

Kansas Department of Health And Environment
Bureau of Waste Management Policy 2010-P1

related to

Compliance Assistance Visits

Effective May 13, 2010

editorial changes made February 18, 2013

Purpose

This policy establishes the intent to enhance staff efforts related to compliance assistance and an opportunity for facilities to participate in a Compliance Assistance Visit (CAV) program. This program is designed to provide technical assistance to hazardous waste generators to help them achieve and maintain compliance with applicable hazardous waste regulations.

Background

The Kansas Department of Health and Environment (KDHE) has the authority under Kansas Administrative Regulation (K.A.R.) 28-31-12 and Kansas Statutes Annotated (K.S.A.) 65-3431 to conduct compliance inspections at any premises that has a potential to generate, store, treat, or dispose of hazardous wastes. KDHE develops a schedule of routine inspections to be conducted each year and also conducts inspections as part of complaint investigations. Both routine and complaint inspections are unannounced and can result in violations and potential enforcement actions (including penalties).

KDHE is also directed and authorized by statute to “provide technical assistance, including the training of personnel, to industry, local units of government and the hazardous waste management industry to meet the requirements of [the hazardous waste management] act” (K.S.A. 65-3431(f)).

KDHE has historically emphasized traditional compliance inspections and associated enforcement as warranted by observed violations. Some “technical assistance” has been provided as part of those inspections to guide facilities into compliance and some additional technical assistance has been provided through special training sessions and workshops. Although some limited compliance visits have occurred in the past, primarily for specific industry sectors, this new initiative will shift some staff efforts away from traditional inspections to “Compliance Assistance Visits” (CAV). Even if interest in this new program is high, compliance and enforcement staff will still continue to spend over 50 percent of their time on traditional inspections and enforcement.

Eligibility

The department’s technical assistance efforts are being enhanced under this new CAV program to help facilities achieve and maintain compliance with hazardous waste regulations. This is a voluntary program which will benefit participating facilities in multiple ways:

- Facilities can receive free technical assistance regarding applicable regulations.
- Facilities can identify areas of non-compliance without being subject to traditional enforcement, including monetary penalties (some exceptions for major violations are explained in the attached CAV agreement).

- New environmental staff at facilities can receive help as they assume new compliance responsibilities.
- New management can determine the current state of compliance of their facility.
- Facilities, where no violations or only minor violations are identified and corrected, will be exempt from routinely scheduled traditional hazardous waste inspections for a minimum of two years.

In order to be eligible for a CAV, a facility must meet the following criteria:

1. The facility is a generator of hazardous waste in Kansas.
2. No state or federal Resource Conservation and Recovery Act (RCRA) hazardous waste inspections have been conducted at the facility within the last 5 years. Alternatively, a company that has been inspected in the last 5 years can demonstrate that they have had a change in management or environmental compliance staff.
3. The facility has not had enforcement actions with the Bureau of Waste Management for the past 10 years or the facility can demonstrate that it has had a change in management or environmental compliance staff after that enforcement action.
4. A CAV has not been previously conducted at this facility or any other facility owned or operated by the same company in Kansas.

How to participate in a CAV

In order to receive a CAV, a facility must

1. Apply to KDHE using our website or paper forms that can be obtained by contacting the KDHE Bureau of Waste Management (see pg 3 of the attached CAV agreement form);
2. Be accepted into the program based upon the eligibility criteria explained above; and
3. Sign the CAV agreement that requires the facility to correct any identified discrepancies.

KDHE and facility responsibilities are described in the attached CAV agreement form.

Conclusion

This policy explains KDHE's intent to enhance technical assistance efforts through a new initiative to conduct Compliance Assistance Visits (CAVs). It also establishes eligibility criteria and procedures acceptance into the program. Participation in the CAV program is voluntary but the ability of KDHE to conduct all requested CAVs depends upon the number of requests and other staff duties. The final decision regarding the selection of facilities to receive CAVs is at the discretion of KDHE. This policy provides guidance to KDHE staff in the Bureaus of Waste Management and Environmental Field Services and to potential applicants to the CAV Program. It does not create any binding conditions upon KDHE and is not enforceable by the applicants to the program or other members of the public. Participation does not preclude KDHE from taking enforcement actions as necessary to protect human health and the environment.



William L. Bider
Director, Bureau of Waste Management

May 13, 2010

Hazardous Waste COMPLIANCE ASSISTANCE VISIT AGREEMENT

In accordance with BWM Policy 2010-P1, this signed agreement documents the intent of the Kansas Department of Health and Environment (KDHE) to perform a Compliance Assistance Visit (CAV) at the designated facility based upon a voluntary request made by the facility. Both KDHE and the regulated facility agree to the terms contained herein.

