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STATE OF KANSAS

Department of Health and Environment

Notice of Public Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Air, will conduct a public hearing at 10 a.m. Thursday, October 13, 2016, in the Azure Conference Room, fourth floor, Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed amended air quality regulations K.A.R. 28-19-11, 28-19-300 and 28-19-304. Upon adoption of these proposed amended regulations, KDHE will submit these regulations to the U.S. Environmental Protection Agency (USEPA) for approval into the State Implementation Plan (SIP).

A summary of the proposed regulations and the estimated economic impact follows.

Summary of Regulations:

**K.A.R. 28-19-11.** KDHE proposes to amend K.A.R. 28-19-11 to comply with the USEPA SIP call and avoid a Federal Implementation Plan if the state does not comply. Amendments remove the authority of KDHE to declare excess emissions from a startup, shutdown, malfunction or scheduled maintenance event “not a violation” of applicable emission limitations and standards.

**K.A.R. 28-19-300.** KDHE proposes to amend K.A.R. 28-19-300 to implement the revised National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter (PM<sub>2.5</sub>) and to clarify and refine applicability criteria for sources subject to the Kansas Minor New Source Review (NSR) permitting program.

**K.A.R. 28-19-304.** KDHE proposes to amend K.A.R. 28-19-304 to update the NSR preconstruction permitting program fee structure from an estimated capital cost mechanism to one based on complexity of source and permit type. Current preconstruction permitting fees were

established January 23, 1995, and have not been amended or evaluated since inception.

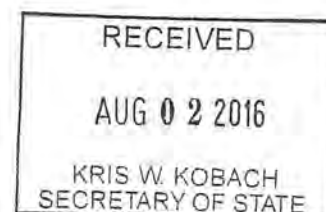
**Economic Impact:**

The proposed amendments impose no additional costs to the implementing agency, other governmental agencies, units, or the general public.

Costs to the regulated community and consumers: Sources required to obtain a minor NSR construction approval or permit will incur a cost ranging from \$750 for an approval or \$1,000 to \$4,000 for a permit depending on the source category. If the source is required to obtain a Prevention of Significant Deterioration or Nonattainment NSR permit they will incur a cost ranging from \$3,000 to \$18,000 depending on the complexity of the project and the requirement for refined modeling.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulations. All interested parties may submit written comments prior to 5 p.m. on the day of the hearing to Douglas Watson, Chief, Air Monitoring and Planning Section, Kansas Department of Health and Environment, Bureau of Air, 1000 S.W. Jackson, Suite 310, Topeka, 66612-1366, by email to [dwatson@kdheks.gov](mailto:dwatson@kdheks.gov), or by fax to (785) 296-7455. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulations as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulations and the corresponding regulatory impact statements may be obtained from the KDHE Bureau of Air at



<http://www.kdheks.gov/bar/planning/pnplanning.html> or by contacting Douglas Watson at [dwatson@kdheks.gov](mailto:dwatson@kdheks.gov), 785-296-0910 or fax 785-296-7455. Copies may also be viewed at the following locations:

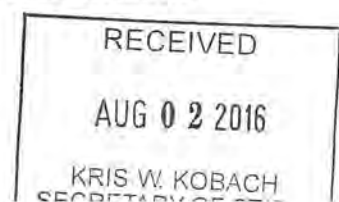
- Department of Air Quality, Unified Government of Wyandotte County - Kansas City, Kansas Health Department, 619 Ann Ave., Kansas City, Kansas
- Johnson County Environmental Department, 11811 S. Sunset, Suite 2700, Olathe
- Curtis State Office Building, 1000 S.W. Jackson St., Suite. 310, Topeka
- KDHE Northeast District Office, 800 W. 24th St., Lawrence
- KDHE Northwest District Office, 2301 E. 13th St., Hays
- KDHE North Central District Office, 2501 Market Place, Suite D, Salina
- KDHE South Central District Office, 130 S. Market, Suite 6050, Wichita
- KDHE Southeast District Office, 1500 W. 7th St., Chanute
- KDHE Southwest District Office, 302 W. McArtor Rd., Dodge City
- Wichita-Sedgwick County Dept. of Community Health, 1900 E. 9th St., Wichita

Questions pertaining to the proposed regulation should be directed to Douglas Watson at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the regulatory impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Douglas Watson.

Susan Mosier, M.D.

Secretary of Health and Environment



28-19-11. ~~Exceptions~~ Enforcement discretion due to ~~breakdowns~~ startup, shutdown, malfunctions, or scheduled maintenance. (a) ~~Abnormal operating conditions resulting~~ An emission source having emissions that are in excess of the applicable emission limitation and standard and result from malfunction breakdown startup, shutdown, malfunctions, and or necessary repairs to scheduled maintenance of control or processing equipment and appurtenances which cause emissions in excess of the limitations specified in the emission control regulations shall not be deemed violations provided that may be exempt from enforcement action at the secretary's discretion if both of the following conditions are met:

(1) The person responsible for the operation of the emission source notifies the department of the occurrence and nature of ~~such malfunctions, breakdown, or repairs~~ the excess emissions resulting from startup, shutdown, malfunctions, or scheduled maintenance, in writing, within ~~ten (10) days of noted occurrence~~ discovery of the excess emissions.

(2) ~~The number of occurrences of such breakdowns is not deemed excessive by the department and appropriate~~ Reasonable action is taken regarding the occurrence specified in paragraph (a)(1) to initiate and complete any necessary repairs and place the equipment back in operation as quickly as possible.

(b) Emissions that are in excess of the applicable emission source emission limitation and standard and result from startup, shutdown, or malfunctions shall be evaluated by the secretary for potential enforcement action based on the frequency and severity of the excess emissions.

(c) Emissions that are in excess of the limitations specified in these emission control regulations resulting the applicable emission source emission limitation and standard and result from scheduled maintenance of control or processing equipment and appurtenances will shall be

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permitted only on the basis of evaluated by the secretary for potential enforcement action based on the following:

(1) The severity of the excess emissions;

(2) any prior approval for scheduled maintenance by the department secretary; and

(3) upon demonstration that such the scheduled maintenance cannot be accomplished by maximum reasonable effort, including off-shift labor where required, during periods of shutdown of any related control or processing equipment.

~~(c) Excessive contaminant emission from fuel burning equipment used for indirect heating purposes resulting from fuel or load changes, start up, soot blowing, cleaning of fires, and rapping of precipitators will not be deemed violations provided that they do not exceed a period or periods aggregating more than five (5) minutes during any consecutive one (1) hour period. *Provided, however,* That where the operator of such equipment can demonstrate to the satisfaction of the department that any such specific operational procedures will require that the allowable time period for excessive emissions be extended beyond five (5) minutes during any one hour, the department may authorize, upon request of the operator, an adjusted time schedule for permitting such excessive emissions. Such authorization shall require that visible emissions not exceed an opacity of 60 percent; and shall specify an appropriate time and daily frequency schedule for such excessive emissions~~

(d) Any exemption granted under this regulation may be rescinded if the secretary obtains additional information and deems enforcement action necessary based upon this information.

(e) Lack of enforcement for excess emissions under this regulation shall not preclude the

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taking of enforcement action by USEPA or through private citizen lawsuits. (Authorized by K.S.A. 1974 2015 Supp. 65-3005; implementing K.S.A. 65-3006; and K.S.A. 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-74-7, Jan. 1, 1974; amended May 1, 1975; amended P- \_\_\_\_\_.)

