of the legislature as the chairperson and the vice-chairperson of

the joint committee on administrative rules and regulations or a member of the joint committee designated by the vice-chairperson from the same house of the legislature as the vice-chairperson. If a member is designated to serve on the board by the chairperson or vice-chairperson of the joint committee, the designated member shall serve in lieu of the designating officer on a temporary or permanent basis as specified by the designating officer. The attorney general shall be the chairperson of the board. The secretary of state shall serve as the secretary to the board. The state rules and regulations board shall determine whether a rule and regulation should be adopted as a temporary rule and regulation, shall determine the rules and regulations to be published in the Kansas administrative regulations and in the annual supplement to such regulations as provided for in this act and shall perform such other duties as may be required by this act.

History: L. 1965, ch. 506, § 9; L. 1975, ch. 484, § 3; L. 1975, ch. 485, § 3; L. 1975, ch. 486, § 3; L. 1977, ch. 321, § 9; L. 1979, ch. 304, § 4; L. 1981, ch. 366, § 3; L. 1988, ch. 366, § 36; L. 2010, ch. 95, § 12; July 1.

77-424. State rules and regulations board to determine which rules and regulations published in Kansas administrative regulations or annual supplement; reference to rules and regulations not published. The state rules and regulations board shall meet as soon as possible after January 1 each year to determine which rules and regulations filed during the preceding calendar year are to be published in the Kansas administrative regulations or annual supplement thereto. For the purpose of avoiding unwarranted expense, the board may authorize and direct the secretary of state to withhold publication of any technical rule and regulation of any state agency where such rules and regulations are of limited public interest and are or will be available in published form. In every such case where the rules and regulations are not published in the Kansas administrative regulations or annual supplement, reference shall be made by the secretary of state to the rules and regulations omitted therefrom, and shall state how such rules and regulations may be obtained and that the rules and regulations so omitted are on file in the office of the secretary of state.

History: L. 1965, ch. 506, § 10; L. 1975, ch. 484, § 5; L. 1975, ch. 485, § 5; L. 1975, ch. 486, § 5; L. 1976, ch. 415, § 4; L. 1977, ch. 321, § 10; L. 1982, ch. 386, § 6; L. 1983, ch. 307, § 6; L. 1988, ch. 366, § 37; L. 2006, ch. 55, § 1; L. 2010, ch. 95, § 13; July 1.

77-425. Effective date of permanent rules and regulations; effect of filing and publication; effect of revocation. Every rule and regulation other than a temporary rule and regulation which is filed by a state agency in the office of the secretary of state as provided in this act shall have the force and effect of law on and after the date prescribed in K.S.A. 77-426, and amendments thereto, until amended or revoked as provided by law and such amendment or revocation shall have become effective. Any rule and regulation not filed and published as required by this act shall be of no force or effect, except that any error or irregularity in form or any clerical error or omission of the secretary of state in the filing of such regulation not affecting substantial rights shall not invalidate the same. The filing and publication of rules and regulations as required by this act shall not be construed as dispensing with the requirements of any other law necessary to make the rules and regulations effective. The revocation of a rule and regulation by a state agency shall not be construed as reviving a rule and regulation previously revoked by such agency, nor shall such revocation by a state agency be construed as affecting

any right which accrued, any duty imposed, any penalty incurred, nor any proceeding commenced, under or by virtue of the rule and regulation revoked.

History: L. 1965, ch. 506, § 11; L. 1974, ch. 421, § 2; L. 1976, ch. 415, § 5; L. 1977, ch. 321, § 11; L. 1985, ch. 307, § 3; L. 1988, ch. 366, § 38; June 1.

77-426. Existing rules and regulations continued in effect; effective date of permanent rules and regulations; filing with joint legislative committee; legislature may request revocation or amendment of rules and regulations. (a) All rules and regulations which are in force and effect at the time this act takes effect shall continue in full force and effect and may be amended, revived or revoked as provided by law. All new rules and regulations and all amendments, revivals or revocations of rules and regulations, other than temporary regulations, adopted in any year shall be filed with the secretary of state and shall become effective 15 days following its publication in the Kansas register or such later date as clearly expressed in the body of such rule and regulation.