KDHE Responsibilities:

Discrepancies found by KDHE during a CAV will not be considered violations, will not be recorded as violations in the federal RCRAInfo database (or public partners of that database) and will not be used as “counts” on any future enforcement actions. KDHE will take no enforcement action against a company admitted to this program for discrepancies discovered as a result of a CAV. This agreement applies only to discrepancies discovered as part of a CAV and does not apply to any other investigations or inspections.

If egregious or criminal acts are discovered during a CAV, KDHE will not be prohibited from taking necessary actions to protect human health and the environment, including, but not limited to, penalties (only for the egregious or criminal acts), ordering corrective actions, and referral to the U.S. Environmental Protection Agency (EPA) Criminal Investigation Division (CID) or local authorities for criminal investigation. Examples of “egregious or criminal acts” are the unlawful disposal of hazardous waste in a manner that causes environmental harm or impacts to human health and falsifying records or reports.

After a facility is accepted into the program and a signed agreement is in place, KDHE will adhere to the following procedures:

1. A KDHE inspector will contact the facility and schedule the CAV. This will be done at least 2 weeks prior to the CAV being conducted.
2. The KDHE inspector may send forms to the facility contact prior to the CAV. Completing these forms prior to the CAV will be vital to ensure that the CAV can be completed in a timely manner.
3. The KDHE inspector will conduct a detailed CAV, including the following:
 - a. a discussion of waste streams generated at the facility and processes used at the facility;
 - b. a visual inspection of the entire facility (inside and outside) focusing on waste management areas; and
 - c. a review of all required records.
 - d. a closeout meeting at the conclusion of the CAV during which the inspector explains the preliminary findings and answers questions.
4. A final list of discrepancies and findings will be sent to the facility within 30 days and will include a copy of the inspector’s summary report documenting the CAV. This report will be a part of KDHE’s file and will become a public record.
5. The KDHE inspector will establish a schedule for the facility to correct the identified discrepancies to achieve compliance.
6. After the facility has corrected all discrepancies, the inspector will send the facility confirmation that all discrepancies have been corrected, and KDHE will terminate the agreement.
7. During the entire process, KDHE will provide the facility with all available information to achieve and maintain compliance.

Facility Responsibilities

The facility agrees to:

1. Allow KDHE to conduct a CAV during normal business hours. The CAV may take multiple days depending on the size of the facility.
2. Complete all forms sent to the facility by the inspector before the CAV to the best of their ability.
3. Provide a minimum of one facility contact that will accompany KDHE during the entire CAV, and provide access to additional employees as necessary to complete a detailed CAV.
4. Provide copies of all required documents for KDHE’s review, and provide photocopies of necessary documents for the inspector to take with them for future reference.
5. Allow the inspector to take photographs (unless safety requirements prohibit this) at the facility to document discrepancies or to illustrate situations for future use.
6. Have all appropriate management personnel participate in the meeting at the conclusion of the CAV so that employees are aware that management supports and encourages the facility’s compliance efforts.
7. Correct all discrepancies found during the CAV within the time frames established by the KDHE inspector. All discrepancies must be corrected and compliance achieved to KDHE’s satisfaction within the timeframes established in the CAV inspection report in order to terminate the agreement. If a discrepancy cannot be corrected within the established time frame, the facility is responsible for contacting the KDHE inspector to obtain an extension. An alternate schedule may be approved by KDHE based upon justifiable circumstances explained by the facility as part of the request for extension.
8. Apply the knowledge learned from this facility CAV to all other facilities owned or managed by the company within Kansas.

Signatures

By signing this agreement, both the facility and KDHE specifically and expressly agree and acknowledge that this Agreement is entered into freely and voluntarily for the purposes of achieving and maintaining compliance with the hazardous waste regulations of the State of Kansas.

Agreement entered into this _____ day of _____, 20_____.

Company Representative:

Printed Name	Printed Title
Date of Signature	Signature

KDHE Representative:

Printed Name	Printed Title
Date of Signature	Signature

Contact Information

Company Information:

Company Name: _____

Physical Address: _____

Mailing Address: _____

EPA ID Number: _____

Generator Status (if known): _____

Contact Name (for scheduling CAV): _____

Contact Phone Number: _____

Contact e-mail address: _____

KDHE Information:

Brian Burbeck, Unit Chief
Compliance Assistance and Enforcement Section
KDHE Bureau of Waste Management
1000 SW Jackson, Suite 320
Topeka, KS 66612-1366
785-296-1613
bburbeck@kdheks.gov