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28-19-300. Construction permits and approvals; applicability. (a) ~~Any~~ Each person who proposes to construct or modify a stationary source or ~~emissions~~ emission unit shall obtain a construction permit before ~~commencing such~~ beginning actual construction or modification if at least one of the following conditions is met:

(1) The potential-to-emit of the proposed stationary source or ~~emissions~~ emission unit, or the increase in the potential-to-emit resulting from the modification, equals or exceeds any of the following:

(A) Either 25 tons ~~per year~~ of particulate matter per year or 15 tons ~~per year~~ of PM10 per year, except for any agricultural-related activity, in which case the emission level is shall be 100 tons ~~per year~~ of particulate matter per year, including ~~but not limited to~~ PM10;

(B) 40 tons ~~per year~~ of sulfur dioxide or sulfur trioxide, or a combination ~~thereof~~ of these, per year;

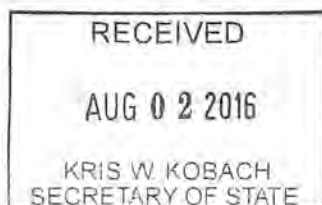
(C) 100 tons ~~per year~~ of carbon monoxide per year;

(D) 40 tons ~~per year~~ of volatile organic compounds per year;

(E) 40 tons ~~per year~~ of oxides of nitrogen per year; ~~or~~


(F) 0.6 tons ~~per year~~ of lead or lead ~~compound~~ compounds per year; or

(G) 10 tons of directly emitted PM2.5 per year. For the purposes of this paragraph, "PM2.5" shall mean particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.



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(2) For the purposes of this paragraph, the definitions in 40 C.F.R. part 63 adopted by reference in K.A.R. 28-19-750 shall apply. The ~~emissions unit or construction or modification~~ project is located at a stationary source ~~is an affected source~~; and involves any of the following:

(A) The construction of any new major source of hazardous air pollutants;

(B) the reconstruction of any existing major source of hazardous air pollutants;

(C) the modification of any existing area source of hazardous air pollutants such that the source becomes a major source; or

(D) any activity specified in 40 C.F.R. 63.5(b)(3).

(3) ~~the emissions unit or stationary source is a major source of hazardous air pollutants;~~ The source is requesting a federally enforceable operational restriction or permit condition pursuant to K.A.R. 28-19-302(b).

(4) The ~~emissions~~ emission unit or stationary source is an incinerator used to dispose of refuse by burning or pyrolysis or used for the processing of salvageable materials, except incinerators installed on residential premises that contain ~~less~~ fewer than six dwelling units and ~~that~~ are used to burn waste materials associated with normal habitation of those dwelling units; ~~or.~~

(5) The ~~emissions~~ emission unit or stationary source is required to apply for a construction approval pursuant to ~~K.A.R. 28-19-300(b)(2)~~ paragraph (b)(2), and the secretary ~~or an authorized representative of the secretary~~ determines that air emissions from the ~~emissions~~ emission unit or stationary source require that the permit issuance procedures be implemented.

(b) Any Each person who proposes to construct or modify a stationary source or

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~~emissions~~ emission unit who is not required to obtain a construction permit pursuant to ~~K.A.R. 28-19-300 subsection (a)~~; shall, before ~~commencing~~ beginning actual construction or modification of the stationary source or ~~emissions~~ emission unit, obtain an approval from the department to ~~commence such~~ begin actual construction or modification if at least one of the following conditions is met:

(1) The potential-to-emit of the proposed stationary source or ~~emissions~~ emission unit, or the increase in the potential-to-emit resulting from the modification, equals or exceeds one or more of the following:

(A) Either ~~5~~ five pounds ~~per hour~~ of particulate matter per hour or ~~2~~ two pounds ~~per hour~~ of PM10 per hour, except for any agricultural-related activity, in which case the emission level is ~~5~~ shall be five pounds ~~per hour~~ of particulate matter per hour, including ~~but not limited to~~ PM10;

(B) ~~2~~ two pounds ~~per hour~~ of sulfur dioxide or sulfur trioxide, or a combination ~~thereof~~ of these, per hour;

(C) 50 pounds ~~per 24-hour period~~ of carbon monoxide per 24-hour period;

(D) 50 pounds ~~per 24-hour period~~ of volatile organic compounds per 24-hour period, except when the stationary source or ~~emissions~~ emission unit is located in an area designated as a nonattainment area at in 40 CFR C.F.R. 81.317 as in effect on July 1, 1989, in which case approval is ~~shall be~~ required if the emission level exceeds either 15 pounds per 24-hour period or ~~3~~ three pounds per hour;

(E) 50 pounds ~~per 24-hour period~~ of oxides of nitrogen calculated as nitrogen dioxide per 24-hour period; or

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(F) 0.1 pounds ~~per hour~~ of lead or lead ~~compound~~; compounds per hour.

(2) The secretary ~~or an authorized representative of the secretary~~ determines that any other air contaminant emissions from the ~~emissions~~ emission unit or stationary source ~~may~~ could cause or contribute to air pollution within the state because of ~~its~~ the specific chemical or physical nature of the emissions or because of the quantity discharged ~~and if the department notifies the owner or operator of the emissions unit or stationary source of such determination prior to the commencement of the construction or modification of the emissions unit or stationary source;~~ .

(3) ~~the source is not otherwise required to obtain a construction permit pursuant to K.A.R. 28-19-30(a) but is subject to:~~

(A) ~~an emissions limitation or standard pursuant to~~ The construction or modification project is located at a stationary source for which a standard has been promulgated under 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720, new source performance standards, ~~except~~ and the project involves the construction of any new source or the modification or reconstruction of any existing source subject to the standard. For the purposes of this paragraph, the definitions in 40 C.F.R. part 60 adopted by reference in K.A.R. 28-19-720 shall apply. A construction approval shall not be required for construction, reconstruction, or modification projects subject to the standards of performance for new residential wood heaters, 40 CFR C.F.R. part 60, subpart AAA; .

(B) ~~(4) The construction or modification project is located at a stationary source for which a standard has been promulgated under 40 C.F.R. part 61, as adopted by reference in~~

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K.A.R. 28-19-735, ~~national emission standards for hazardous air pollutants, except the national emissions standard for asbestos, standard for demolition and renovation, and the project involves the construction of any new source or the modification of any existing source subject to the standard. For the purposes of this paragraph, the definitions in 40 C.F.R. part 61 adopted by reference in K.A.R. 28-19-735 shall apply. A construction approval shall not be required for construction or modification projects subject to 40 CFR C.F.R. 61.145; or~~

~~(C) (5) The construction or modification project is located at a stationary source for which a relevant standard has been promulgated under 40 C.F.R. part 63, as adopted by reference in K.A.R. 28-19-750 et seq., hazardous air pollutants and the project involves the construction of any new source or the reconstruction of any existing source subject to the relevant standard. For the purposes of this paragraph, the definitions in 40 C.F.R. part 63 adopted by reference in K.A.R. 28-19-750 shall apply. A construction approval shall not be required solely if the project is subject to any of the following:~~

~~(A) 40 C.F.R. part 63, subpart M;~~

~~(B) 40 C.F.R. part 63, subpart CCCCCC; or~~

~~(C) 40 C.F.R. part 63, subpart ZZZZ, if the project is located at an area source.~~

~~(4) (6) The source is seeking an approval with operational restrictions pursuant to K.A.R. 28-19-302(b) (c).~~

~~(c) For the purpose of this regulation, neither of the following shall not be considered a modification:~~

~~(1) Routine maintenance or parts replacement; or~~

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(2) an increase or decrease in operating hours or production rates if both of the following conditions are met:


(A) Production rate increases do not exceed the originally approved design capacity of the stationary source or ~~emissions~~ emission unit; and

(B) the increased potential-to-emit resulting from the change in operating hours or production rates ~~do~~ does not exceed any emission or operating limitations imposed as a condition to any permit issued under ~~these regulations~~ this article of the department's regulations. (Authorized by K.S.A. ~~1993~~ 2015 Supp. 65-3005; implementing K.S.A. ~~1993~~ 2015 Supp. 65-3008; effective Jan. 23, 1995; amended P-\_\_\_\_\_.)

