

Part 256 Evaluation of the Kansas SWMP

EPA has completed its review of Kansas's Solid Waste Management Plan (SWMP) to determine if the SWMP complies with the 40 CFR part 256 (part 256) requirements for developing and revising state solid waste management plans. Because Kansas is planning to adopt by reference the federal minimum requirements in 40 CFR part 257, EPA did not conduct a side-by-side comparison of their coal combustion residuals (CCR) technical requirements with the federal CCR regulations. Until the process to adopt specific CCR regulations is completed, Kansas will implement the CCR rule through existing laws, regulations, and permitting authorities.

This document is a side-by-side comparison of the part 256 requirements for SWMPs (in the left hand column) and what Kansas has provided in its SWMP to show how they meet those requirements (in the right hand column). Kansas submitted its draft SWMP (dated 6/30/15) to EPA for a preliminary review. The right hand column (in black text) shows what the draft SWMP included to address the corresponding requirements in the left hand column. EPA reviewed the draft SWMP and provided comments back to Kansas on 8/6/15. Those comments and suggestions are noted in the right hand column in red text. Kansas revised its SWMP and submitted a proposed SWMP dated 8/24/15 for EPA review. Kansas then held a public comment period that ended on 9/28/15 with a public hearing. The blue text in the right hand column reflects how Kansas incorporated EPA’s comments and those comments received through the public participation process. Kansas made a few additional revisions to its SWMP and these are noted at the end of this document. The final SWMP, dated 9/29/15 was submitted to EPA for review and conditionally approved (subject to Kansas completing the process to adopt specific CCR regulations) on 10/19/15.

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<b>Subpart A—Purpose, General Requirements, Definitions</b>	
<b>§ 256.01 Purpose and scope of the guidelines</b>	
<p>(b) These guidelines address the minimum requirements for approval of State plans as set forth in section 4003 of the Act. These are:</p> <p>(1) The plan shall identify, in accordance with section 4006(b), (i) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (ii) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (iii) the means for coordinating regional planning and implementation under the State plan.</p> <p>(2) The plan shall, in accordance with section 4005(c), prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (i) utilized for resource recovery or (ii) disposed of in sanitary landfills (within the meaning of section 4004(a)) or otherwise disposed of in an environmentally sound manner.</p>	<p><b>NON-CCR and CCR</b></p> <p>These provisions are addressed under other sections of 256:</p> <ul style="list-style-type: none"> <li>• (b)(1): see 256.10</li> <li>• (b)(2): see 256.20 and 256.30</li> <li>• (b)(3): see 256.</li> <li>• (b)(4): see 256.21</li> <li>• (b)(5): see 256.30</li> <li>• (b)(6): see 256.30</li> <li>• (c): see 256.26</li> </ul>

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<p>(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 4005.</p> <p>(4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.</p> <p>(5) The plan shall provide that no local government within the State shall be prohibited under State or local law from entering into long-term contracts for the supply of solid waste to resource recovery facilities.</p> <p>(6) The plan shall provide for resource conservation or recovery and for the disposal of solid waste in sanitary landfills or for any combination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.</p> <p>(c) These guidelines address the requirement of section 4005(c) that a State plan:            Shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule of compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed five years from the date of publication of the inventory).</p>	
<b>§ 256.02 Scope of the state solid waste management plan.</b>	
<p>(a)(1) The State plan shall address all solid waste in the State that poses potential adverse effects on health or the environment or provides opportunity for resource conservation or resource recovery. The plan shall consider:</p> <ul style="list-style-type: none"> <li>(i) Hazardous wastes;</li> <li>(ii) Residential, commercial and institutional solid waste;</li> <li>(iii) Wastewater treatment sludge;</li> <li>(iv) Pollution control residuals;</li> <li>(v) Industrial wastes;</li> <li>(vi) Mining wastes;</li> <li>(vii) Agricultural wastes;</li> <li>(viii) Water treatment sludge; and</li> <li>(ix) Septic tank pumpings.</li> </ul> <p>(2) The State plan shall consider the following aspects of solid waste management:</p> <ul style="list-style-type: none"> <li>(i) Resource conservation;</li> <li>(ii) Source separation;</li> <li>(iii) Collection;</li> <li>(iv) Transportation;</li> <li>(v) Storage;</li> <li>(vi) Transfer;</li> <li>(vii) Processing (including resource recovery);</li> <li>(viii) Treatment; and</li> <li>(ix) Disposal.</li> </ul>	<p><b>NON-CCR and CCR:</b></p> <p>(a)(1): page 5, specific waste streams are not listed, however definition of solid waste in 65-3402(a), page A-1 covers all wastes listed in 256.02, except hazardous waste. KS is authorized by EPA to implement the RCRA hazardous waste programs and is approved for their MSWLF permitting program.</p> <p>(a)(2): page 5, KSA 65-3402(b), (c), and (d) define solid waste management system, processing facility, and disposal area, indicating that the aspects of solid waste management listed in 256 are covered within KS' overall solid waste management program.</p>
<p>(b) The State Plan shall establish and justify priorities and timing for actions. These priorities shall be based on the current level</p>	<p><b>NON-CCR:</b></p>