(b) As soon as possible after the filing of any rules and regulations by a state agency, the secretary of state shall submit to the joint committee on administrative rules and regulations such number of copies as may be requested by the joint committee on administrative rules and regulations.

(c) At any time prior to adjournment sine die of the regular session of the legislature, the legislature may adopt a concurrent resolution expressing the concern of the legislature with any permanent or temporary rule and regulation which is in force and effect and on file in the office of the secretary of state and any permanent rule and regulation filed in the office of the secretary of state during the preceding year and requesting the revocation of any such rule and regulation or the amendment of any such rule and regulation in the manner specified in such resolution.

History: L. 1965, ch. 506, § 12; L. 1974, ch. 421, § 3; L. 1975, ch. 484, § 4; L. 1975, ch. 485, § 4; L. 1975, ch. 486, § 4; L. 1976, ch. 415, § 6; L. 1976, ch. 416, § 1; L. 1977, ch. 321, § 12; L. 1979, ch. 305, § 1; L. 1979, ch. 304, § 5; L. 1982, ch. 386, § 7; L. 1985, ch. 307, § 4; L. 1988, ch. 366, § 39; L. 1995, ch. 93, § 3; July 1.

77-428. Annual supplements; publication; contents; authentication. (a) At the beginning of each calendar year the secretary of state, as soon as possible, shall assemble all rules and regulations, except temporary rules and regulations, filed during the preceding year in accordance with the provisions of this act. The state rules and regulations board shall determine which of such rules and regulations are to be published in the Kansas administrative regulations or annual supplement as provided in this act.

(b) Annual supplements shall be cumulative and shall include all rules and regulations published in the annual supplement in the next preceding year which remain in force and effect on the effective date of the current supplement, together with all rules and regulations, other than temporary rules and regulations, which were regularly adopted and filed in the office of the secretary of state in the year next preceding the year when such annual supplement is published and which were approved for publication by the state rules and regulations board.

(c) The secretary of state shall prepare annual supplements to the rules and regulations and material to be published therewith, in the form determined by the secretary of state. The annual supplement of rules and regulations shall be published and shall include a general index of all rules and regulations contained therein and such notes, cross references and explanatory materials as will facilitate the use of such supplements. Authentication of all supplement

volumes shall be in the manner provided in K.S.A. 77-429, and amendments thereto. The director of printing shall print the number of copies requisitioned by the secretary of state.

History: L. 1965, ch. 506, § 14; L. 1974, ch. 421, § 4; L. 1975, ch. 484, § 6; L. 1975, ch. 485, § 6; L. 1975, ch. 486, § 6; L. 1976, ch. 417, § 1; L. 1976, ch. 415, § 7; L. 1976, ch. 418, § 2; L. 1977, ch. 321, § 14; L. 1978, ch. 387, § 2; L. 1980, ch. 304, § 6; L. 1983, ch. 307, § 7; L. 1988, ch. 366, § 40; L. 2010, ch. 95, § 14; July 1.

77-429. Authentications; rules and regulation database; secretary of state duties. (a) Before the Kansas administrative regulations or the annual supplement thereto shall be published by the secretary of state, they shall be examined and compared by the attorney general and the secretary of state, and if they contain all rules and regulations approved for publication by the board, and otherwise comply with the terms of this act, they shall so certify and after such authentication they shall be deemed and held to be "Kansas administrative regulations" and evidence in all courts having jurisdiction in the state; and such authentication shall accompany each electronic or printed copy of Kansas administrative regulations and annual supplement thereto.

(b) (1) The secretary of state shall prepare a searchable database containing all of the Kansas administrative regulations, including any supplements, published pursuant to this section by July 1, 2012, if practicable. The database shall be constructed in such a manner that any person accessing or using such database shall be able to search for any rule and regulation based upon the number or subject matter of the rule and regulation or by keyword search. The initial search shall return a list of all rules and regulations which contain the initial search term.

(2) Using any rule and regulation containing the initial search term as an entry point into the database, the database shall permit the person using such database to:

(A) View all occurrences of the search term in the rule and regulation retrieved; and

(B) using the initially retrieved rule and regulation as an entry point into the database's hierarchy, navigate to each rule and regulation which follows or precedes the initial rule and regulation.