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28-19-304. Construction permits and approvals; fees. ~~(a)~~ An application for an approval or a permit to ~~construct or modify an emissions unit or stationary source~~ shall not be reviewed until the department has received an application fee that has been determined pursuant to the requirements of this regulation.

(a) The fee for each construction approval application shall be \$750.00.

(b) The fee for each construction permit application fees shall be determined as follows, according to the following source categories:

(1) The base fee shall be in the amount of 0.05% of the estimated capital cost of the activity for which application is made.

(A) The applicant shall provide a certified estimate of the capital cost of the activity with the application unless the fee is determined under the provisions of subsection (3) of this regulation.

(B) A minimum fee of \$100.00 shall be charged when the estimated capital cost is less than \$200,000.00 and a maximum fee of \$4,000.00 shall be charged when the estimated capital cost is more than 8,000,000.00.

(1) \$4,000 for each of the following:

(A) Aircraft manufacturing;

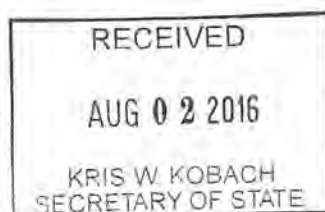
(B) cellulosic organic fiber manufacturing;

(C) chemical manufacturing, except ethanol manufacturing;

(D) electric power generation with total plantwide capacity at least 100 megawatts;

(E) fiberglass insulation manufacturing;

(F) foundries;



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(G) glass and glass product manufacturing;

(H) hazardous waste and medical waste incinerators;

(I) pesticide, fertilizer, and other agricultural chemical manufacturing;

(J) petroleum refineries;

(K) portland cement manufacturing;

(L) sulfuric and nitric acid manufacturing; and

(M) tire manufacturing;

(2) \$2,000 for each of the following:

(A) Agriculture, construction, and mining machinery manufacturing;

(B) aircraft engine or parts manufacturing;

(C) animal slaughtering and processing;

(D) ethanol manufacturing, including distilleries;

(E) fabricated metal product manufacturing;

(F) grain and oilseed milling, including oil extraction;

(G) lime and gypsum product manufacturing;

(H) motor vehicle manufacturing, including vehicle body, truck trailer, and camper manufacturing;

(I) paint, coating, and adhesive manufacturing;

(J) pipeline transportation of refined petroleum, crude oil, and natural gas;

(K) printing and related support activities;

(L) rubber product manufacturing, except tire manufacturing;

(M) ship and boat building;

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(N) soap and cleaning compound manufacturing;

(O) solid waste landfills; and

(P) storage battery manufacturing; and

(3) \$1,000 for each of the following:

(A) Each source category listed in paragraph (b)(1) that is not a major source, as defined in K.A.R. 28-19-200;

(B) air curtain combustors;

(C) animal crematory services;

(D) animal food manufacturing;

(E) asphalt paving mixture and block manufacturing;

(F) crude petroleum and natural gas extraction;

(G) electric power generation with total plantwide capacity less than 100 megawatts;

(H) food manufacturing;

(I) grain elevators;

(J) hog and pig farming;

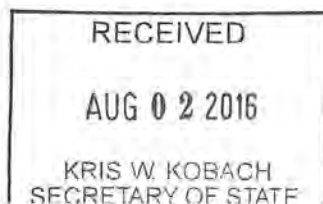
(K) nonmetallic mineral mining and quarrying;

(L) plastics product manufacturing, including fiberglass products; and

(M) ready-mix concrete manufacturing.

(c) The fee for each construction permit application for any source category not listed in subsection (b) shall be \$1,000.

(2)(d)(1) The construction permit application fees in subsections (b) and (c) shall not



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apply if the proposed construction or modification is also subject to review and approval permitting requirements under the provisions of K.A.R. 28-19-16 through 28-19-16m, pertaining to nonattainment area requirements, or K.A.R. 28-19-17 through 28-19-17q 28-19-350, pertaining to prevention of significant deterioration, there. Instead, the fees shall be an additional fee of \$1,500.00 added to the fee established by paragraph (c)(1) of this regulation. as follows:

(A) For each application for new permit, \$10,000; or

(B) for each application for modification of an existing permit, \$10,000 if the

modification includes any of the following:

(i) A new best available control technology (BACT) analysis or a modification of an existing BACT analysis;

(ii) a review of emissions or net emissions calculations; or

(iii) the addition of a new unit subject to BACT; and

(3)(C) If no estimate of the capital cost of the activity is included with the application, a base fee of \$4,000.00 shall be paid. for each application for modification of an existing permit not specified in paragraph (d)(1)(B), \$3,000.

(4) The estimated capital cost of the activity means the estimated total cost of equipment and services that would normally be capitalized according to generally accepted accounting procedures. Certification of the estimated capital cost of the activity may be evaluated during the review period. If the department determines that the certified capital cost is not correct, the department shall either recover an adjusted fee based upon the correct cost or deny the permit.

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(2) In addition to the construction permit application fee requirements of paragraphs

(d)(1)(A) and (B), the following fees shall apply:

(A) For each refined modeling analysis, \$8,000;

(B) for each revision to application, \$5,000; and

(C) for each revision to modeling, \$4,000.

~~(C)~~ (e) The non-refundable Each fee, which shall be nonrefundable, shall be remitted in the form of a check, draft, credit card payment, or money order made payable to the Kansas department of health and environment. Receipt of any ~~check for the fee~~ type of payment that is not covered by sufficient funds shall be cause for the denial of the construction permit or approval. (Authorized by K.S.A. ~~1993~~ 2015 Supp. 65-3005; implementing K.S.A. ~~1993~~ 2015 Supp. 65-3008; effective Jan. 23, 1995; amended P-\_\_\_\_\_.)

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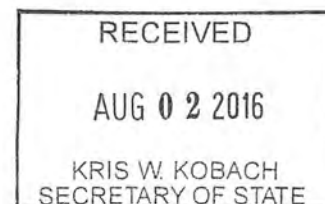
**REGULATORY IMPACT STATEMENT CONSISTING OF:**

**I. ENVIRONMENTAL BENEFIT STATEMENT**  
**AND**  
**II. ECONOMIC IMPACT STATEMENT**

Pursuant to K.S.A. 77-416

**PROPOSED REVISED PERMANENT AIR QUALITY REGULATION:  
K.A.R. 28-19-11**

July 2016



Proposed

## Background of Proposed Amendments

The CAA (section 110(k)(5)) provides a mechanism commonly called a "SIP call" for correcting state implementation plans that the Administrator finds to be substantially inadequate to meet CAA requirements.

