

Proposed

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 10:00 a.m. Wednesday, November 15, 2017, in the Flint Hills Conference Room, third floor, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the proposed revocation of K.A.R. 28-19-202 and the adoption of proposed amended regulations K.A.R. 28-19-516 and 28-19-517, all regarding air quality. Upon adoption of these proposed amended regulations, KDHE will submit these regulations to the U.S. Environmental Protection Agency (USEPA) as a revision to the approved State of Kansas Part 70 Operating Permit Program.

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

Summary of Regulations:

K.A.R. 28-19-202. Annual emissions fee. KDHE is proposing to revoke the current annual emissions fee regulation K.A.R. 28-19-202 under general provisions and combine it with the annual emissions inventory requirements of K.A.R. 28-19-517 under the Class I Operating Permit regulations, K.A.R. 28-19-500 et seq.

K.A.R. 28-19-516. Class I operating permits; application fees. KDHE is proposing to increase all application fees specified in K.A.R. 28-19-516 to supplement the Class I Operating Permit Program fee schedule. Additionally, KDHE is proposing to eliminate the existing language in K.A.R. 28-19-516(c) allowing a reduction of fee by the amount paid in annual emission fees.

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K.A.R. 28-19-517. Class I operating permits; annual emissions inventory and fees.

KDHE is proposing to incorporate new emissions fee language in K.A.R. 28-19-517 applicable

to only sources required to submit an annual emission inventory pursuant to K.A.R. 28-19-517.

KDHE is proposing to increase the emissions fee from the existing \$37.00 per ton to \$53.00 per ton for calendar year 2018 and beyond, establish a base annual emission fee of \$1,000, establish the option for an electronic submittal or paper submittal with associated fee, and amend language concerning late fees, refunds, and credits to encourage timely submission and discourage inaccurate reporting.

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: Class I sources required to apply for a Class I operating permit or renewal pursuant to K.A.R. 28-19-516 will incur a cost ranging from \$750 to \$3000 per application. KDHE projects an increase in revenue associated with these amendments to be approximately \$158,600 annually. Class I sources required to submit an annual emissions inventory pursuant to K.A.R. 28-19-517 will incur a cost in emissions fees ranging from \$1,000 to \$53 per ton of emissions. KDHE projects an increase of revenue associated with all proposed amendments to K.A.R. 28-19-517 to be approximately \$335,726 for fees received beginning in 2018 from those received in 2016. The cumulative increase in costs to the regulated community in 2018 for all proposed amendments is projected to be approximately \$592,746 from fees collected in 2016.

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

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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 Melissa McDonald, Kansas Department of Health and Environment, Bureau of Air, 1000 SW Jackson, Suite 310, Topeka, KS 66612, by email to Melissa.McDonald@ks.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 statement may be obtained from the KDHE Bureau of Air website at

<http://www.kdheks.gov/bar/regs/pnregs.html>

or by contacting Melissa McDonald at the address above, 785-296-5610 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

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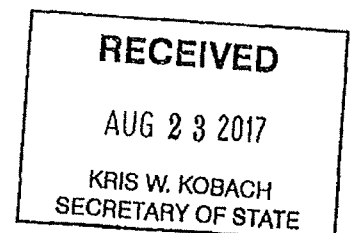
- Wichita-Sedgwick County Dept. of Community Health, 1900 E. 9th St., Wichita

Questions pertaining to the proposed regulations should be directed to Melissa McDonald 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 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 Melissa McDonald.

Susan Mosier, MD, MBA, FACS

Secretary and State Health Officer



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28-19-202. (Authorized by K.S.A. 2009 Supp. 65-3005 and 65-3024; implementing K.S.A. 65-3024; effective Nov. 22, 1993; amended Jan. 23, 1995; amended March 15, 1996; amended Feb. 21, 1997; amended Feb. 13, 1998; amended March 23, 2001; amended Jan. 30, 2004; amended Nov. 5, 2010; revoked P- _____.)

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28-19-516. Class I operating permits; application fee fees. (a) ~~Except as provided in paragraph (b) of this regulation, an application pertaining to a~~ Each of the following class I operating permit applications shall ~~not be deemed complete unless be~~ accompanied by the appropriate fee; specified in this subsection:

(b) Fees:

(1) ~~The fee For an initial application for a class I operating permit other than a general permit shall be \$1,000.00;~~ submitted under K.A.R. 28-19-510, \$3,000.00;

(2) ~~The fee for a class I operating permit renewal application other than a general permit renewal application shall be \$1,000.00;~~ submitted under K.A.R. 28-19-514, \$3,000.00;

(3) ~~The fee for a class I operating permit~~ an application for a significant permit modification shall ~~be \$500.00;~~ submitted under K.A.R. 28-19-513, \$1,500.00;

(4) ~~The fee for a class I general operating permit petition submitted under the provisions of K.A.R. 28-19-401, shall be \$750.00;~~ \$2,250.00; and

(5) ~~The fee for a class I general operating permit application submitted under the provisions of K.A.R. 28-19-403, shall be \$250.00~~ \$750.00.