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<p>of solid waste management planning and implementation within the State, the extent of the solid waste management problem, the health, environmental and economic impacts of the problem, and the resources and management approaches available.</p>	<p>Page 3 provides overview of the comprehensive solid waste program that has been developed over the last several decades. KS' current authorities, solid waste plan, and report to legislature demonstrate that their system is set up to identify and address priorities. EPA suggests that KS provide a link to their 2010 state-wide plan, which they use as their actual planning tool. KS' comprehensive 2010 plan could be used to demonstrate compliance with this requirement—i.e., the state's priorities and timing of actions.</p> <p>A link to the 2010 plan was provided in the text on page 2 as follows: <i>The sustainability-focused plan will be called the "State of Kansas Comprehensive Solid Waste Management Plan"; this plan can be found on the Kansas Department of Health &amp; Environment (KDHE) Bureau of Waste Management web site at <a href="http://www.kdheks.gov/waste/">www.kdheks.gov/waste/</a>.</i></p> <p><b>CCR:</b> The specific timing of actions related to CCR rule development and implementation is addressed on pages 2, 10 and 13</p>
<p>(c) The State plan shall set forth an orderly and manageable process for achieving the objectives of the Act and meeting the requirements of these guidelines. This process shall describe as specifically as possible the activities to be undertaken, including detailed schedules and milestones.</p>	<p><b>NON-CCR</b></p> <p>The process KS uses for overall state-wide and county level planning, as well as regulatory and enforcement efforts is described generally in the plan. Specific activities are not addressed, because the initial planning has already been achieved. Schedules and milestones exist in the overall program. EPA suggests that KS provide a link to their 2010 state-wide plan, which they use as their actual planning tool. KS' comprehensive 2010 plan can be used to demonstrate specific activities, schedules and milestones.</p> <p>A link to the 2010 plan was provided in the text on page 2 as follows: <i>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 <a href="http://www.kdheks.gov/waste/">www.kdheks.gov/waste/</a>.</i></p> <p><b>CCR</b></p> <p>Process is described in terms of incorporating the 257 subpart D requirements into permits and then incorporating the rule by reference into KS' rules. The specific regulation development steps are described on page 14.</p>
<p>(d) The State plan shall cover a minimum of a five year time period from the date submitted to EPA for approval.</p>	<p><b>NON-CCR</b></p> <p>Page 1 indicates that KS' planning cycle calls for updates to the state plan every five years. Page 4 indicates that county level planning requirements also require 5 year updates. So overall, KS has established a planning process that focuses on a five year time period.</p>

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	<p><b>CCR:</b></p> <p>Due to the immediate next steps related to EPA’s rule and the development of a new KS regulation, the “EPA” plan submittal focuses on 3 years. <i>EPA suggests that KS include a statement indicating that CCR units fall under the overall state solid waste planning cycles described under NON-CCR above and therefore, would be addressed in a 5 year timeframe.</i></p> <p><i>The text on page 2 was modified to read as follows: 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.</i></p>
(e) The State plan shall identify existing State legal authority for solid waste management and shall identify modifications to regulations necessary to meet the requirements of these guidelines.	<p><b>NON-CCR and CCR</b></p> <p>This is addressed in specific sections below related to legal authorities, regulatory authorities, and guideline requirements.</p>
<p><b>§ 256.03 State plan submission, adoption, and revision.</b></p>	
(a) To be considered for approval, the State plan shall be submitted to EPA within a reasonable time after final promulgation of these guidelines.	Not applicable
(b) Prior to submission to EPA, the plan shall be adopted by the State pursuant to State administrative procedures.	<p><b>NON-CCR and CCR</b></p> <p>On page 5, KS indicates that the statutory authority that directs the state to develop a plan does not specify administrative procedures to adopt the plan. KS lays out the procedure they will follow on page 5.</p>
(c) The plan shall be developed in accord with public participation procedures required by Subpart G of this part.	See 256.60
<p>(d) The plan shall contain procedures for revision. The State plan shall be revised by the State, after notice and public hearings, when the Administrator, by regulation, or the State determines, that:</p> <p>(1) The State plan is not in compliance with the requirements of these guidelines;</p> <p>(2) Information has become available which demonstrates the inadequacy of the plan; or</p> <p>(3) Such revision is otherwise necessary.</p>	<p><b>NON-CCR and CCR</b></p> <p>On page 2, KS indicates they will review the plan every three years to determine the need for revision or re-adoption. <i>EPA suggests that KS add a short description of the procedures they would follow to revise the plan (or provide reference if these procedures are in the appendix).</i></p> <p><i>The following text was added to page 2: 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.</i></p>
(e) The State plan shall be reviewed by the State and, where necessary, revised and readopted not less frequently than every three years.	<p><b>NON-CCR and CCR</b></p> <p>On page 2, KS indicates they will review the plan every three years to determine the need for revision or re-adoption.</p>
(f) States which are developing a complete State plan may submit the portion of the plan designed to satisfy the requirements of § 256.26 prior to submission of the complete plan.	Not applicable
<p><b>§ 256.04 State plan approval, financial assistance.</b></p>	
(a) The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the	EPA requirements