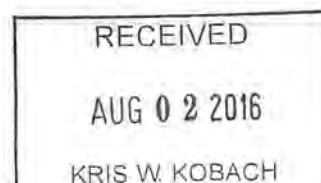
Exemptions from emission limits during periods of startup, shutdown and malfunction (SSM) exist in a number of state rules, some of which were adopted and approved into SIPs by the EPA many years ago.

Recent court decisions have held that under the CAA, such exemptions are not allowed in SIPs. Other court decisions have remanded similar exemptions in National Emissions Standards for Hazardous Air Pollutants (NESHAP), which the EPA is also correcting in separate actions.

On February 12, 2013, the EPA proposed to:

- deny the request in the Petition that EPA prohibit affirmative defenses in SIPs.
- grant the Petitioner's claim for 36 of the 39 states identified in the Petition, by proposing to determine that these 36 states have approved SIPs that include one or more SSM provision that is inconsistent with the CAA. EPA proposed a "SIP Call" for each of those 36 states.
- deny the request in the Petition that EPA discontinue reliance on interpretive letters from states to clarify any potential ambiguity in the state's SIP submission.

Subsequent to the February 2013 proposal, on April 18, 2014, the U.S. Court of Appeals for the D.C. Circuit issued its decision in *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014). The court evaluated the legal validity of an affirmative defense provision in



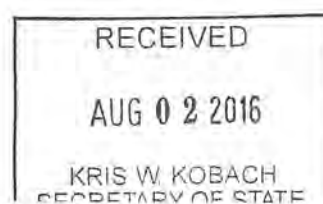
the EPA's NESHAP for the manufacturers of Portland cement. In the court's opinion, affirmative defense provisions in the EPA's own regulations cannot be applicable to violations of CAA requirements. The EPA extended the logic of the court's decision to SIP provisions and revised its SSM policy on approvability of affirmative defense provisions in SIPs.

The EPA issued a supplemental proposal in September 2014 to reflect the court's opinion that affirmative defense provisions cannot be applicable to violations of CAA requirements. In the supplemental proposal, the EPA revised what it proposed in February 2013 with respect to affirmative defense provisions and it proposed SIP calls for affirmative defense provisions in additional states.

On May 22, 2015, the U.S. Environmental Protection Agency (EPA) issued a final action to ensure states have plans in place that are fully consistent with the Clean Air Act and recent court decisions concerning startup, shutdown and malfunction (SSM) operations. Air pollution emitted during these periods may adversely affect the health of people in neighboring and downwind communities.

This action responds to a petition for rulemaking filed by the Sierra Club by addressing outdated provisions in State Implementation Plans (SIPs), improving national consistency and providing clarity for the treatment of emissions that occur during startup, shutdown and malfunction (SSM).

This final action specifically: responds to the Sierra Club Petition; 2. clarifies the EPA's SSM Policy to assure consistency with the Clean Air Act and recent court decisions; and 3. finalizes the Administrator's findings that the SSM provisions in the SIPs of 36 states (applicable in 45 statewide and local jurisdictions and no tribal areas) do



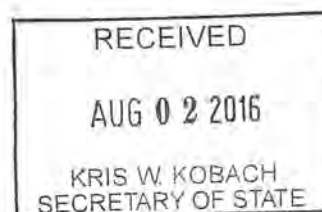
not meet the requirements of the Clean Air Act (CAA) and accordingly issues a “SIP call” for each of those states.

In issuing the SIP call action, the EPA directs the affected states to correct specific SSM provisions in their SIPs. The Clean Air Act allows a maximum of 18 months from the issuance of the final action to submit a SIP revision. The SIP submission deadline for each of the 36 states subject to the SIP call action is November 22, 2016.

This Regulatory Impact Statement, consisting of an Environmental Benefit Statement and Economic Impact Statement, is submitted in support of the proposed amendments.

#### **Regulation Description**

The proposed revised K.A.R. 28-19-11, once a final regulation and incorporated in a State Implementation Plan Revision submittal to EPA, removes the authority of KDHE to declare an SSM event “not a violation”. Therefore, while KDHE can still choose to not pursue an enforcement action for an SSM event, the owner or operator of the emission source that experienced the SSM event could still be susceptible to enforcement by the EPA or citizen lawsuits.



**I. Environmental Benefit Statement**

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

**a) Need**

These amendments are mandatory in order to comply with the EPA SIP Call and avoid a Federal Implementation Plan that would be placed on the State by the EPA if the State does not comply.

**b) Environmental benefit**

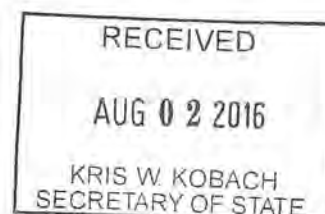
Emissions from startup, shutdown and malfunction events should not significantly change as a result of amendments to this regulation. These amendments only lessen the amount of protection from enforcement that the department can provide emission sources.

**2) When applicable, a summary of the research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rules and regulations or amendment.**

Not applicable. These amendments will have a negligible effect on air emissions in the State.

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

These amendments do not control specific contaminants. These amendments only remove the authority of the department to protect sources experiencing SSM events from EPA enforcement or citizen lawsuits.



## II. Economic Benefit Statement

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

No. This is not relevant to this proposed regulation in any fashion.

2) Do the proposed amendments exceed the requirements of applicable Federal law?

No. The proposed revised K.A.R. 28-19-11 does not exceed requirements of applicable federal law.

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

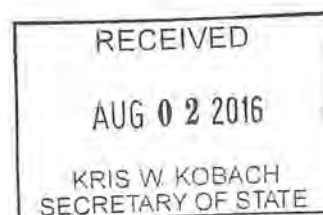
a) **Capital and annual costs of compliance with the proposed amendments and the persons who will bear those costs.**

The proposed amendments impose no new capital costs to the implementing agency or to the general public.

b) **Initial and annual costs of implementing and enforcing the proposed amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.**

There are no initial or annual costs associated with the implementation and enforcement of the proposed amendments.

c) **Costs which would likely accrue if the proposed regulations are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the regulations.**



The costs that would likely accrue if the proposed regulations are not adopted would be those associated with the requirements established by a Federal Implementation Plan put into place by the EPA. A Federal Implementation Plan could require more reporting of SSM events than the department's proposed amendments, therefore likely increasing costs to the department and industry.

**d) A detailed statement of the data and methodology used in estimating the costs used in the statement.**

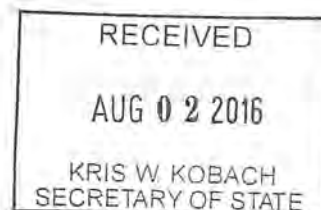
Not applicable.

**e) Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulations.**

No less costly or intrusive method was identified in the process of developing the proposed amendments.

**f) Consultation with League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.**

Copies of the regulation, the regulatory impact statement, and the notice of hearing will be provided electronically to these organizations at the time of publication of the Notice of Hearing in the *Kansas Register*.





