

State of Kansas
Department of Health and Environment
Notice of Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Environmental Remediation, will conduct a public hearing at 10:00 a.m. Friday, December 15, 2023, in Room 530, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed amended spill reporting regulations K.A.R. 28-48-1 and 28-48-2 and the adoption of proposed new spill reporting regulations K.A.R. 28-48-3 and 28-48-4.

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

Summary of Regulations:

K.A.R. 28-48-1. Definitions. Defines the meaning of terms, in addition to the terms defined in K.S.A. 65-171v, and amendments thereto, as used in K.A.R. 28-48-1 through 28-48-4.

K.A.R. 28-48-2. Action required. Specifies immediate actions, reporting and notification requirements, and clean up and restoration that the person responsible for a release shall conduct for a release that is required to be reported by K.A.R. 28-48-3; provides the notice and report requirements when a release is discovered as the result of an environmental investigation on the owner's property; clarifies how a person with knowledge of a release not specified in this regulation may report the release to the department.

K.A.R. 28-48-3. Reportable quantities. Requires that the person responsible for a release shall report the release to the department if any of the specified conditions are met; requires that the person who owns the property when discovery of any quantity of pollutants occurs as the result of an environmental investigation shall report the release to the department.

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K.A.R. 28-48-4. Adoption of certain reportable quantities. Adopts by reference portions of 40 C.F.R. 302.4, as in effect on July 1, 2021, as amended by 87 fed. reg. 20725-20761 (2022); adopts by reference 40 C.F.R. 302.6(b) through (d), as in effect on July 1, 2021.

Economic Impact:

Cost to the agency: The proposed regulations will not result in increased costs to the agency.

Cost to the public and regulated community: There are no material, equipment, or additional financial requirements in the proposed regulations. The regulations specify the threshold quantities when spills must be reported to KDHE. K.S.A. 65-171v requires the responsible party to complete a clean-up. No additional costs are imposed by these proposed regulations on the public and regulated community.

Costs to other governmental agencies or units: No additional costs will be imposed by the proposed regulations on other governmental agencies or units.

A detailed economic impact is provided in the economic impact statement that is available from the designated KDHE contact staff person or at the State Regulations Enforced by BER website listed below.

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 5:00 p.m. on the day of the hearing to Joseph Dom, Kansas Department of Health and Environment, Bureau of Environmental Remediation, Curtis State Office Bldg., 1000 SW Jackson, Suite 410, Topeka, KS 66612 or by email to Joe.Dom@ks.gov. Interested parties are encouraged to participate in the public hearing by submitting written comments.

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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. It is requested that each individual giving oral comments also provide a written copy of the comments for the record. 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 economic impact statement and environmental benefit statement may be obtained from the State Regulations Enforced by BER website at <https://www.kdhe.ks.gov/194/State-Regulations-Enforced-by-BER> or by contacting Joseph Dom at Joe.Dom@ks.gov, 785-296-1914. Questions pertaining to the proposed regulations should be directed to Joseph Dom 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, economic impact statement, and environmental benefit statement 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 Joseph Dom.

Janet Stanek
Secretary
Department of Health and Environment

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28-48-1. Definitions. The following words and phrases when used in these regulations, have the meanings respectively ascribed to them in this section. In addition to the terms defined in K.S.A. 65-171v and amendments thereto, each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation:

(a) "Owner" means individual, partnership, firm, trust, company, association, corporation, institution, political subdivision or agency which is financially responsible for the material or facility "Department" means Kansas department of health and environment.

(b) "Discovery" means the act of finding a release or acquiring knowledge that a release has occurred.

(c) "Person responsible for the release" means person or organization which has been placed in control of the material or facility by the owner either or both of the following:

(1) The person producing, handling, storing, transporting, refining, disposing of, or otherwise in control of a pollutant when the release of that pollutant occurred; or

(2) the person who owns or owned the property upon which the release occurred at the time the release occurred, if that person leased the property to the person meeting the criteria of paragraph (c)(1) at the time of the release.

(d) "Secretary" means secretary of the Kansas department of health and environment.

(e) "24-hour spill reporting telephone number" means the telephone number, designated by the department pursuant to K.S.A. 65-171v and amendments thereto, to call to notify the department of a release.

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

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specified in K.S.A. 65-161, and amendments thereto. (Authorized by and implementing K.S.A.