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<p>plan. The Administrator shall approve a plan if he determines that:</p> <p>(1) It meets the requirements of these guidelines which address sections 4003(1), (2), (3), and (5), and</p> <p>(2) It contains provisions for revision pursuant to § 256.03.</p>	
<p>(b) The Administrator shall review approved plans from time to time, and if he determines that revisions or corrections are necessary to bring such plan into compliance with all of the requirements of these guidelines, including the requirements which address sections 4003(4) and (6) and any new or revised requirement established by amendment to this part, he shall notify the State and provide an opportunity for such revisions and corrections and for an appeal and public hearing. If the plan continues to remain out of compliance, he shall withdraw his approval of such plan.</p>	EPA requirements
<p>(c) Such withdrawal of approval shall cease to be effective upon the Administrator's determination that the State plan complies with the requirements of these guidelines.</p>	EPA requirements
<p>(d) The Administrator shall approve a State application for financial assistance under subtitle D of the Act, and make grants to such State, if the Administrator determines that the State plan continues to be eligible for approval and is being implemented by the State.</p>	EPA requirements
<p>(e) Upon withdrawal of approval of a State plan, the Administrator shall withhold Federal financial and technical assistance under subtitle D (other than such technical assistance as may be necessary to assist in obtaining reinstatement of approval) until such time as approval is reinstated. (Procedures for termination of financial assistance and for settlement of disputes are contained in 40 CFR part 30, appendix A, articles 7 and 8.)</p>	EPA requirements
<p>(f) If a State submits to EPA the portion of the plan by which entities may, pursuant to § 256.26, obtain timetables or schedules of compliance for complying with the open dumping prohibition, the Administrator shall approve such portion of the plan if he determines that:</p> <p>(1) The portion submitted satisfies the requirements of § 256.26;</p> <p>(2) The State has the general legal authority to issue and enforce compliance schedules; and</p> <p>(3) The remainder of the plan is being developed in conformity with these guidelines and will be completed within a reasonable period of time. In giving partial plan approval, the Administrator shall specify in writing the timetable for completion of the final plan as required in paragraph (f)(3) of this section.)</p>	Not applicable
<p><b>§ 256.05 Annual work program</b></p>	Not applicable
<p><b>§ 256.06 Definitions</b></p>	
<p><b>Subpart B—Identification of Responsibilities; Distribution of Funding</b></p>	
<p><b>§ 256.10 Requirements</b></p> <p>(a) In accordance with sections 4003(1) and 4006 and the interim guidelines for identification of regions and agencies for solid waste management (40 CFR part 255), the State plan shall provide for:</p> <p>(1) The identification of the responsibilities of State and substate (regional, local and interstate)</p>	<p><b>NON CCR and CCR</b></p> <p>(a)(1): page 6 and Appendix pages: page A-7, A-16, A-17 for state responsibilities, A- 4, A-14, A-23 for local/county responsibilities.</p> <p>(a)(3): page 6 and KSA 65-3405, page A-4 describes the requirements for planning at the local level, includes info</p>

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<p>authorities in the development and implementation of the State plan;</p> <p>(2) The means of distribution of Federal funds to the authorities responsible for development and implementation of the State plan; and</p> <p>(3) The means for coordinating substate planning and implementation.</p> <p>(b) Responsibilities shall be identified for the classification of disposal facilities for the inventory of open dumps.</p> <p>(c) Responsibilities shall be identified for development and implementation of the State regulatory program described in subpart C of this part.</p> <p>(d) Responsibilities shall be identified for the development and implementation of the State resource conservation and resource recovery program described in subpart D of this part.</p> <p>(e) State, substate and private sector responsibilities shall be identified for the planning and implementation of solid and hazardous waste management facilities and services.</p> <p>(f) Financial assistance under sections 4008(a)(1) and (2) shall be allocated by the State to State and substate authorities carrying out development and implementation of the State plan. Such allocation shall be based on the responsibilities of the respective parties as determined under section 4006(b).</p>	<p>on regional planning and who can/should be involved in the process.</p> <p>(b): Per the responsibilities outlined above in (a)(1), Regulatory development and permitting responsibility resides with the state agency – this is how open dumps are defined in the state -- disposal areas operating without a permit.</p> <p>(c): Per the responsibilities outlined above in (a)(1), the state agency is responsible for developing appropriate regulations.</p> <p>(d): Per the overall state policy (see A-1), the state encourages waste reduction and recycling. Per KSA 65-3405 (A-4), the county/local level is responsible for planning for solid waste management, including waste reduction/recovery. Per KSA 65-3415 (A-17), the state provides funding to support local-level efforts on resource recovery and KSA 65-3405 (A-4).</p> <p>(e): State and local responsibilities are described for solid waste (see 256.01(b)(1) description). Policy (see A-1) indicates the involvement of private enterprises. Page 9 provides information on utilities for CCR units.</p> <p>(f): not applicable</p>
<b>Subpart C—Solid Waste Disposal Programs</b>	
<b>§ 256.20 Requirements for State legal authority.</b>	
<p>In order to comply with sections 4003 (2) and (3), the State plan shall assure that the State has adequate legal authority to prohibit the establishment of new open dumps and to close or upgrade existing open dumps. The prohibition of the establishment of new open dumps shall take effect no later than six months after the date of promulgation of the criteria or on the date of approval of the State plan, whichever is later.</p>	<p><b>NON-CCR</b></p> <p>Page 6, plus A-7, A-9, and A-13. KS indicates the prohibition against open dumps went into effect decades ago.</p> <p><b>CCR</b></p> <p>Overall legal authority is same as for NON-CCR, but these are stated again on page 8. Also on 8, KS describes legal authority to incorporate the federal CCR requirements into the existing CCR permits even before KS has incorporated the requirements into their own state rules. In this way, KS proposed to ensure that all CCR facilities have a permit to ensure compliance with the federal criteria by the effective dates (stated on page 10).</p>
<b>§ 256.21 Requirements for State regulatory powers.</b>	
<p>In order to comply with section 4003(4), the State plan shall provide for the establishment of State regulatory powers. These powers:</p> <p>(a) Shall be adequate to enforce solid waste disposal standards which are equivalent to or more stringent than the criteria for classification of solid waste disposal facilities (40 CFR part 257). Such authority shall be as definitive as possible and clearly establish the means for compliance.</p>	<p><b>NON-CCR</b></p> <p>(a): page 6 and associated appendix pages (all have been referenced under other provisions).</p> <p>(b): Page 6 provides specific inspection, monitoring authorities which are included in the appendix.</p> <p>(c): pages 4 and 6 address permitting authority; appropriate sections are included in the appendix</p>