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Division of Environment  
Bureau of Air

**REGULATORY IMPACT STATEMENT CONSISTING OF:**

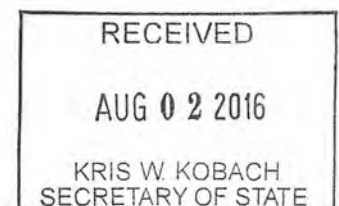
- I. **ENVIRONMENTAL BENEFIT STATEMENT**
- AND
- II. **ECONOMIC IMPACT STATEMENT**

Pursuant to K.S.A. 77-416

**PROPOSED AMENDMENT OF EXISTING AIR QUALITY REGULATION:**

**K.A.R. 28-19-300**

March 2016



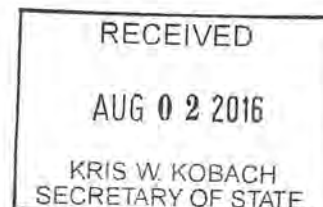
### Background of Proposed Amendments

The Kansas Air Quality Act, K.S.A. 65-3001 *et seq.*, authorizes the secretary of the Kansas Department of Health and Environment (KDHE) to develop rules and regulations to conserve air quality and to control air pollution in the state of Kansas. In large part, the Kansas air quality regulatory program implements the requirements of the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, as a state program pursuant to the Kansas State Implementation Plan (SIP) approved by the United States Environmental Protection Agency (USEPA). Upon adoption of the proposed amendments, KDHE will submit a revised SIP to the USEPA for approval.

Specifically, K.A.R. 28-19-300 implements the Minor New Source Review (Minor NSR) program that the USEPA promulgated at 40 CFR §51.160 – 51.164 in response to requirements of the federal Clean Air Act, 42 U.S.C. §7401 *et seq.* The Minor NSR permitting program addresses pollutants from stationary sources that do not require Prevention of Significant Deterioration (PSD) or nonattainment NSR permits. The purpose of Minor NSR permits is to prevent the construction of new sources or modifications at existing sources that would interfere with attainment or maintenance of a National Ambient Air Quality Standard (NAAQS) or violate the control strategy in nonattainment areas. Also, Minor NSR permits often contain permit conditions to limit the sources emissions to avoid PSD or nonattainment NSR.

KDHE is proposing to amend K.A.R. 28-19-300 “*Construction permits and approvals; applicability*” specifically to implement the revised NAAQS for Fine Particulate Matter (PM<sub>2.5</sub>). In addition, to clarify and refine applicability criteria for sources subject to the Kansas Minor NSR permitting program, KDHE is proposing the following amendments to:

- eliminate the requirement for all Title IV Acid Rain sources to obtain construction permits regardless of emissions;
- clarify the preconstruction review requirements for sources emitting hazardous air pollutants, or sources subject to standards promulgated by the USEPA; and
- add prescriptive language to eliminate the requirement for sources to obtain an approval solely due to being subject to standards promulgated by the USEPA without regard to emissions for insignificant activities.



This Regulatory Impact Statement, consisting of an Environmental Benefit Statement and Economic Impact Statement, is submitted in support of the proposed amendments.

**I. Environmental Benefit Statement**

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

**a) Need**

These amendments to K.A.R. 28-19-300 are needed to codify the regulatory language to align with the federal requirements and current state Minor NSR permitting practice. The proposed amendments are needed specifically to implement the revised NAAQS for Fine Particulate Matter (PM<sub>2.5</sub>), eliminate the requirement for all Acid Rain sources to obtain a construction permit regardless of emissions, and to clarify the preconstruction review requirements for sources emitting hazardous air pollutants, or sources subject to other standards promulgated by the USEPA.

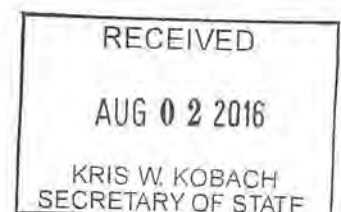
**b) Environmental benefit**

The proposed amendments to K.A.R. 28-19-300 clarify and refine applicability criteria for sources subject to the Minor NSR permitting program. The amendments do not impose any additional reductions in pollutants to sources but add PM<sub>2.5</sub> to the analyses conducted as part of the permitting application and review process. No direct environmental benefits are anticipated to accrue due to the proposed changes.

**2) When applicable, a summary of the research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rules and regulations or amendment.**

The health effects associated with exposure to PM<sub>2.5</sub> are significant. Epidemiological studies have shown a significant correlation between elevated PM<sub>2.5</sub> levels and premature mortality. Other important effects associated with PM<sub>2.5</sub> exposure include aggravation of respiratory and cardiovascular disease, lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems. Individuals particularly sensitive to PM<sub>2.5</sub> exposure include older adults, people with heart and lung disease, and children.

On July 18, 1997, the USEPA revised the NAAQS for particulate matter (PM) to add new standards for fine particles, using PM<sub>2.5</sub> as the indicator. The USEPA established health-based (primary) annual and 24-hour standards for PM<sub>2.5</sub> [62 FR 38652]. The USEPA set an annual standard at a level of 15 micrograms per cubic



meter ( $\mu\text{g}/\text{m}^3$ ) and a 24-hour standard at a level of  $65 \mu\text{g}/\text{m}^3$ . The USEPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of  $\text{PM}_{2.5}$  such as visibility impairment, soiling, and materials damage.

On October 17, 2006, the USEPA revised the primary and secondary NAAQS for  $\text{PM}_{2.5}$  and  $\text{PM}_{10}$ . In that rulemaking, the USEPA reduced the 24-hour NAAQS for  $\text{PM}_{2.5}$  to  $35 \mu\text{g}/\text{m}^3$  and retained the existing annual  $\text{PM}_{2.5}$  NAAQS of  $15 \mu\text{g}/\text{m}^3$ . In addition they retained  $\text{PM}_{10}$  as the indicator for coarse PM, retained the existing  $\text{PM}_{10}$  24-hour NAAQS of  $150 \mu\text{g}/\text{m}^3$ , and revoked the annual  $\text{PM}_{10}$  NAAQS (which had previously been set at  $50 \mu\text{g}/\text{m}^3$ ). See 71 FR 61236.

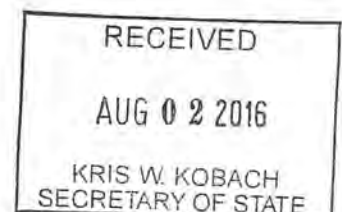
On December 14, 2012, the USEPA promulgated the most recently revised primary annual  $\text{PM}_{2.5}$  national ambient air quality standard (NAAQS). The  $\text{PM}_{2.5}$  NAAQS was published in the Federal Register on January 15, 2013 [78 FR 3086]. In that action, the USEPA revised the primary annual  $\text{PM}_{2.5}$  standard, strengthening it from  $15.0 \mu\text{g}/\text{m}^3$  to  $12.0 \mu\text{g}/\text{m}^3$ . In that same action, USEPA retained the existing secondary annual standard for  $\text{PM}_{2.5}$ , the existing primary and secondary 24-hour standards for  $\text{PM}_{2.5}$ , and the existing primary and secondary standards for particulate matter with aerodynamic diameters of 10 microns or less ( $\text{PM}_{10}$ ).