~~1984 Supp. 65-171d~~ 2022 Supp. 65-171v; effective May 1, 1986; amended

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28-48-2. Action required. ~~All sewage, substances, materials, or wastes, as set forth in 65-171d, regardless of phase or physical state, which are, or threaten to contaminate or alter any of the properties of the waters of the state or pollute the soil in a detrimental, harmful, or injurious manner or create a nuisance, shall be reported in the following manner:~~

(a) ~~The owner or person responsible for the discharge or escape of materials detrimental to the quality of waters of the state or pollution of the soil under conditions other than provided by a valid permit issued by the secretary of health and environment, shall report the discharge or escape to the Kansas department of health and environment. For each release that is required to be reported as specified in K.A.R. 28-48-3, unless the discovery occurs as the result of an environmental investigation, the person responsible for the release shall conduct the following:~~

(1) Immediate action. As soon as the discovery occurs, the person responsible for the release shall:

(A) Take immediate action to accomplish the following:

(i) Protect human life and public safety;

(ii) notify local emergency responders;

(iii) stop and contain the release; and

(iv) prevent any additional release; and

(B) cooperate fully with representatives of the department and local emergency responders during the release response.

(2) Reporting and notifications. The person responsible for the release shall conduct the following:

(A) As soon as practicable after the discovery of the release, after the actions specified

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in paragraph (a)(1)(A) have been initiated, report the release to the department by calling the 24-hour spill reporting telephone number or by using another method specified by the department.

(B) Not later than five days after the discovery of the release, make reasonable attempts to ensure that the following are notified of the release:

(i) The owner and each tenant of the property upon which the release occurred: and

(ii) the owner and each tenant of each property onto which the release migrated.

(3) Clean up and restoration. The person responsible for the release shall conduct the following:

(A) Perform a cleanup that is determined by the secretary to be protective of human health and safety and the environment; and

(B) restore each property onto which the release migrated to a condition that is determined by the secretary to be as close as reasonably possible to the condition of the property before the release.

~~(b) Emergency or accidental discharge of materials which are detrimental to the quality of waters of the state or tend to cause pollution of the soil shall be immediately reported to the Kansas department of health and environment by the owner, owner's representative, or person responsible. In the event the pollution causing material is in transit or in storage within the state, the owner, carrier, or person responsible for storage shall be responsible for immediate notification to the Kansas department of health and environment that the pollutant will gain admittance to the waters of the state or the soil. If the discovery occurs as the result of an environmental investigation of a property, the person who owns the property at the time of~~

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the discovery shall:

(1) Not later than fourteen days after the discovery, make reasonable attempts to ensure that each tenant of the property upon which the release occurred is notified of the release; and

(2) report the discovery to the department in writing within 30 days of the discovery.

(c) Any person with knowledge of a release not specifically provided for in this regulation may report the release to the department by calling the 24-hour spill reporting telephone number or by using another method specified by the department. (Authorized by and implementing K.S.A. 1984 Supp. 65-171d 2022 Supp. 65-171v; effective May 1, 1986; amended P-_____.)

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28-48-3. Reportable quantities. Each release shall be reported to the department, as specified in K.A.R. 28-48-2 in accordance with the following criteria:

(a) The person responsible for the release shall report the release to the department if any of the following conditions are met:

(1) The release, regardless of quantity, occurred in any of the following locations:

(A) In any waters of the state;

(B) 100 feet or less from any surface water; or

(C) in any sensitive groundwater area, as defined in K.A.R. 28-16-160;

(2) the release occurred on soil and the quantity of released pollutant meets or exceeds any of the following reportable quantities:

(A) Any quantity identified in either table 302.4 or appendix B of 40 C.F.R. 302.4, as adopted by reference in K.A.R. 28-48-4. The reporting requirement shall be determined in accordance with the criteria specified in 40 C.F.R. 302.6(b) through (d), as adopted by reference in K.A.R. 28-48-4;

(B) 100 pounds of a pollutant that meets all of the following criteria:

(i) The pollutant is not identified in table 302.4 or appendix B of 40 C.F.R. 302.4;

(ii) the pollutant is a hazardous waste as specified in 40 C.F.R. 261, as adopted by reference in K.A.R. 28-31-261. For the purposes of this regulation, a released pollutant is considered a waste, regardless of any potential for beneficial use; and

(iii) the pollutant exhibits the characteristic of ignitability, corrosivity, reactivity, or toxicity, or any combination of these characteristics, according to the criteria specified in 40 C.F.R. 261.21 through 261.24;

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(C) 25 gallons of oil, unless the oil was released during the exploration and production of petroleum and is required to be reported to the Kansas corporation commission, as specified in K.A.R. 82-3-603 through K.A.R. 82-3-608. For the purposes of this regulation, “oil” shall mean a nonpolar chemical substance that is hydrophobic and lipophilic, including the following:

- (i) Naturally formed petroleum hydrocarbons, regardless of specific gravity;
- (ii) refined petroleum products, including fuel;
- (iii) mineral oil;
- (iv) electrical insulating oil;
- (v) animal fat; and
- (vi) vegetable oil, including oil derived from plant seeds, nuts, kernels or fruits.