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<p>(b) Shall include surveillance capabilities necessary to detect adverse environmental effects from solid waste disposal facilities. Such capabilities shall include access for inspection and monitoring by regulatory officials and the authority to establish operator monitoring and reporting requirements.</p> <p>(c) Shall make use of a permit program which ensures that the establishment of new open dumps is prohibited.</p> <p>(d) Shall have administrative and judicial enforcement capabilities, including enforceable orders, fines or other administrative procedures, as necessary to ensure compliance.</p>	<p>(d): enforcement authorities are listed and included in the appendix.</p> <p><b>CCR</b></p> <p>(a): Page 13 indicates KS plans to incorporate the federal criteria for CCR units by reference, although they indicate some modifications of terms may be necessary. EPA suggests that KS indicate more specifically what terms will be modified. Definition of terms in the federal rule (e.g., for beneficial use) are critical for determining applicability of the rule. Final KS CCR rules must be consistent with and as stringent as the federal criteria. EPA suggests establishing an approach for working with EPA to ensure any changes are consistent with the federal criteria.</p> <p>The modifications that are necessary for adoption will be non-substantive, and similar to those made in Kansas' adoption of the federal hazardous waste regulations; the 2013 authorization of the hazardous waste regulations found these modifications did not make Kansas regulations less stringent than the federal regulations. Kansas will follow guidelines provided in the EPA document "Guidelines for State Adoption of Federal RCRA Regulations by Reference."</p> <p>For example, page 9 of the guidance states: <i>States should substitute their own statutes for the Federal terms "Resource Conservation and Recovery Act", "RCRA", "Subtitle C of RCRA", "RCRA Subtitle C", or "Subtitle C", when referring either to an operating permit or to the Federal hazardous waste program as a whole (i.e., not a specific provision of RCRA)...</i></p> <p>So where 40 CFR 257.98(d) states: "All CCR that are managed pursuant to a remedy required under § 257.97, or an interim measure required under paragraph (a)(3) of this section, shall be managed in a manner that complies with all applicable RCRA requirements," Kansas replaced "RCRA requirements" with "Kansas solid and hazardous waste program requirements."</p> <p>Also, the state cannot adopt explanatory or non-regulatory language, e.g. the purpose statement in 40 CFR 257.50(a). Kansas will not adopt 40 CFR 257.51, because this will not be the effective date of our regulation.</p> <p>Kansas will work with EPA while drafting the regulations to ensure that modifications do not make the State regulations less stringent than the federal regulations. The text on page 15 (previously page 13) was modified to read as follows:</p> <p><i>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</i></p>



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	<p><i>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.</i></p> <p>(a) – (d): The authorities are generally the same as the non-CCR authorities, but pages 8 - 10 cover the authorities again in terms of how they apply to CCR units. Special permitting provision that can be used to incorporate federal criteria into current permits before KS has adopted the regulations is described on pages 8 and 9. On page 10, KS indicates permits will be modified to include provisions in the CCR rule that have deadlines in 2015 and 2016. <i>EPA suggests that KS also address if/when the CCR unit permits will be modified to incorporate provisions with later compliance dates, since the plan must cover a 5 year period.</i></p> <p><i>The following text was added to page 13 (previously page 11):</i>  <i>Facility permits will continue to be updated as necessary to ensure compliance with requirements of the CCR rule that have deadlines after 2016.</i></p> <p><i>On page 12, the first statement under Compliance Assessments and Enforcement strategy should be clarified to indicate that not only landfill permit conditions, but also solid waste processing facility permit conditions (i.e., surface impoundments) authorize KDHE to enforce the standards in the federal rule.</i></p> <p><i>The term “landfill permit conditions” (now on page 14) was replaced with “permit conditions” because these permits will encompass both disposal areas and surface impoundments.</i></p>
<p><b>§ 256.23 Requirements for closing or upgrading open dumps.</b></p>	
<p>In meeting the requirement of section 4003(3) for closing or upgrading open dumps:</p> <p>(a) The State plan shall provide for the classification of existing solid waste disposal facilities according to the criteria. This classification shall be submitted to EPA, and facilities classified as open dumps shall be published in the inventory of open dumps.</p> <p>(b) The State plan shall provide for an orderly time-phasing of the disposal facility classifications described in paragraph (a) of this section. The determination of priorities for the classification of disposal facilities shall be based upon:</p> <p>(1) The potential health and environmental impact of the solid waste disposal facility;</p> <p>(2) The availability of State regulatory and enforcement powers; and</p> <p>(3) The availability of Federal and State resources for this purpose.</p> <p>(c) For each facility classified as an open dump the State shall take steps to close or upgrade the facility. Evidence of that</p>	<p><b>NON CCR</b></p> <p>(a) Because the implementation of their solid waste program has been underway for decades and the classification and permitting of facilities has already happened, KS indicates on page 5 that there are no open dumps in KS in 2015 and therefore they do not need to publish an open dump inventory.</p> <p>(b): Not applicable – no open dumps to prioritize.</p> <p>(c): Currently no existing open dumps to upgrade or close. KS indicates that if an open dump is found, they can use their enforcement authorities to upgrade or close.</p> <p>(d): page 5 – KSA 65-3411 provides authority for requiring corrective measures if an open dump is found and it presents any hazard to the environment or public health.</p> <p><b>CCR</b></p>