The  $\text{PM}_{2.5}$  NAAQS establishes a limit on the acceptable exposure and public health impacts for fine particulate matter. These amendments to K.A.R. 28-19-300 implement the  $\text{PM}_{2.5}$  NAAQS for Minor NSR.

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

As discussed above this regulatory action is being proposed primarily to implement the  $\text{PM}_{2.5}$  NAAQS for the Minor NSR permitting program, however the Kansas program applies to new sources or modifications at existing sources for *all criteria pollutants* in all areas of the state. USEPA has promulgated NAAQS for each air pollutant for which air quality criteria have been published. To date, NAAQS have been promulgated for six criteria pollutants: ozone, particulate matter, sulfur oxides, nitrogen oxides, carbon monoxide, and lead (further details can be found at USEPA's NAAQS website, <http://www3.epa.gov/ttn/naaqs/criteria.html>).

K.A.R. 28-19-300 also addresses sources emitting hazardous air pollutants (HAPs). Under Section 112(b) of the CAA, Congress established the list of HAPs that were shown to provide a threat of adverse human health effects. The USEPA has conducted or utilized research on the health effects of the various HAPs, which



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has guided their promulgation of emission standards. Emission standards are necessary to reduce emissions released into the atmosphere to attain the air quality standards that are specified in the CAA. Each standard has been subjected to peer review and often to litigation (Further details can be found at USEPA's Air Toxics website, <http://www.epa.gov/ttn/atw/area/arearules.html>).

## II. Economic Benefit Statement

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

Yes. KDHE's authority to fully implement the Clear Air Act programs, which are in part funded through grants from the USEPA, is maintained by assuring that all state program elements are current and consistent with the terms of the federal requirements that KDHE implements.

### 2) Do the proposed amendments exceed the requirements of applicable Federal law?

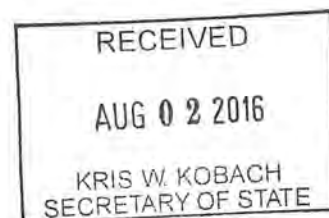
No. The proposed amendments to K.A.R. 28-19-300 do not exceed requirements of applicable federal law.

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

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

The proposed amendments impose no new capital costs to the implementing agency or to the general public. The elimination of the Acid Rain permitting requirements will lessen both the burden and cost to Acid Rain sources in Kansas and the permitting authority.

The USEPA determined the expansion of the NSR program to cover  $PM_{2.5}$  and its precursors to increase only marginally the costs to owners and operators of  $PM_{2.5}$  sources that become subject to the program [73 FR 28345, May 16, 2008]. They expected the rule changes to increase the burden associated with only major NSR permitting under PSD and NA NSR.



**b) Initial and annual costs of implementing and enforcing the proposed amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.**

There are no initial or annual costs associated with the implementation and enforcement of the proposed amendments. The USEPA determined that the addition of PM<sub>2.5</sub> to the NSR Program is unlikely to increase significantly the number of NSR permits that must be issued, but may add to the analyses that sources and Federal, State, and local reviewing authorities must conduct as part of the construction permit application and review process. They expected the rule changes to increase the burden associated with only major NSR permitting under PSD and NA NSR. Additionally, once the Acid Rain requirements are eliminated from the current program there will be a reduction in associated paperwork and costs.

**c) Costs which would likely accrue if the proposed regulations are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the regulations.**

The costs that would likely accrue if the proposed regulations are not adopted would be only those associated with the current requirements relating to Acid Rain affected sources remaining in place.

**d) A detailed statement of the data and methodology used in estimating the costs used in the statement.**

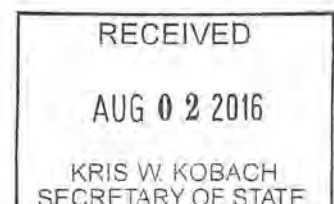
Not applicable.

**e) Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulations.**

No less costly or intrusive method was identified in the process of developing the proposed amendments to K.A.R. 28-19-300.

**f) Consultation with League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.**

Copies of the regulation, the regulatory impact statement, and the notice of hearing will be provided electronically to these organizations at the time of publication of the Notice of Hearing in the *Kansas Register*.



Proposed



Division of Environment  
Bureau of Air

**REGULATORY IMPACT STATEMENT CONSISTING OF:**

**I. ENVIRONMENTAL BENEFIT STATEMENT**

**AND**

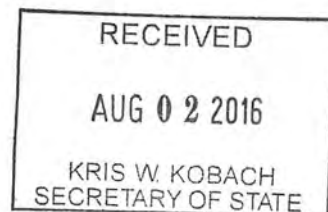
**II. ECONOMIC IMPACT STATEMENT**

Pursuant to K.S.A. 77-416

**PROPOSED AMENDMENT OF EXISTING AIR QUALITY REGULATION:**

**K.A.R. 28-19-304**

February 2016



**Background of Proposed Amendments**

K.S.A. 65-3008 authorizes the Secretary of the Kansas Department of Health and Environment (KDHE) to fix, charge and collect fees for approvals and permits, and the renewal thereof, to cover all or any part of the cost of administering the provisions of the Kansas air quality act (KAQA). HB 2548 was passed in the 2014 legislative session, which amended K.S.A. 65-3008 and 65-3024 to redirect revenue previously deposited in State General Fund (SGF) to the Air Quality Fee Fund (AQFF), as intended, to cover the cost of administering the KAQA. As such, the Secretary is required to adopt regulations fixing such fees and to periodically increase or decrease such fees, as needed to administer the KAQA.

The purpose of this proposed regulatory action is two-fold. First the Bureau of Air (BOA) is proposing to restructure and modify current fee calculation requirements to clarify potentially ambiguous language relating to the calculation of estimated capital cost, which may be causing unintended compliance issues for some industries within the regulated community.

The second is to update the fee schedule to bring in sufficient revenue to adequately administer the KAQA, specifically to adequately staff the Kansas New Source Review (NSR) preconstruction permitting program. Current construction permitting fees were established January 23, 1995, and have not been amended or evaluated since inception. The permitting process has become increasingly complex and labor intensive during the past twenty years; therefore, as a supplement to this recent change in Kansas law, BOA is proposing to restructure these fees to cover the cost of this work. As a co-benefit of this amendment, BOA will no longer need to receive SGF money for SFY 2016 and beyond for implementation of KAQA.

To cover part of KDHE's cost of administering the NSR preconstruction permitting program, K.S.A. 65-3008 authorizes KDHE to collect fees for approvals and permits. BOA currently collects fees for construction permits pursuant to Kansas Administrative Regulations (K.A.R.) 28-19-304 *Construction permits and approvals; fees*; which is the focus of this regulatory amendment. For SFY 2015, BOA collected construction and operating permit application fees totaling \$180,271 of these \$163,295 were from construction projects. As of July 1, 2014, or SFY 2015 the application fees being collected are now, pursuant to HB 2548, being deposited into the AQFF and will be utilized to implement KAQA.

KDHE is proposing to restructure permit and approval application fees to more accurately support current construction permitting program activities. As previously stated, the Kansas Legislature supported this direction by passing legislation in 2014. Based on applying the proposed application fees to the actual annual average of the corresponding applications received for the fifteen-year period of 2000 to 2014, the updated fee schedule will provide BOA an estimated additional \$251,572 per year. These fees will be deposited into the AQFF and will be used solely for the purposes of administering the NSR preconstruction permitting program.