(D) 420 gallons of brine. For the purposes of this regulation, “brine” shall mean a solution of water and dissolved solids with a concentration of chlorides or sulfates of 3,000 parts per million or more;

(E) 1,000 pounds of dry fertilizer, as defined in K.A.R. 4-4-900; or

(F) 100 gallons of liquid fertilizer, as defined in K.A.R. 4-4-900; or

(3) two or more releases that occur on the same property within 90 calendar days and the cumulative amount of the pollutant released meets or exceeds any of the reportable quantities specified in paragraph (a)(2).

(b) If the discovery of one or more pollutants, in any quantity, occurs as the result of an environmental investigation of a property, the person who owns the property at the time of the discovery shall report the release to the department. (Authorized by and implementing K.S.A.

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2022 Supp. 65-171v; effective P-_____.)

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28-48-4. Adoption of certain reportable quantities. For the purposes of K.A.R. 28-48-3, the following are hereby adopted by reference:

(a) The following portions of 40 C.F.R. 302.4, as in effect on July 1, 2021, and as amended by 87 fed. reg. 20725-20761 (2022):

(1) Table 302.4; and

(2) appendix B.

(b) 40 C.F.R. 302.6(b) through (d), as in effect on July 1, 2021. (Authorized by and implementing K.S.A. 2022 Supp. 65-171v; effective P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

785 296-1291
Contact Phone Number

Amended: 28-48-1, 28-48-2, New: 28-48-3, 28-48-4
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

☒ No **If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?**

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.

☒ No **If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.**

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Section I

Brief description of the proposed rule(s) and regulation(s).

Article 48 outlines the expectations of a person responsible for the release for reporting and responding to spills or other unpermitted releases of pollutants as defined in K.S.A. 65-171v to the soil or waters of the state. The proposed regulations will clearly define the spill reporting requirements for releases of pollutants to soil or waters of the state and the required response actions to such spills. The proposed regulations will establish minimum reportable quantities consisting of volumetric criteria for specified pollutants. The reportable quantities proposed will align with the federal reportable quantities for hazardous substances and be more consistent with neighboring states within the region.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The proposed regulations will not exceed the requirements of applicable federal law. The regulations will decrease the current spill reporting requirements in K.A.R. 28-48-1, *et. seq.* The regulations will make the spill reporting and response requirements consistent with the federal reporting requirements and more similar to adjacent state requirements. Colorado, Nebraska, Iowa, Missouri, and Oklahoma have all adopted spill reporting quantities more in line with the federal reportable quantities.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed regulation change will neither enhance or restrict business activities and growth. The person responsible for a release of the pollutant will continue to be responsible for the clean-up of any release in accordance with K.S.A. 65-171v. The proposed regulations will limit the spills required to be reported to KDHE to only when the released volume of pollutant exceeds the proposed reportable quantities.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

The proposed regulation change will have minimal economic effect on compliance costs for businesses, sectors, public utility ratepayers, individuals or local governments. As previously stated, the person responsible for the release will continue to be liable for the clean-up of any release in accordance with K.S.A. 65-171v. There will be a minimal reduction in the time necessary to report the release to KDHE when the released volume of pollutant exceeds the proposed reportable quantities.

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- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);
Any business that produces, handles, stores, transports, refines, disposes or is otherwise in control of a pollutant as defined by K.S.A. 65-171v at the time of the release would be affected by the proposed regulations.
- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;
The proposed regulation change will reduce the requirements of the person responsible for the release when reporting a release to KDHE. Currently all releases, regardless of volume are required to be reported to the agency. The proposed regulations will adopt minimum reportable quantities establishing a criterion for when the agency must be notified of the release. The person responsible for the release will continue to be liable for the clean-up of any release in accordance with K.S.A. 65-171v.
- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;
No special measures need to be taken by the agency to minimize the cost and impact of the proposed regulation change since there will be no cost impacts associated with the proposed regulations.
- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.
Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

Total Annual Costs – \$0

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

The methodology used to determine the \$0 cost estimate is based on the fact that the person responsible for the release maintains the liability to clean-up the release. The only reduction in costs would be the decrease in time spent notifying the agency of the release.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

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Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

There would be no changes to state revenues or expenditures for both the current and next fiscal year due to the implementation of the proposed regulation changes.