(c) ~~The application fee required by this regulation, including any application fee involving a class I general operating permit, may be reduced by the amount of any annual emission fee paid pursuant to K.A.R. 28-19-202 if:~~

(1) ~~the annual emission fee was due and paid within the 12-month period immediately preceding payment of the application fee;~~

(2) ~~the application fee involves the same stationary source for which the annual emission fee was paid;~~

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~~(3) the entity responsible for paying the application fee is the same entity responsible for paying the annual emission fee; and~~

~~(4) the total of the application fees reduced during any relevant 12-month period does not exceed the corresponding annual emissions fee paid.~~

(b) Each application fee shall be remitted in the form of a check, bank draft, credit card payment, or money order made payable to the Kansas department of health and environment.

All application fees shall be nonrefundable. (Authorized by K.S.A. 1993 2016 Supp. 65-3005; implementing K.S.A. 1993 2016 Supp. 65-3008; effective Jan. 23, 1995; amended

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~~Proposed~~

28-19-517. Class I operating permits; annual emissions inventory and fees. ~~(a) Each~~ The owner or operator of a each stationary source that is required by these regulations to apply for a class I operating permit shall, ~~on or before April 1 of each year, submit to the department all operating information and any other relevant information deemed necessary by the secretary to estimate the actual air emissions from the stationary source for the preceding year. If April 1 falls on a Saturday, Sunday, or legal holiday, then the submissions shall be due on or before the next business day following April 1. The timeliness of the submissions shall be determined by the postmark if submitted by mail.~~

~~(b) The information required by subsection (a) shall be submitted on forms provided by the department or approved by the secretary~~ comply with this regulation.

(a) Annual emissions inventory.

(1) Each owner or operator shall submit to the department an annual emissions inventory for each stationary source for the year preceding the calendar year in which the source is required to apply for an operating permit and each year thereafter.

(2) Each annual emissions inventory shall be submitted for any regulated pollutant deemed necessary by the secretary from each emission unit, as defined in K.A.R. 28-19-200, and shall include the following:

(A) All operating information;

(B) actual emissions, including fugitive emissions, calculated pursuant to K.A.R. 28-19-210;

(C) any quantity of emissions regardless of operating hours, including sources that did not operate; and

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(D) emissions from each source only while operating in Kansas, if the source operates both in Kansas and out of state.

(b) Annual emissions fee.

(1) Each owner or operator shall submit to the department an annual emissions fee based on the annual emissions inventory determined under subsection (a). Annual emissions fees shall be the greater of the following:

(A) \$1,000.00; or

(B) \$53.00 per ton of emissions multiplied by the total number of tons of emissions, with a maximum of 4,000 tons of each of the following pollutants rounded to the nearest ton:

(i) Sulfur dioxide;

(ii) nitrogen oxides;

(iii) PM10;

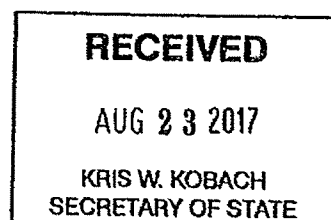
(iv) volatile organic compounds (VOCs); and

(v) hazardous air pollutants (HAPs), excluding HAPs already accounted for as VOCs or PM10.

(2) Each owner or operator shall make annual emissions fee payments by check, bank draft, credit card, or money order payable to the Kansas department of health and environment.

(c) Submittal.

(1) Each annual emissions inventory determined under subsection (a) and each annual emissions fee determined under subsection (b) shall be submitted on forms provided by the department, using either of the following:



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(A) An electronic inventory submission; or

(B) a paper inventory submission, including a fee of \$250.00 for each paper inventory submittal and \$10.00 for each single-sided page.

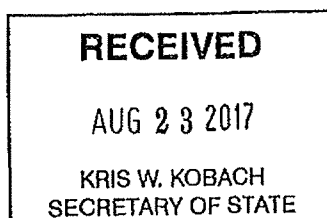
(2) Each submission shall be signed by a responsible official, as defined in K.A.R. 28-19-200, and shall be due on or before April 1 of each year or, if April 1 is a Saturday or Sunday, on or before the next business day following April 1.