KDHE has prepared this proposal in order to maintain the current level of preconstruction permitting services. Based upon a review of current and proposed fees for similar services in other states, the proposed fee increase is still

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marginal in comparison, but necessary to cover the direct and indirect costs of administering the state preconstruction permitting program.

**I. Environmental Benefit Statement**

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

**a) Need**

These amendments to K.A.R. 28-19-304 are needed to update the fee schedule to bring in sufficient revenue to adequately administer KAQA, specifically to adequately staff and administer the NSR preconstruction permitting program. Current preconstruction permitting fees were established January 23, 1995, and have not been amended or evaluated since inception. The permitting process has become increasingly complex and labor intensive during the past nineteen years, therefore as a supplement to a recent change in Kansas law, BOA is proposing to restructure these fees to cover the cost of this work.

In addition, the BOA is using this opportunity to address some ongoing compliance issues, concerning potentially ambiguous language in K.A.R. 28-19-304 related to the calculation of estimated capital cost, by employing a more straightforward fee structure based on complexity of source type.

**b) Environmental benefit**

The proposed amendments to K.A.R. 28-19-304 result in a permit and approval application fee change for the NSR permitting program. The NSR permitting program was established as part of the 1977 Clean Air Act Amendments. NSR is a preconstruction permitting program that serves two important purposes.

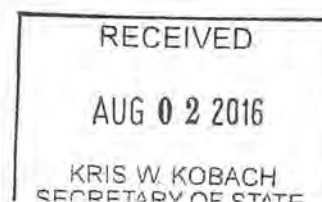
First, it ensures that air quality is not significantly degraded from the addition of new and modified factories, industrial boilers, and power plants. In areas with unhealthy air, NSR assures that new emissions do not slow progress toward cleaner air. In areas with clean air, especially pristine areas like national parks, NSR assures that new emissions do not significantly worsen air quality.

Second, the NSR program assures the public that any large new or modified industrial source in their neighborhoods will be as clean as possible, and that advances in pollution control occur concurrently with industrial expansion.

NSR permits are legal documents that the facility owners/operators must abide by. The permit specifies what construction is allowed, what emission limits must be met, and often how the emissions source must be operated.

There are no direct environmental benefits anticipated to accrue due to the proposed changes, except to the extent that the fee restructuring ensures the ability of BOA to implement the KAQA and in turn reduce emissions through the NSR permitting program.

**2) When applicable, a summary of the research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rules and regulations or amendment.**



Not applicable. This amendment is not directly related to any risk to the public health or environment. Neither the fee change nor the restructuring impose any new or alter any existing emissions limitations or standards that will have direct bearing on public health or the environment.

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

Not applicable. There are no changes to the standards or limitations on specific contaminants by this amendment.

## **II. Economic Benefit Statement**

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

An effective air emissions fee program is mandated under federal law; however, the state specific permit and approval application fees are not federally prescribed, but the state must demonstrate to the EPA that its fee structure is adequate to support the air program overall. These amendments are not required to participate in a federally subsidized program.

**2) Do the proposed amendments exceed the requirements of applicable Federal law?**

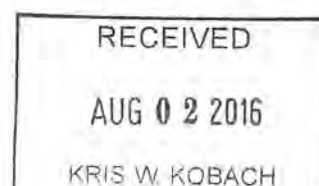
No. The proposed amendments to K.A.R. 28-19-304 do not exceed requirements of applicable federal law.

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

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

The proposed amendments impose no new capital costs to the implementing agency or to the general public. The amendments will result in an increase in application fees for the regulated community that are proposing construction or modification projects that are subject to the Kansas NSR preconstruction permitting program. The current fee structure is based on a percentage of the estimated capital cost of the activity for which the application is made. This type of fee structure has some considerable challenges; first it requires a great deal of expertise and resources to evaluate multi-industrial costs for varying construction and modification projects. Our resources are focused primarily on approval and permit issuance, not economic evaluation of projected costs. In addition, capital cost estimates for specific projects to be permitted do not always correspond with the complexity of the projects' regulatory requirements.

Existing K.A.R. 28-19-304 requires the base fee for a construction permit application be in the amount of 0.05% of the estimated capital cost of the activity for which application is made. It is the responsibility of the applicant to provide a



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certified estimate of the capital cost of the activity, or if no estimate is provided a base fee of \$4,000 is applied. A minimum fee of \$100 is charged when the estimated capital cost is less than \$200,000 and a maximum fee of \$4,000 shall be charged when the estimated capital cost is more than \$8,000,000. Supplemental to this base fee, if the proposed construction or modification is subject to provisions of K.A.R. 28-19-16 through 28-19-16m, pertaining to nonattainment area requirements, or K.A.R. 28-19-17 through 28-19-17q, pertaining to prevention of significant deterioration, there is an additional fee of \$1,500.

The proposed structure was developed by relying on staff expertise in the nature and complexity of current permitting and approval activities. All projected estimates are based on applying the proposed application fee to the actual annual average of the corresponding applications received for the fifteen-year period of 2000 to 2014.

### Approvals

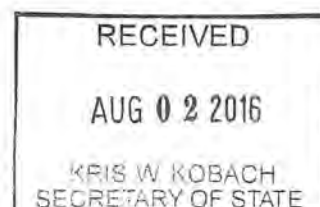
Currently BOA does not collect application fees for approvals; although it does spend significant resources on the issuance of these preconstruction documents. Under the proposed structure, a source required to obtain an approval pursuant to K.A.R. 28-19-300 shall have an approval application fee of \$750 regardless of the source type. Based on average number of actual approval applications received during the fifteen-year period from 2000 to 2014, BOA is predicting a revenue increase of \$135,600 for FY2016.

### NSR Permits

A source required to obtain a permit pursuant to K.A.R. 28-19-300 shall have a permit application fee based on its source type. This structure was preferred by permitting staff, as the complexity of construction permit activities is inherent to source type. There are three groups of source categories proposed.

➤ Group 1 encompasses those types of sources that are typically more complex, have more applicable requirements, and require additional time and expertise in permitting. An application fee of \$4,000 is proposed. Based on average number of actual permit applications received for Group 1 source categories during the fifteen-year period from 2000 to 2014, BOA is predicting revenue of \$51,733 for FY2016. The average actual annual revenue realized for these sources during that fifteen-year period was \$11,558.

➤ Group 2 includes those source categories that the permitting staff determined to be less complex but still require substantial time and expertise to permit. An application fee of \$2,000 is proposed. Based on average number of actual permit applications received for Group 2 source categories during the fifteen-year period from 2000 to 2014, the BOA is predicting revenue of \$48,000 for FY2016. The average actual annual revenue realized for these sources during the fifteen-year period was \$13,256.



➤ Group 3 includes those source categories that the permitting staff determined to be the least complex of those specifically listed out in the regulation. This group also includes those Group 1 sources that are not “major” sources pursuant to KAQA. It was determined that sources listed in Group 1 that were not major sources did not meet the same complexity level as those that are major sources, or even the difficulty level of permitting assumed for Group 2 sources. An application fee of \$1,000 is proposed. Based on average number of actual permit applications received for Group 3 source categories during the fifteen-year period from 2000 to 2014, BOA is predicting revenue of \$92,867 for FY2016. The average actual annual revenue realized for these sources during the fifteen-year period was \$29,411.