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<p>action shall be incorporated by reference into the annual work program and be made publicly available. When the State's actions concerning open dumps are modified, the changes shall be referenced in subsequent annual work programs.</p> <p>(d) In providing for the closure of open dumps the State shall take steps necessary to eliminate health hazards and minimize potential health hazards. These steps shall include requirements for long-term monitoring or contingency plans where necessary.</p>	<p>(a): page 9 identifies the facilities that are addressed by the new 257 criteria and page 10 provides a short term approach to incorporating 257 requirements that would be new to these units (i.e., beyond current state requirements). KS indicates that their approach will result in none of the facilities being open dumps.</p> <p>(b): no open dumps. On page 10, KS indicates there is no need to set priorities for addressing the facilities</p> <p>(c): same as under NON-CCR</p> <p>(d): same as under NON-CCR</p>
<p><b>§ 256.26 Requirement for schedules leading to compliance with the prohibition of open dumping.</b></p>	
<p>In implementing the section 4005(c) prohibition on open dumping, the State plan shall provide that any entity which demonstrates that it has considered other public or private alternatives to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, may obtain a timetable or schedule for compliance which specifies a schedule of remedial measures, and an enforceable sequence of actions, leading to compliance within a reasonable time (not to exceed 5 years from the date of publication of the inventory).</p>	<p><b>NON CCR</b></p> <p>Because KS's solid waste program has been in place for decades, there are no open dumps to apply this type of compliance schedule to. However, their compliance/enforcement program does provide a process for addressing non-compliance issues at permitted sites and any new open dumps that are found.</p> <p><b>CCR</b></p> <p>Although KS is not expecting any of their current CCR landfills and Surface Impoundments to be out of compliance with the federal criteria, EPA suggests they address the approach they will follow if they are requested by a utility to extend any of the compliance dates in the federal rule within the first 5 years after promulgation. With an approved plan, KS will be able to extend dates, but must consider the following:</p> <ul style="list-style-type: none"> <li>• Whether other disposal units can be used</li> <li>• Whether the facility has made a good faith effort to meet compliance deadline</li> <li>• Whether there are factors beyond the facility's control that have made it unable to meet the compliance deadlines</li> <li>• Documentation from the facility supporting their claims and/or the results of an independent investigation</li> <li>• 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.</li> </ul> <p>Any approval of a compliance schedule would need to identify the specific activities that remain to be completed, along with clear and enforceable deadlines for each. See p 21,342-21,343 of the final rule preamble for further guidance.</p> <p>The following section was added to page 12 (previously page 10) after the section on "Priority Facilities."</p> <p><b>Compliance Schedules</b></p>

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	<p><i>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 considering of the following:</i></p> <ul style="list-style-type: none"> <li>• Whether other disposal units can be used;</li> <li>• Whether the facility has made a good faith effort to meet compliance deadlines;</li> <li>• Whether there are factors beyond the facility’s control that have made it unable to meet the compliance deadlines;</li> <li>• Documentation from the facility supporting their claims and/or the results of an independent investigation;</li> <li>• 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.</li> </ul> <p><i>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.</i></p>
<b>Subpart D – Resource Conservation and Resource Recovery Programs</b>	
<p><b>§ 256.30 Requirements</b></p> <p>(a) In order to comply with sections 4003(2) and (6) as they pertain to resource conservation and recovery, the State plan shall provide for a policy and strategy for encouragement of resource recovery and conservation activities.</p> <p>(b) In order to comply with section 4003(5), the State plan shall provide that no local government within the State is prohibited under State or local law from entering into long-term contracts for the supply of solid waste to resource recovery facilities.</p>	<p><b>NON-CCR and CCR</b></p> <p>(a): See policy on page A-1, 65-3401(e). Other provisions such as the grant program to local governments and the requirements for local plans to address waste reduction and recycling meet this requirement.</p> <p>(b): page 5, A-14, A-21, A-23</p>
<b>Subpart E—Facility Planning and Implementation</b>	
<p><b>§ 256.40 Requirements</b></p> <p>In order to comply with section 4003(6), the State plan shall provide for adequate resource conservation, recovery, storage, treatment and disposal facilities and practices necessary to use or dispose of solid and hazardous waste in an environmentally sound manner.</p>	<p><b>NON –CCR</b></p> <p>Page 7 provides the authorities that address this provision</p> <p><b>CCR</b></p> <p>Same as NON-CCR</p>
<b>Subpart F – Coordination with Other Programs</b>	
<p><b>§ 256.50 Requirements.</b></p> <p>Section 4003(1) requires the State solid waste management plan to identify means for coordinating regional planning and implementation under the State plan. Section 1006 requires the Administrator to integrate all provisions of this Act (including approval of State plans) with other Acts that grant regulatory authority to the Administrator in order to prevent duplication of administrative and enforcement efforts. In order to meet these requirements:</p>	<p><b>NON-CCR and CCR</b></p> <p><i>Pages 7 and 13 provide information addressing coordination with other environmental programs and examples are provided. Page A-7, 65-3406, requires cooperation with federal state, interstate, and local governments. Administrative code 28-29-23 addresses requirements for disposal and processing units to comply with other air and water requirements. If available, EPA suggest KS add information on any</i></p>