(3) If there is a change in the owner or operator of the stationary source, the owner or operator at the time the submission is due shall be responsible for submitting the annual emissions inventory and fee payment. For purposes of determining the annual emissions inventory required by subsection (a) for any period in which there was any other owner or operator of the stationary source, the owner or operator may assume current operating and emission information if the owner or operator is unable to obtain actual information from any previous owner or operator.

(d) Late fee and refund.

(1) Each owner or operator who fails to submit the annual emissions inventory and pay the annual emissions fee by the due date specified in subsection (c) shall pay a late fee. The late fee shall be \$200.00 per day or 0.10 percent of the annual emissions fee per day, whichever is greater.

(2) Any overpayment of at least \$1,000.00 made by the owner or operator of a stationary source may be refunded. Overpayments in any amount less than \$1,000.00 shall not be refunded. (Authorized by K.S.A. 2009 2016 Supp. 65-3005 and 65-3024; implementing K.S.A.



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65-3007 and K.S.A. 2016 Supp. 65-3024; effective Jan. 23, 1995; amended Feb. 20, 1998;
amended Sept. 23, 2005; amended Nov. 5, 2010; amended P-_____.)

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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 REVOCATION OF PERMANENT AIR QUALITY REGULATION:

K.A.R. 28-19-202

PROPOSED REVISION OF PERMANENT AIR QUALITY REGULATIONS:

K.A.R. 28-19-516 and K.A.R. 28-19-517

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Background of Proposed Regulatory Action

The 1990 amendments to the Clean Air Act (CAA) required the U.S. Environmental Protection Agency (USEPA) to promulgate regulations requiring state or local government permitting authorities to establish air quality operating permit programs under Title V. The USEPA has delegated responsibility for running the Title V program to state and local permitting authorities and established standards for those programs under regulations promulgated at 40 C.F.R. part 70. One of the requirements of permit programs is a provision that permitting authorities collect annual fees under a fee schedule that results in the collection and retention of revenues sufficient to cover all reasonable indirect and direct costs of developing and administering the program.

K.S.A. 65-3024 statute establishes the Air Quality Fee Fund (AQFF) and authorizes the Secretary of the Kansas Department of Health and Environment (KDHE) to establish an emissions fee program to administer the Kansas Air Quality Act (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. In addition, K.S.A. 65-3008 authorizes the Secretary of 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 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 AQFF, as intended, to support the cost of administering the KAQA.

In recent years, KDHE has experienced shortfalls in the Title V fee revenues due to emission reductions at major facilities. The purpose of this proposed regulatory action is to restructure and update the Kansas Class I Operating Permit Program fee schedule for calendar year 2018 and beyond. In a subsequent regulatory action, KDHE will be proposing a similar update for the Class II Operating Permit Program fee structure.

KDHE reviews the projected revenues from the fee schedule and proposes appropriate adjustments to meet program requirements. Periodically, adjustments are needed and implemented, including some decreases. This process is clouded with uncertainty, particularly when it comes to predictions related to the economy, the weather, and the subsequent effects of both on business practices and performance. A downturn in the economy leads to reduced consumer demand and reduced production for many businesses, resulting in fewer emissions. Mild winter and summer weather lead to less consumer demand for natural gas and electrical production, resulting in reduced emissions from these industries. Compliance with air emissions regulations also result in reduced emissions.

Currently, a fee increase is needed to offset the combined effects of the reduction over time for emissions upon which fees are paid and maintaining the unfunded mercury deposition monitoring program. The implementation of the mercury deposition monitoring network, established by K.S.A. 75-5673 on April 26, 2007, committed air quality fee funds of approximately \$228,000 for year one and \$140,000 each year after for mercury monitoring. The average cost to run the program for the last three calendar years of 2014 through 2016 is approximately \$136,500 annually.

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For the ten-year period from emission year 2006 to 2015 there were a total of 67,586 tons of actual emissions reductions realized. In the two-year period from emissions year 2015 to 2017, KDHE is projecting an additional 18,868 tons of emissions reductions. These reductions in emissions levels, while a good measure of the successful impact of the Kansas Air Quality program in meeting its goals of protecting human health and environment, also mean there are fewer tons of air pollutants emitted upon which fees are paid.

Although emissions and revenues may decline, there remains an abundance of air quality work (i.e., permitting, compliance and enforcement, monitoring and planning. Permitting activity, in particular, continues to expand with revisions of existing federal regulations and the addition of new standards (e.g., NESHAP/MACT, NSPS, NSR and PSD). The proposed increase in fees will aid in offsetting the effect of declining revenue and in maintaining the Title V fee schedule and the Kansas Air Quality program overall. Projections of program needs for fiscal year 2019 and beyond indicate that resources adequate for effective implementation of the program will not be available without the proposed amendments.