The remaining sources fall under the proposed K.A.R. 28-19-304(c), which stipulates an application fee of \$1,000 for all source categories not listed elsewhere but still required to obtain a permit. Based on average number of actual permit applications received for the remaining source categories during the fifteen-year period from 2000 to 2014, BOA is predicting revenue of \$14,667 for FY2016. The average actual annual revenue realized for these sources during the fifteen-year period was \$6,404.

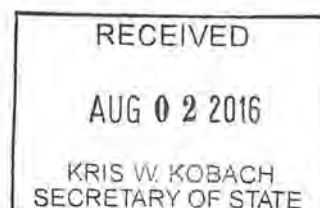
**PSD and Nonattainment NSR Permits**

Finally, the most complex and labor intensive permit applications are those submitted for Prevention of Significant Deterioration (PSD) or Nonattainment NSR permits.

PSD applies to new major sources or major modifications at existing sources for pollutants where the area the source is located is in attainment or unclassifiable with the National Ambient Air Quality Standards (NAAQS). PSD permitting requires the following: installation of the Best Available Control Technology (BACT); an air quality analysis; an additional impacts analysis; and public involvement.

BACT is an emissions limitation that is based on the maximum degree of control that can be achieved. It is a case-by-case decision that considers energy, environmental, and economic impact. BACT can be add-on control equipment or modification of the production processes or methods. This includes fuel cleaning or treatment and innovative fuel combustion techniques. BACT may be a design, equipment, work practice, or operational standard if imposition of an emissions standard is infeasible.

The main purpose of the air quality analysis is to demonstrate that new emissions emitted from a proposed major stationary source or major modification, in conjunction with other applicable emissions increases and decreases from existing sources, will not cause or contribute to a violation of any applicable NAAQS or PSD increment. Generally, the analysis will involve an assessment of existing air quality, which may include ambient monitoring data and air quality dispersion modeling results, and predictions, using dispersion modeling, of ambient concentrations that will result from the applicant's proposed project and future growth associated with the project.



PSD increment is the amount of pollution an area is allowed to increase. PSD increments prevent the air quality in clean areas from deteriorating to the level set by the NAAQS. The NAAQS is a maximum allowable concentration "ceiling." A PSD increment, on the other hand, is the maximum allowable increase in concentration that is allowed to occur above a baseline concentration for a pollutant. The baseline concentration is defined for each pollutant and, in general, is the ambient concentration existing at the time that the first complete PSD permit application affecting the area is submitted. Significant deterioration is said to occur when the amount of new pollution would exceed the applicable PSD increment. It is important to note, however, that the air quality cannot deteriorate beyond the concentration allowed by the applicable NAAQS, even if not all of the PSD increment is consumed.

The additional impacts analysis assesses the impacts of air, ground, and water pollution on soils, vegetation, and visibility caused by any increase in emissions of any regulated pollutant from the source or modification under review, and from associated growth. Associated growth is industrial, commercial, and residential growth that will occur in the area due to the source.

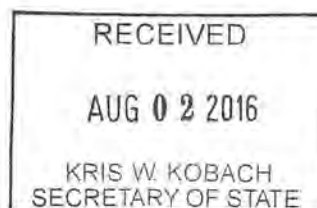
An application fee of \$10,000 is proposed for any application for a new permit, or for any application for modification to an existing permit when the modification includes any of the following: (1) A new best available control technology (BACT) analysis or modification to an existing BACT analysis; (2) emissions unit and process modifications; (3) review of emissions or netting calculations; or (4) addition of new unit subject to BACT. All other applications for modification to existing permit not including (1) – (4) as specified above is proposed to be \$3,000. In addition to the application fee the following are proposed: (1) \$8,000 for refined modeling analysis; (2) \$5,000 fee for each revision to application; and (3) \$4,000 fee for each revision to modeling.

Based on average number of actual permit applications received over the fifteen-year period from 2000 to 2014, the BOA is predicting revenue of \$72,000 for FY2016. The average actual annual revenue realized for these sources during the fifteen-year period from 2000 to 2014 was \$15,242.

Nonattainment NSR applies to new major sources or major modifications at existing sources for pollutants where the area the source is located is not in attainment with the NAAQS. Nonattainment NSR requirements are customized for the nonattainment area. All nonattainment NSR programs have to require: the installation of the lowest achievable emission rate (LAER); emission offsets; and opportunity for public involvement.

Currently Kansas has only one nonattainment area and during the fifteen-year period from 2000 to 2014 no permits have been issued pursuant to these requirements. There is however, a strong potential for an increase in these types of applications after the state implements the proposed 2014 ozone standard.

**b) Initial and annual costs of implementing and enforcing the proposed amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.**



The proposed amendment to K.A.R. 28-19-304 will impose no new costs or paperwork burdens of implementing and enforcing upon the state agencies, other governmental agencies or other persons.

**c) Costs which would likely accrue if the proposed regulations are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the regulations.**

If the proposed increase in permitting and approval application fees is not adopted, BOA will not receive adequate fee revenue into the AQFF to support the air quality program overall, specifically the NSR preconstruction permitting program. The proposed amendments were developed to generate adequate revenue to sustain the state's NSR preconstruction permit program at a current nominal staffing level. The costs that would likely accrue if the proposed regulations are not adopted would be only those associated with delays in permit and approval issuance. The regulated community would bear the costs associated with these delays accrued due to inadequate staff available to process approval and permit applications for construction and modification of new or existing sources in a timely manner.

**d) A detailed statement of the data and methodology used in estimating the costs used in the statement.**

BOA maintains a Facility Air Quality Data Management System developed by Pacific Environmental Services, Inc. to collect and store actual permitting and emissions inventory data. This data was utilized to project future estimates based on annual averages. All projected estimates are based on applying the proposed application fee to the actual annual average of the corresponding applications received for the fifteen-year period of 2000 to 2014.

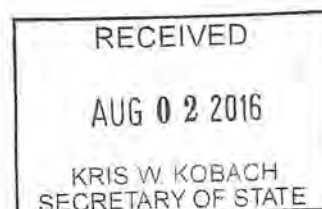
**e) Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulations.**

The proposed amendments were developed to generate adequate revenue to sustain the state's NSR preconstruction permit program at a current nominal staffing level. Current statutory authority allows BOA to collect fees for approvals and permits as well as other fees to cover all or any part of the cost of administering the provisions of the KAQA. No less costly or intrusive method was identified in the process of developing the proposed regulation.

**f) Consultation with League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.**

Copies of the regulation, the regulatory impact statement, and the notice of hearing will be provided electronically to these organizations at the time of publication of the Notice of Hearing in the *Kansas Register*.

Cities, counties and school boards may incur minimal cost increases as a result of these regulatory amendments. If they own or operate a source that is required to obtain a construction approval or permit pursuant to K.A.R. 28-19-300 they will incur a cost ranging from \$750 to \$4,000 per application for construction or modification. Any source owner or operator



Proposed

regardless of source type will incur a cost of \$750 per preconstruction approval application. If they operate the following source categories the corresponding permit application fee shall apply:

- Electric power generation with total plant-wide capacity
  - greater than or equal to 100 megawatt - \$4,000
  - less than 100 megawatt - \$1,000
- Solid waste landfill - \$2,000
- Sources not specified elsewhere - \$1,000.