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<p>(a) The State solid waste management plan shall be developed in coordination with Federal, State, and substate programs for air quality, water quality, water supply, waste water treatment, pesticides, ocean protection, toxic substances control, noise control, and radiation control.</p> <p>(b) The State plan shall provide for coordination with programs under section 208 of the Clean Water Act, as amended (33 U.S.C. 1288). In identifying agencies for solid waste management planning and implementation, the State shall review the solid waste management activities being conducted by water quality planning and management agencies designated under section 208 of the Clean Water Act. Where feasible, identification of such agencies should be considered during the identification of responsibilities under subpart B of this part. Where solid waste management and water quality agencies are separate entities, necessary coordination procedures shall be established.</p> <p>(c) The State plan shall provide for coordination with the National Pollutant Discharge Elimination System (NPDES) established under section 402 of the Clean Water Act, as amended (33 U.S.C. 1342). The issuance of State facility permits and actions taken to close or upgrade open dumps shall be timed, where practicable, to coordinate closely with the issuance of a new or revised NPDES permit for such facility.</p> <p>(d) The State plan shall provide for coordination with activities for municipal sewage sludge disposal and utilization conducted under the authority of section 405 of the Clean Water Act, as amended (33 U.S.C. 1345), and with the program for construction grants for publicly owned treatment works under section 201 of the Clean Water Act, as amended (33 U.S.C. 1281).</p> <p>(e) The State plan shall provide for coordination with State pretreatment activities under section 307 of the Clean Water Act, as amended (33 U.S.C. 1317).</p> <p>(f) The State plan shall provide for coordination with agencies conducting assessments of the impact of surface impoundments on underground sources of drinking water under the authority of section 1442(a)(8)(C) of the Safe Drinking Water Act (42 U.S.C. 300j-1).</p> <p>(g) The State plan shall provide for coordination with State underground injection control programs (40 CFR Parts 122, 123, 124, and 146) carried out under the authority of the Safe Drinking Water Act (42 U.S.C. 300f <i>et seq.</i>) and with the designation of sole source aquifers under section 1424 of that Act.</p> <p>(h) The State plan shall provide for coordination with State implementation plans developed under the Clean Air Act (42 U.S.C. 7401 <i>et seq.</i>; incineration and open burning limitations; and, State implementation plan requirements impacting resource recovery systems).</p> <p>(i) The State plan shall provide for coordination with the Army Corps of Engineers permit program (or authorized State program) under section 404 of the Clean Water Act, as amended (33 U.S.C. 1344) for dredge and fill activities in waters of the United States.</p> <p>(j) The State plan shall provide for coordination with the Office of Endangered Species, Department of the Interior, to ensure that solid waste management activities, especially the siting of</p>	<p><b>general provision that may be in statute or code that requires compliance with all federal rules.</b></p> <p>While Kansas does not have any statutory or regulatory provisions that specifically require compliance with all federal regulations, KS SWMP demonstrates that KS provides for adequate and appropriate coordination with other environmental programs.</p> <p>Based on a comment received during the public comment period, Kansas added the following paragraph to page 16:</p> <p><i>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.</i></p>