Summary of Proposed Regulatory Action

KDHE is proposing to reorganize, clarify and update the Class I emissions fee, application fee, and emissions inventory regulations by revoking Kansas Administrative Regulations (K.A.R.) 28-19-202 and amending K.A.R. 28-19-516 and K.A.R. 28-19-517.

Annual Emissions Fees: Currently K.A.R. 28-19-202 is the primary implementing regulation for the emissions fee program established at K.S.A. 65-3024. This regulation was initially effective November 22, 1993, and established an annual emissions fee of \$18 per ton of emissions. The presumptive fee in the federal CAA was \$25.00 per ton of emissions, to be adjusted annually for inflation; however, states were provided the flexibility to demonstrate that they could adequately implement their programs with a lesser fee. K.A.R. 28-19-202 was last amended on November 5, 2010, to increase the emissions fee from \$25.00 per ton to \$37.00 per ton for calendar year 2010 and subsequent years.

The proposed amendment would increase the emissions fee to \$53 per ton in calendar year 2018 and would be the only increase in eight years. For comparison, the USEPA Part 70 presumptive minimum fee rate (\$/ton) effective for the 12-month period of September 1, 2016 through August 31, 2017 is \$48.88. This fee rate represents an increase of 0.80433% (or \$0.39) from the fee rate in effect for the prior 12-month period (\$48.49). This increase is based on a calculation of the average monthly change in the Consumer Price Index (All Urban Consumers) for the 12-month period of September 2015 through August 2016 as reported by the U.S. Bureau of Labor Statistics.

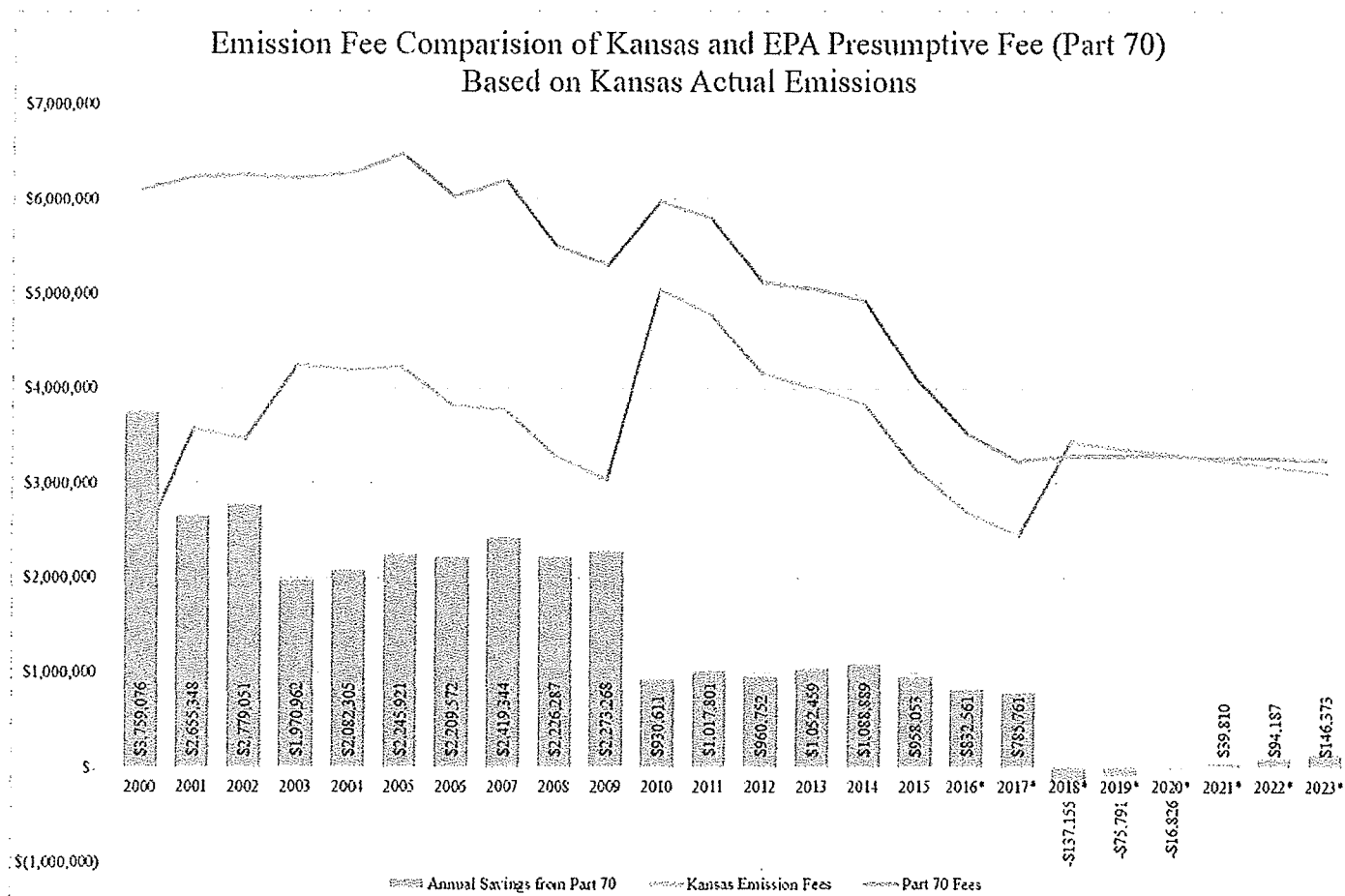
Over the 23-year period since the implementation of this fee schedule, the Bureau of Air, within KDHE, has maintained the fees at levels substantially below those presumed by the USEPA to be the minimum for a state ran program (40 C.F.R. Part 70). As illustrated below, the cumulative savings for Kansas sources subject to the requirements of Part 70 from 2000 to 2015 equal \$30,629,700 and a projected cumulative savings of \$1,668,920 from 2016* through 2023*. The estimates for Part 70 are based on the historic published presumptive fees and the projected linear