History: L. 1965, ch. 506, § 15; L. 1977, ch. 321, § 16; L. 2010, ch. 95, § 15; July 1.

77-430. Kansas administrative regulations; publication, distribution and sale; sale price fixed by secretary of state; disposition of receipts. (a) The secretary of state shall publish the Kansas administrative regulations in an electronic or paper medium. The secretary of state shall make the Kansas administrative regulations available by request to the following:

(1) The supreme court law library and the state library.

(2) The law schools and law libraries of the university of Kansas and Washburn university.

(3) Each member of the legislature at the time of taking office, after election or appointment, for the member's first term of office as a member of either house of the legislature which commences on or after the second Monday of January in 1991, except that a term of office as a member of either house of the legislature, whether a complete or partial term of office, shall not be construed for purposes of this distribution to be the member's first term of office if such term of office is part of a continuous period of service as a member of either house of the legislature or both houses of the legislature, in any combination of consecutive terms of office;

(4) each member of the joint committee on administrative rules and regulations;

(5) the governor, lieutenant governor, attorney general and state historical society library;

(6) the judicial branch of state government;

(7) each county law library;
(8) the city library in each city of the first and second class;
(9) each county library;
(10) the office of revisor of statutes;
(11) the legislative research department;
(12) the division of post audit; and
(13) the division of legislative administrative services.

(b) The Kansas administrative regulations may be purchased in complete sets or in single volumes. Single volumes of the Kansas administrative regulations shall be sold by the secretary of state at the per volume price fixed by the secretary of state under this section. Complete sets of the Kansas administrative regulations shall be sold by the secretary of state at the per set price fixed therefor by the secretary of state under this section.

(c) All moneys received from such sales shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the information and services fee fund of the secretary of state.

(d) The secretary of state shall fix by rules and regulations the per volume and complete set prices of the Kansas administrative regulations sold under this section to recover the costs of publishing such volumes, whether in printed or electronic form. The secretary of state shall revise such prices from time to time for the purposes of covering and recovering such costs.

History: L. 1965, ch. 506, § 16; L. 1974, ch. 135, § 19; L. 1975, ch. 488, § 1; L. 1976, ch. 415, § 8; L. 1976, ch. 418, § 3; L. 1976, ch. 416, § 2; L. 1980, ch. 304, § 7; L. 1983, ch. 307, § 8; L. 1988, ch. 367, § 1; L. 1990, ch. 339, § 7; L. 2001, ch. 5, § 439; L. 2006, ch. 15, § 3; L. 2010, ch. 95, § 16; July 1.

77-430a. Kansas administrative regulations; replacement volumes; publication, distribution and sale. (a) The secretary of state shall edit and prepare for publication volumes of rules and regulations which replace existing volumes of the Kansas administrative regulations within the limitations of available appropriations therefor. Replacement volumes shall be published in the same format and in accordance with the same specifications used in the volume replaced and shall be authenticated as required by K.S.A. 77-429, and amendments thereto. Replacement volumes of the Kansas administrative regulations shall be published by the secretary of state who shall distribute and sell such replacement volumes in the same manner as provided in K.S.A. 77-430, and amendments thereto, for the distribution and sale of other volumes of the Kansas administrative regulations, except that each member of the senate or house of representatives shall receive, upon request, one copy of each replacement volume for the purpose of updating the set of the Kansas administrative regulations received at the time of taking office for the member's first term of office as a member of either house of the legislature as provided in K.S.A. 77-430, and amendments thereto.

(b) Moneys received from the sale of replacement volumes under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the information and services fee fund of the secretary of state.

(c) The secretary of state shall fix by rules and regulations the per volume price, or the complete set price if more than one replacement volume is published, of any replacement volume

of the Kansas administrative regulations sold under this section to recover the costs of publishing such volumes, whether in printed or electronic form. The secretary of state shall revise such prices from time to time for the purposes of covering and recovering such costs.

History: L. 1976, ch. 418, § 6; L. 1983, ch. 307, § 9; L. 1988, ch. 366, § 41; L. 1990, ch. 339, § 8; L. 2010, ch. 95, § 17; July 1.