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<p>disposal facilities, do not jeopardize the continued existence of an endangered or threatened species nor result in the destruction or adverse modification of a critical habitat.</p> <p>(k) The State plan shall provide for coordination, where practicable, with programs under:</p> <p>(1) The Toxic Substances Control Act (15 U.S.C. 2601 <i>et seq.</i>; disposal of chemical substances and mixtures).</p> <p>(2) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 1362 <i>et seq.</i>; disposal and storage of pesticides and pesticide containers).</p> <p>(3) The Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1420 <i>et seq.</i>; disposal in ocean waters).</p> <p>(l) The State plan shall provide for coordination, where practicable, with programs of other Federal agencies, including:</p> <p>(1) Department of the Interior.</p> <p>(i) Fish and Wildlife Service (wetlands),</p> <p>(ii) Bureau of Mines and Office of Surface Mining (mining waste disposal and use of sludge in reclamation),</p> <p>(iii) U.S. Geological Survey (wetlands, floodplains, ground water);</p> <p>(2) Department of Commerce, National Oceanic and Atmospheric Administration (coastal zone management plans);</p> <p>(3) Water Resources Council (floodplains, surface and ground waters);</p> <p>(4) Department of Agriculture, including Soil Conservation Service (land spreading solid waste on food chain croplands);</p> <p>(5) Federal Aviation Administration (locating disposal facilities on or near airport property);</p> <p>(6) Department of Housing and Urban Development (701 comprehensive planning program, flood plains mapping);</p> <p>(7) Department of Defense (development and implementation of State and substate plans with regard to resource recovery and solid waste disposal programs at various installations);</p> <p>(8) Department of Energy (State energy conservation plans under the Energy Policy and Conservation Act (42 U.S.C. 6321)); and</p> <p>(9) Other programs.</p> <p>(m) The State plan shall provide for coordination, where practicable, with solid waste management plans in neighboring States and with plans for Indian reservations in the State.</p>	
<p><b>Subpart G—Public Participation</b></p>	
<p><b>§ 256.60 Requirements for public participation in State and substate plans.</b></p>	
<p>(a) State and substate planning agencies shall:</p> <p>(1) Maintain a current list of agencies, organizations, and individuals affected by or interested in the plan, which shall include any parties that request to be on the list, the owner or operator of each facility classified as an open dump and any other parties which the State determines to be affected by or interested in the plan;</p> <p>(2) Provide depositories of relevant information in one or more convenient locations; and</p> <p>(3) Prepare a responsiveness summary, in accord with 40 CFR 25.8, where required by this subpart or by an approved public participation work plan, which describes matters on which the public was consulted, summarizes the public’s views, and sets forth the agency’s response to the public input.</p>	<p><b>NON-CCR and CCR</b></p> <p>This section is generally addressed on pages 5 and 7. Specific steps for engaging the public on this CCR plan are described. In addition, language in the 2010 plan indicates there is an established stakeholder and public participation processes for their overall solid waste plan development. <b>To more fully address the requirements of this provision, EPA suggests KS include a link to their comprehensive state solid waste website, which is a depository for relevant information.</b></p> <p>The following text was added to page 7 (previously page 6):</p> <p><i>Items noted above and other relevant information will be posted on the KDHE Bureau of Waste Management</i></p>

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<p>(b) State and substate planning agencies shall provide information and consult with the public on plan development and implementation. Provision of information and consultation shall occur both early in the planning process (including the preparation and distribution of a summary of the proposed plan) and on major policy decisions made during the course of plan development, revision and implementation. To meet this requirement, planning agencies shall:</p> <p>(1) Publicize information in news media having broad audiences in the geographic area;</p> <p>(2) Place information in depositories maintained under paragraph (a)(2) of this section;</p> <p>(3) Send information directly to agencies, organizations and individuals on the list maintained under paragraph (a)(1) of this section; and</p> <p>(4) Prepare and make available to the public a responsiveness summary in accord with 40 CFR 25.8.</p> <p>(c) State and substate planning agencies shall conduct public hearings (and public meetings, where the agency determines there is sufficient interest) in accord with 40 CFR 25.5 and 25.6. The purpose of the hearings and meetings is to solicit reactions and recommendations from interested or affected parties and to explain major issues within the proposed plan. Following the public hearings, a responsiveness summary shall be prepared and made available to the public in accord with 40 CFR 25.8.</p>	<p><i>comprehensive solid and hazardous waste web site: <a href="http://www.kdheks.gov/waste/">www.kdheks.gov/waste/</a>.</i></p> <p>EPA also suggests that KS describe how their newsletters or other relevant information is distributed, in order to clarify the maintenance of a stakeholder list.</p> <p>The following text was added to page 6 (previously page 5):</p> <ul style="list-style-type: none"> <li>• <i>Notification of anticipated adoption or revision distributed via the KDHE Bureau of Waste Management newsletter or other means;</i></li> </ul> <p>The following text was added to page 9 (previously page 7):</p> <p><i>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.</i></p> <p>EPA suggests Kansas provide some information on how they document public comments and their response to comments.</p> <p>The text on page 7 (previously page 6) was modified to read as follows:</p> <ul style="list-style-type: none"> <li>• <i>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;</i></li> </ul> <p>Finally, some information regarding the use of news media should be provided.</p> <p>The following text was added to page 7:</p> <p><i>KDHE will issue press releases, if it is deemed appropriate, to solicit comments and/or announce the adoption of plans.</i></p>
<p><b>§ 256.61 Requirements for public participation in the annual State workplan.</b></p>	<p>Not applicable</p>
<p><b>§ 256.62 Requirements for public participation in State regulatory development.</b></p>	<p><b>NON-CCR and CCR</b></p>
<p>(a) The State shall conduct public hearings (and public meetings where the State determines there is sufficient interest) on State legislation and regulations, in accord with the State administrative procedures act, to solicit reactions and recommendations. Following the public hearings, a responsiveness summary shall be prepared and made available to the public in accord with 40 CFR 25.8.</p> <p>(b) In advance of the hearings and meetings required by paragraph (a) of this section, the State shall prepare a fact sheet on proposed regulations or legislation, mail the fact sheet to agencies, organizations and individuals on the list maintained</p>	<p>(a): page 7: Public participation in regulation development is established through KSA 77-4415 through 77-438 (provided in appendix) and described more specifically on page 14, including a public hearing.</p> <p>EPA suggests KS provide information on how they document public comment on regulations and their responses to those comments.</p> <p>The text on page 17 (previously page 15) was modified to read as follows:</p> <ul style="list-style-type: none"> <li>• <i>Preparation and distribution of a responsiveness summary. The responsiveness summary contains all</i></li> </ul>