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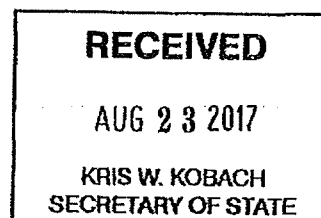
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interpolation of the annual adjustment for the published consumer price index (CPI) applied to actual (2000 – 2015) and projected (2016* – 2023*) Kansas emission data.



To implement this fee increase, KDHE is proposing to revoke the current annual emissions fee regulation K.A.R. 28-19-202 under general provisions and combine it with the annual emissions inventory requirements of K.A.R. 28-19-517 under the Class I Operating Permit regulations, K.A.R. 28-19-500 et seq. The proposed new emissions fee language in K.A.R. 28-19-517 parallels existing K.A.R. 28-19-202 language, but limits the applicability to only those sources required to submit an annual emission inventory pursuant to K.A.R. 28-19-517. KDHE is proposing to combine the two regulations to clarify applicability, submittal and timing requirements as they relate to both annual emission inventory and fees. In addition to the emissions fee increase from the existing \$37.00 to \$53.00 for calendar year 2018 and beyond, the new language establishes a base fee of \$1,000 for annual emissions fees, establishes the option for an electronic submittal or paper submittal with associated fee, and includes modified language concerning late fees, refunds, and credits to encourage timely submission and discourage inaccurate reporting.