77-431. Annual supplements to Kansas administrative regulations; publication, distribution and sale; sale price fixed by secretary of state; disposition of receipts. (a) The secretary of state shall publish and make available the annual supplements to the Kansas administrative regulations. The secretary of state shall transmit the same number of copies of each annual supplement in the same manner as provided in subsection (a) of K.S.A. 77-430, and amendments thereto, for distribution of Kansas administrative regulations, except that each member of the senate or house of representatives shall receive, upon request, one copy of each annual supplement for the purpose of updating the set of the Kansas administrative regulations received at the time of taking office for the member's first term of office as a member of either house of the legislature as provided in K.S.A. 77-430, and amendments thereto.

The secretary of state may publish the supplements to the Kansas administrative regulations in an electronic or paper medium.

(b) Moneys received from the sale of supplements under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the information and services fee fund of the secretary of state.

(c) The secretary of state shall fix by rules and regulations the per volume price, or the complete set price if more than one volume is published, for each annual supplement to the Kansas administrative regulations sold under this section to recover the costs of publishing, whether published in an electronic or paper medium. The secretary of state shall revise such prices from time to time for the purposes of covering and recovering such costs.

History: L. 1965, ch. 506, § 17; L. 1976, ch. 415, § 9; L. 1976, ch. 418, § 4; L. 1978, ch. 387, § 3; L. 1983, ch. 307, § 10; L. 1990, ch. 339, § 9; L. 2001, ch. 5, § 440; L. 2006, ch. 15, § 4; L. 2010, ch. 95, § 18; July 1.

77-432a. Disposition of obsolete volumes and supplements. Whenever the secretary of state determines that any volume of Kansas administrative regulations or any annual supplement to the Kansas administrative regulations has become obsolete by reason of the publication of a later volume or annual supplement, the secretary of state may provide for the disposition of the remaining copies of such obsolete volumes or supplement volumes by whatever means the secretary determines, without making a charge therefor.

History: L. 1978, ch. 387, § 4; L. 1983, ch. 307, § 11; L. 1988, ch. 366, § 42; June 1.

77-433. Duplication and distribution of regulations by agency, when. This act shall not be construed as prohibiting the duplication or distribution of rules and regulations by any agency of its properly adopted rules and regulations, if filed as provided by law, and funds are available for such purpose.

History: L. 1965, ch. 506, § 19; L. 1977, ch. 321, § 17; July 1.

77-435. Editing of rules and regulations by secretary of state. In publishing the material in the Kansas administrative regulations and latest supplements thereto, the secretary of state shall not alter the sense, meaning or effect of any rule and regulation but may correct manifest orthographical, clerical or typographical errors and may edit the rules and regulations in the following manner:

(a) By changing descriptive-subject-word headings of sections, subsections or subparts of a rule and regulation in order to briefly and clearly indicate the subject matter of such sections.

(b) Where a pronoun of only masculine or only feminine gender appears a pronoun of the opposite gender may be added, or language may be changed for the same purpose, so long as the opening limitation of this section is not violated.

(c) By striking the word "that" wherever it appears as the first word of any section in the Kansas administrative regulations or the latest supplement thereto.

(d) By correcting doublets.

The secretary of state may submit to the state rules and regulations board, for the board's approval, any proposed changes made pursuant to the provisions of this section. No change made pursuant to the provisions of this section shall effect any change in the substantive meaning of the rule and regulation section, and any error made by the secretary of state in editing the rules and regulations as authorized by this section shall be construed as a clerical error only.

History: L. 1977, ch. 321, § 15; L. 1988, ch. 366, § 43; L. 1998, ch. 82, § 3; L. 2010, ch. 95, § 19; July 1.

77-436. Joint committee on administrative rules and regulations; creation, membership and chairperson; meetings and quorum; duties; compensation and expense allowances. (a) There is hereby established a joint committee on administrative rules and regulations which shall consist of five senators and seven members of the house of representatives. The five senator members shall be appointed as follows: Three by the committee on organization, calendar and rules and two by the minority leader of the senate. The seven representative members shall be appointed as follows: Four by the speaker of the house of representatives and three by the minority leader of the house of representatives. The committee on organization, calendar and rules shall designate a senator member to be chairperson or vice-chairperson of the joint committee as provided in this section. The speaker of the house of representatives shall designate a representative member to be chairperson or vice-chairperson of the joint committee as provided in this section.