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<p>under § 256.60(a)(1) and place the fact sheet in the State information depositories maintained under § 256.60(a)(2).</p>	<p><i>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;</i></p> <p>(b): page 14: a summary of the proposed regulations is included in the Kansa Register. <b>EPA recommends KS provide additional information's as to how they notify the public and key stakeholders of new regulations beyond the KS Register publication.</b></p> <p>The text on page 17 (previously page 14) was modified to read as follows:</p> <ul style="list-style-type: none"> <li>• <i>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;</i></li> </ul> <p>The following text was deleted from page 17 (previously page 15):</p> <p><i>During the public comment period, the public hearing notice, proposed regulations, and Economic and Environmental Impact Statement are made available to all interested parties on the KDHE web site.</i></p> <p>The following text was added to page 17 and 18 (previously page 15):</p> <p><i>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, though one or more of the following, as appropriate:</i></p> <ul style="list-style-type: none"> <li>• The KDHE Division of Environment Regulatory Agenda, which is posted on the KDHE web site at <a href="http://www.kdheks.gov/befs">www.kdheks.gov/befs</a>;</li> <li>• The KDHE Bureau of Waste Management newsletter;</li> <li>• Letters and emails to stakeholders; and</li> <li>• Stakeholder meetings.</li> </ul>
<p><b>§ 256.63 Requirements for public participation in the permitting of facilities.</b></p>	
<p>(a) Before approving a permit application (or renewal of a permit) for a resource recovery or solid waste disposal facility the State shall hold a public hearing to solicit public reaction and recommendations on the proposed permit application if the State determines there is a significant degree of public interest in the proposed permit.</p> <p>(b) This hearing shall be held in accord with 40 CFR 25.5.</p>	<p><b>NON-CCR and CCR</b></p> <p>Page 14 describes the public participation process for new and significantly modified permits (KAR 28-29-6a), which includes public notice and hearing process for all solid waste facilities. <b>EPA suggests KS indicate if the same process is used for permit renewals, and if not, indicate what public participation process is used for renewals.</b></p> <p>The following text was added to page 16 (previously page 14):</p> <p><i>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</i></p>



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	<p><i>an administrative process, only requiring submission of the following:</i></p> <ul style="list-style-type: none"> <li>• The renewal fee, if applicable;</li> <li>• Proof of liability insurance;</li> <li>• Current closure and post-closure care cost estimates; and</li> <li>• Proof of financial assurance for closure and post-closure care.</li> </ul>
<p><b>§ 256.64 Requirements for public participation in the open dump inventory.</b></p>	
<p>(a) The State shall provide an opportunity for public participation prior to submission of any classification of a facility as an open dump to the Federal Government. The State shall accomplish this by providing notice as specified in § 256.64(b) or by using other State administrative procedures which provide equivalent public participation.</p> <p>(b) The State may satisfy the requirement of § 256.64(a) by providing written notice of the availability of the results of its classifications to all parties on the list required under § 256.60(a)(1) at least 30 days before initial submission of these classifications to the Federal Government. For those parties on the list required under § 256.60(a)(1) who are owners or operators of facilities classified as open dumps, such notice shall indicate that the facility has been so classified.</p>	<p><b>NON-CCR and CCR</b></p> <p>KS provided information related to their compliance and enforcement procedures for facilities that violate permit requirements. These procedures describe how the state identifies new open dumps and how they work with a facility to bring them into compliance. <i>EPA suggests that KS reference any public notification that occurs as part of their compliance and enforcement procedures for the purpose of this provision.</i></p> <p>The following text was added to page 9 (previously page 7):</p> <p><i>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.</i></p> <p>The new section on Compliance Schedules that has been added to page 12 includes the following language:  <i>Any approved compliance schedule would identify the specific activities that remain to be completed, along with clear and enforceable deadlines</i></p>

**Additional Changes made by Kansas as a result of EPA’s comments, the public comment period and public hearing**

1. The following language was added to section 3 on page 6 (previously page 5) of Kansas’s CCR Part 256 Plan:  
*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.*
  
2. Based on EPA’s letter dated August 6, 2015, the text on page 7 of Kansas’s CCR Part 256 Plan, (previously page 5) will be modified to read as follows:



- *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;*
3. Based on a comment received during the public comment period, Kansas agreed to add the phrase “as in effect on the date this plan was prepared” on pages 4, 13, 14, and 17 of Kansas’s CCR Part 256 Plan.

**KEY**

Black – References information and pages in the draft SWMP (dated 6/30/15)

Red – EPA’s comments (dated 8/6/15) on the draft SWMP

Blue – References information and pages in the final SWMP (dated 9/29/15)