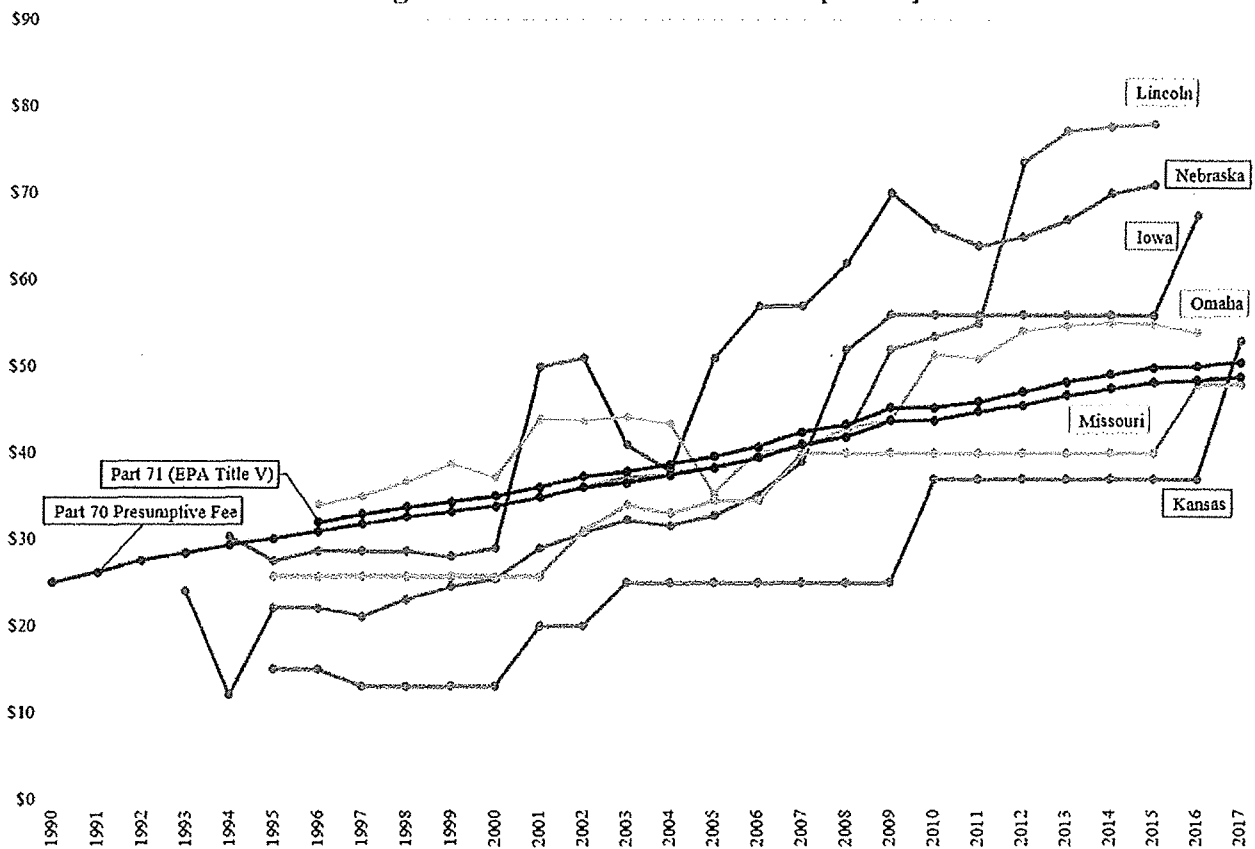


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KDHE trusts that the proposed fees remain competitive with those of the other regional states and should not weigh against business development in Kansas. The following table compares the most currently known annual emission fees for all state and locally ran programs in Region 7 and Part 70 and 71 presumptive fees. The following graphic illustrates the historic trends in all Region 7 fees.

State/Local/Federal	\$/Ton
Kansas (Current)	\$ 37.00
Kansas (Proposed)	\$ 53.00
Iowa	\$ 68.00
Missouri	\$ 48.00
Nebraska	\$ 71.00
Lincoln	\$ 78.03
Omaha	\$ 54.00
Part 70 Presumptive Fee	\$ 48.88
Part 71 (EPA Title V)	\$ 50.56

Region 7 - Title V Emission Fees [\$/Ton]



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Establishment of \$1,000 Base Fee: Currently, sources pay emission fees for every rounded ton emitted. As stated earlier, a supplementary update to the Class II fee schedule is forthcoming and will establish a base fee for all Class II sources, the proposed new language of K.A.R. 28-19-517(b)(1) establishes an equitable corresponding minimum base fee for Class I sources.

Annual Emissions Inventory Paper Submittal Fee: KDHE began accepting annual emissions inventory via an online submittal option for emissions year 2014. To assist the regulated community in this transition to using an online inventory submittal option, KDHE has held workshops and provided source specific training. KDHE is proposing to continue to accept submittals through this preferred online option and also retain the paper form option in these amendments. The paper inventory submittal option requires KDHE staff to manually input the submitted data into the available online option, costing KDHE staff hours. To encourage sources to use the online electronic submittal option, KDHE is proposing to establish a fee for only the paper submittal option to offset this associated burden. The proposed fee will include a base amount of \$250, and an additional \$10 per single-sided page.

Late Fees: Currently, any owner or operator who fails to pay the annual emissions fee by the due date shall pay a late fee of \$20 per day or 0.10% of the annual emissions fee per day, whichever is greater. The majority of late fees paid are assessed using the daily fee verses the 0.10% of annual emissions, therefore only the daily fee is being amended and evaluated for economic impact. The proposed amendment increases the late fee from the current \$20 per day to \$200 per day or by a factor of ten. This amendment is being proposed to encourage sources to submit their inventory information and required fees in the prescribed timeframe to avoid additional fees.

Refunds and Credits: Currently, KDHE refunds an overpayment equal to or greater than the fee equivalent of one ton of emissions (\$37). The current regulation also allows for any overpayment to be credited to next year's annual emissions fee or for the overpayment to be applied to applicable fees of any other source for which the owner is responsible. KDHE is proposing to limit refunds to overpayments equaling \$1,000 (minimum base fee amount) or more with no allowable credits. This amendment is proposed to discourage submittal of inaccurate inventory and fees.