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

There would be no long-range economic impact of the proposed regulation change to any individual, small employer, or the general public.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

When the notice of hearing for these regulations is published in the Kansas Register, standard agency procedure will be followed and the three above-listed organizations will be contacted electronically for comment with attached copies of the regulations, economic impact statement, environmental benefit statement, and published notice of hearing.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

KDHE meets periodically with the regulated community to discuss program accomplishments, issues affecting the regulated community, and to solicit input from the regulated community. It was from these meetings that the regulated community requested KDHE consider revising the spill reporting regulations to be consistent with federal reporting requirements. The Kansas Livestock Association, the Kansas Grain and Feed Association, the Kansas Agribusiness Association, Renew Kansas Biofuels Association and ONEOK provided testimony as proponents of the statute giving authority to KDHE to establish the minimum reportable quantities.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☒ Yes If yes, complete the remainder of Section IV.
☐ No If no, skip the remainder of Section IV.

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- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Any person or business that produces, handles, stores, transports, refines, disposes or is otherwise in control of a pollutant as defined in K.S.A. 65-171v at the time of an accidental or unpermitted release of a pollutant would bear the costs and liability of reporting the release to the agency and for clean-up of the pollutant. There is no capital or annual cost as compliance is only required if a release as defined in K.S.A. 65-171v occurs. If a person or business operates without a release, there is no compliance requirement to meet.

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

There are no initial or annual costs for implementing the proposed regulation change. The proposed change will reduce the reporting requirements of the person responsible for the release and may result in a decrease in the workload of the agency.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

There are no costs that would accrue if the proposed regulations are not adopted. The current spill reporting statutes and regulations already require the person responsible for the release to report releases to the agency and to clean-up the pollutant released.

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

There is no data or methodology that can be used to estimate the costs of compliance with the proposed regulation change since compliance is dependent on a release of a pollutant as defined in K.S.A. 65-171v occurring.

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Division of Environment
Bureau of Environmental Remediation

ENVIRONMENTAL BENEFIT STATEMENT
FOR ENVIRONMENTAL REGULATIONS

PROPOSED SPILL REPORTING AND RESPONSE REGULATIONS:

K.A.R. 28-48-1, 28-48-2, 28-48-3, and 28-48-4

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I. Environmental Benefit Statement

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

a) Need

KSA 65-171v took effect on July 1, 2021, and updated the statutes concerning the release and response of pollutants to the soils or waters of the state. The statute defined the actions to be taken by the responsible party and KDHE in response to the release of a pollutant. This included KDHE establishing minimum reportable quantities for pollutants. The proposed regulations define the response actions to be taken by responsible parties following the release of a pollutant and define minimum reportable quantities for pollutants which trigger notification of the release to KDHE.

b) Environmental benefit

There is no net environmental benefit due to the proposed regulation changes. The changes reduce the regulatory burden on the responsible party to notify KDHE of every release, regardless of the quantity released. The responsible party is required by KSA 65-171v to complete a clean-up of any release regardless of the notification requirement.

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.

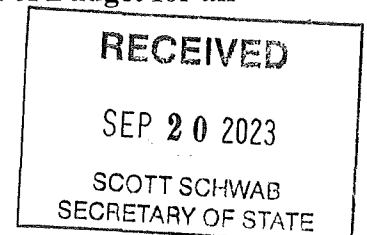
There was no risk assessment completed for these proposed regulations. The responsible party is required by KSA 65-171v to complete a clean-up of any release regardless of the notification requirement.

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.

There are no specific contaminants to be controlled by the proposed regulations. The responsible party is required by KSA 65-171v to complete a clean-up of any release regardless of the notification requirement.

II. Additional Economic Impacts for Environmental Regulations

In addition to the Economic Impact Statement prepared for the Kansas Division of Budget for all environmental rules and regulations, the following descriptions are included:



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

There are no capital costs or annual costs to the regulated community for compliance with the proposed regulations. The current regulations require the person responsible to report all releases of pollutants regardless of volume. The proposed changes will reduce the regulatory burden on the responsible party as notification of KDHE of releases will only occur if the volume exceeds the respective reportable quantity. The responsible party is required by KSA 65-171v to complete a clean-up of any release regardless of the notification requirement.

2) 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 initial and annual costs of implementing and enforcing the proposed regulations will result in a reduction in costs and paperwork for KDHE. The reportable quantities in the proposed regulations will reduce the number of spill reports received by KDHE by up to 10-25 percent. Many of these releases are minor in volume and the regulated community is well adept at cleaning up the releases completely and without oversight.

3) 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.

No new costs will be accrued if the proposed regulations are not adopted. KDHE will continue to operate as it is currently operating.

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

KDHE reviewed the spill reports for the past 10 years and determined the number that would no longer be required to be reported if the proposed regulations are adopted. A comparison of the spills that would not be reported to the total number of spills was completed to determine the reduction in spill reports to be received by the agency. The range of reduction was included as there is a variation in the total number of reports received each year. Some years a significantly larger number of spills occurred due to natural weather phenomena that caused damage to the electrical grid infrastructure, particularly to the oil containing transformers that skewed the percentages.

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