(b) A quorum of the joint committee on administrative rules and regulations shall be seven. All actions of the committee may be taken by a majority of those present when there is a quorum. In odd-numbered years the chairperson of the joint committee shall be the designated member of the house of representatives from the convening of the regular session in that year until the convening of the regular session in the next ensuing year. In even-numbered years the chairperson of the joint committee shall be the designated member of the senate from the convening of the regular session of that year until the convening of the regular session of the next ensuing year. The vice-chairperson shall exercise all of the powers of the chairperson in the absence of the chairperson.

(c) All proposed rules and regulations shall be reviewed by the joint committee on administrative rules and regulations during the public comment period required by K.S.A. 77-421, and amendments thereto. The committee may introduce such legislation as it deems necessary in performing its functions of reviewing administrative rules and regulations.

(d) All rules and regulations filed each year in the office of secretary of state shall be subject to review by the joint committee. The committee may introduce such legislation as it deems necessary in performing its functions of reviewing administrative rules and regulations.

(e) The joint committee shall meet on call of the chairperson as authorized by the legislative coordinating council. All such meetings shall be held in Topeka, unless authorized to be held in a different place by the legislative coordinating council. Members of the joint committee shall receive compensation and travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212, and amendments thereto, when attending meetings of such committee authorized by the legislative coordinating council.

(f) Amounts paid under authority of this section shall be paid from appropriations for legislative expense and vouchers therefor shall be prepared by the director of legislative administrative services and approved by the chairperson or vice-chairperson of the legislative coordinating council.

History: L. 1977, ch. 321, § 19; L. 1980, ch. 304, § 8; L. 1981, ch. 366, § 4; L. 1983, ch. 307, § 5; L. 1988, ch. 368, § 1; L. 1988, ch. 366, § 44; L. 1995, ch. 93, § 4; L. 2010, ch. 95, § 20; L. 2011, ch. 14, § 3; July 1.

77-437. Rules and regulations of the secretary of corrections and Kansas adult authority subject to provisions of the rules and regulations filing act. All temporary and permanent rules and regulations of the secretary of corrections and the Kansas adult authority shall be subject to all of the provisions of K.S.A. 77-415 to 77-436, inclusive, and amendments thereto.

History: L. 1978, ch. 120, § 23; L. 1982, ch. 386, § 8; April 29.

77-438. Guidance documents. (a) (1) A state agency may issue a guidance document without following the procedures set forth in this act for the adoption of rules and regulations.

(2) For the purposes of this section, “guidance document” means a record of general applicability that:

(A) Is designated by a state agency as a guidance document;

(B) lacks the force of law; and

(C) states:

(i) The agency’s current approach to, or interpretation of, law; or

(ii) general statements of policy that describe how and when the agency will exercise discretionary functions.

(b) A guidance document may contain binding instructions to state agency staff members except officers who preside in adjudicatory proceedings.

(c) If a state agency proposes to act in an adjudication at variance with a position expressed in a guidance document, the state agency shall provide a reasonable explanation for the variance. If an affected person in an adjudication claims to have reasonably relied on the agency’s position, the state agency’s explanation for the variance shall include a reasonable justification for the agency’s conclusion that the need for the variance outweighs the affected person’s reliance interests.

(d) Each state agency shall:

(1) Maintain an index of all of its currently effective guidance documents;

(2) publish the index on its website;

(3) make all guidance documents available to the public; and

(4) file the index in the manner prescribed by the secretary of state.

(e) A guidance document may be considered by a presiding officer or agency head in an agency adjudication but such guidance document shall not bind any party, the presiding officer or the agency head.

(f) Any agency that issues a guidance document shall provide a copy of such document to the joint committee on administrative rules and regulations. Such document may be submitted electronically.

History: L. 1982, ch. 386, § 9; L. 2011, ch. 14, § 4; July 1.