Application Fees: Effective in SFY 2015, the statutory amendments to K.S.A. 65-3008 and 65-3024 redirected revenue previously deposited in the State General Fund to the Air Quality Fee Fund, as intended, to support the cost of administering the Kansas Air Quality Act. Due to this legislative change allowing KDHE to retain Class I operating permit fees, it has become increasingly important for the Bureau to stabilize this source of revenue.

The Permitting Unit has committed to implement a strategy to prioritize incoming applications to support the consistent issuance of permits over the 5-year renewal period allowing a more predictable revenue in future years. Once this stream of revenue is stable, it will be adjusted to balance other revenue deficiencies, such as the irregular fees for construction permits and fines, and to offset the continual decline in emissions.

KDHE is proposing to update K.A.R. 28-19-516 Class I operating permit application fees to supplement the Class I Operating Permit Program fee schedule. Current Class I operating permit application fees were established January 23, 1995, and have not been amended or evaluated since inception. Specifically, KDHE is proposing to increase

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all specified application fees by a factor of three, and eliminate the existing language in K.A.R. 28-19-516(c) allowing a reduction of fee by the amount paid in annual emission fees.

This Regulatory Impact Statement, consisting of an Environmental Benefit Statement and Economic Impact Statement, is submitted in support of the proposed regulatory action. The tables in section 3(d) of the Economic Impact Statement, pages 13 and 14 below, provide projections of the effects of these changes.

I. Environmental Benefit Statement

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

a) Need

These amendments are needed to update the Class I Operating Permit fee schedule to bring in sufficient revenue to adequately administer the Kansas Air Quality Act, specifically to adequately administer the Class I Operating Permit Program. This fee schedule enables KDHE to administer and implement the Class I permitting program, including but not limited to the following activities:

- Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
- Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
- General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;
- Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
- Emissions and ambient monitoring;
- Modeling, analyses, or air demonstrations;
- Preparing inventories and tracking emissions; and
- Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the Act in determining and meeting their obligations under this part.

These fee changes are necessary to guarantee consistent and adequate fee revenue and retention for the actual and projected cost requirements of the program. The fee-related provisions of K.S.A. 65-3024 specifically direct the department to “periodically increase or decrease such fees consistent with the need to cover direct and indirect costs of administering the program.” The significant reduction of pollutant emissions from sources in the state, coupled with the unfunded mercury deposition monitoring program have resulted in projected deficiencies in revenues to adequately fund

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the program in fiscal year 2019 and beyond. To offset the projected shortfall of revenue for the program, the proposed increases are crucial.

b) Environmental benefit

There are no direct environmental benefits 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.

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 these amendments.

II. Economic Benefit Statement

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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, these amendments are not required to participate in a federally subsidized program. The Class I operating permit program is fully funded by the fee schedule established by these proposed amended and new regulations. To obtain and retain approval by the USEPA to be the permitting authority in Kansas, KDHE must demonstrate the adequacy of the fee structure. A specific fee schedule is not federally prescribed, but the USEPA annually publishes their calculated Part 70 presumptive minimum fee. This is, as stated, a minimum fee which if applied demonstrates adequacy of the program as determined by USEPA. This proposal is the first time, due to massive decreases in emissions, that KDHE is proposing a fee greater than the USEPA published presumptive minimum fee, and is therefore presumed to be sufficient to cover the cost of administering the program.

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

No. The proposed amendments do not exceed requirements of applicable federal law. The USEPA publishes a minimum presumptive fee annually, which is increased based on the consumer price index (CPI) only. The USEPA further assumes a state fee schedule to be adequate by applying their minimum presumptive fee. There is an inherent problem with this structure. Fee revenues are directly proportional to emissions and emissions have been continuously declining since the inception of the program, eventually the CPI adjustment will not offset the reductions in emission

realized for a state and therefore it cannot be presumed that the adequacy of the program can be measured on the minimum fee published. A state however is not limited to this minimum presumptive fee for meeting the funding needs, 40 C.F.R. §70.9(B)(3) specifically clarifies that "The State program's fee schedule may include emissions fees, application fees, service-based fees or other types of fees, or any combination thereof, to meet the requirements of paragraph (b)(1) or (b)(2) of this section. Nothing in the provisions of this section shall require a permitting authority to calculate fees on any particular basis or in the same manner for all part 70 sources, all classes or categories of part 70 sources, or all regulated air pollutants, provided that the permitting authority collects a total amount of fees sufficient to meet the program support requirements of paragraph (b)(1) of this section." Nothing in the federal requirements precludes a state from charging more than the presumptive fee.

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, the public or the regulated community. The amendments will result in an increase in annual operating costs for all parties subject to the regulations compared to the existing fees as described below.

Annual Emission Fees: Because of the consistent decrease in emissions, some sources have steadily been paying less each year. Due to the directly proportional relationship between emissions and fees, this uncertainty of revenue will continuously be an issue until annual emissions level off and stabilize. Although the fee per ton is increasing, the tons are decreasing for those sources who are making required reductions.

For emissions year 2015, KDHE received \$3,145,338 in emission fees based on 85,009 tons of emissions from 265 sources. KDHE estimates a reduction of 16,746 tons of emissions from electric generating units and an additional 2% or 2,122 tons reduction from all other sources from the 2015 total reported emissions to the projected 2017 emissions year.

Accounting for these reductions in emissions, and only applying the increase in dollar per ton fee and not the base fee of \$1,000, the total increase from emissions year 2015 to 2017 for these 265 sources equals approximately \$360,159 for an estimated 66,141 tons.

Accounting for these reductions in emissions and applying the emission fee increase from \$37.00 to \$53.00 per ton to the 265 sources paying emissions in 2015, KDHE projects only approximately 205 sources will pay on emissions equaling greater than \$1,000 in emission year 2017. KDHE is projecting a revenue increase of approximately \$335,726 for emissions year 2017 received in calendar year 2018, based on estimated total emissions of 65,680 tons from these 205 sources.

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Establishment of \$1,000 Base Fee: For emissions year 2015 approximately 34 sources did not pay emission fees and 83 sources paid less than \$1,000 (\$35,180 total). Again, based on applying the \$53.00/ton to 2015 actual emissions data, KDHE projects the establishment of the \$1,000 base emission fee will result in an annual revenue of approximately \$94,000 from 94 sources, resulting in an increase of approximately \$58,820 for emissions year 2017 and beyond.

Establishment of Fee for Emissions Inventory Paper Submittal: For emissions year 2016 there were 64 sources who submitted their emissions inventory using paper forms, with an average of 29 pages submitted. A \$250 base fee plus a \$10 per page fee would account for an average cost of \$540 per source, only for those sources who continue to submit on paper. KDHE projects the establishment of the fees for emissions inventory paper submittal will result in an annual revenue of no more than \$34,560 for emissions year 2017 and beyond, accounting for sources using the emissions inventory online submittal at no additional cost.

Late Fees: The proposed amendment increases the late fee from the current \$20 per day to \$200 per day or by a factor of ten. Based on the five-year period from calendar year 2012 through 2016, KDHE has collected late fees on annual emissions from 40 sources equaling \$22,039 with an average annual collection of \$4,405. On average, 8 sources pay late fees per year ranging from approximately \$60 to \$3,220 (3 to 161 days late) with an average fee being \$560 (28 day late). Based on this five-year actual average, KDHE projects an increase in late fees to be approximately \$5,040 annually for calendar year 2018 and beyond, for only those sources who trigger late fee requirements.

Application Fees: KDHE is proposing to increase both the initial and renewal Class I application fees from the current \$1,000 to \$3,000, Class I significant modification application from \$500 to \$1,500, Class I general operating permit petition from \$750 to \$2,250, and Class I general operating permit application from \$250 to \$750.

There are approximately 300 sources required to renew their Title V operating permit every 5 years. The renewal date for each permit is dependent upon the issuance and effective date. As stated previously, it is a goal of the department to stabilize this source of revenue by distributing the number of sources submitting applications for renewal every year to be approximately 60. Therefore, the impact to individual sources will be an increase of \$2,000 per five-year renewal period. If a source submits an application for significant modification, the increase would be \$1,000 per applications.

On average, KDHE only receives fees for approximately 36% of total operating permit applications received annually. With the proposed amendments to K.A.R. 28-19-516, KDHE will receive applicable fees for 100% of the applications received. For the ten-year period from 2007 to 2016, KDHE received an annual average of application fees equaling \$21,372. Based on the projected 60 permits to be issued annually, and the 5-year renewal period for Class I operating permits, KDHE is projecting an increase of approximately \$158,600 annually.

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.

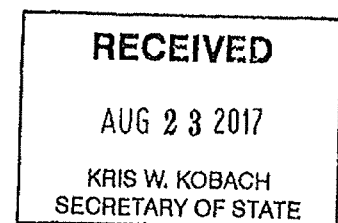
The proposed regulatory action will impose no new costs or paperwork burdens of implementing and enforcing upon the state agencies, other governmental agencies or other persons.

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.

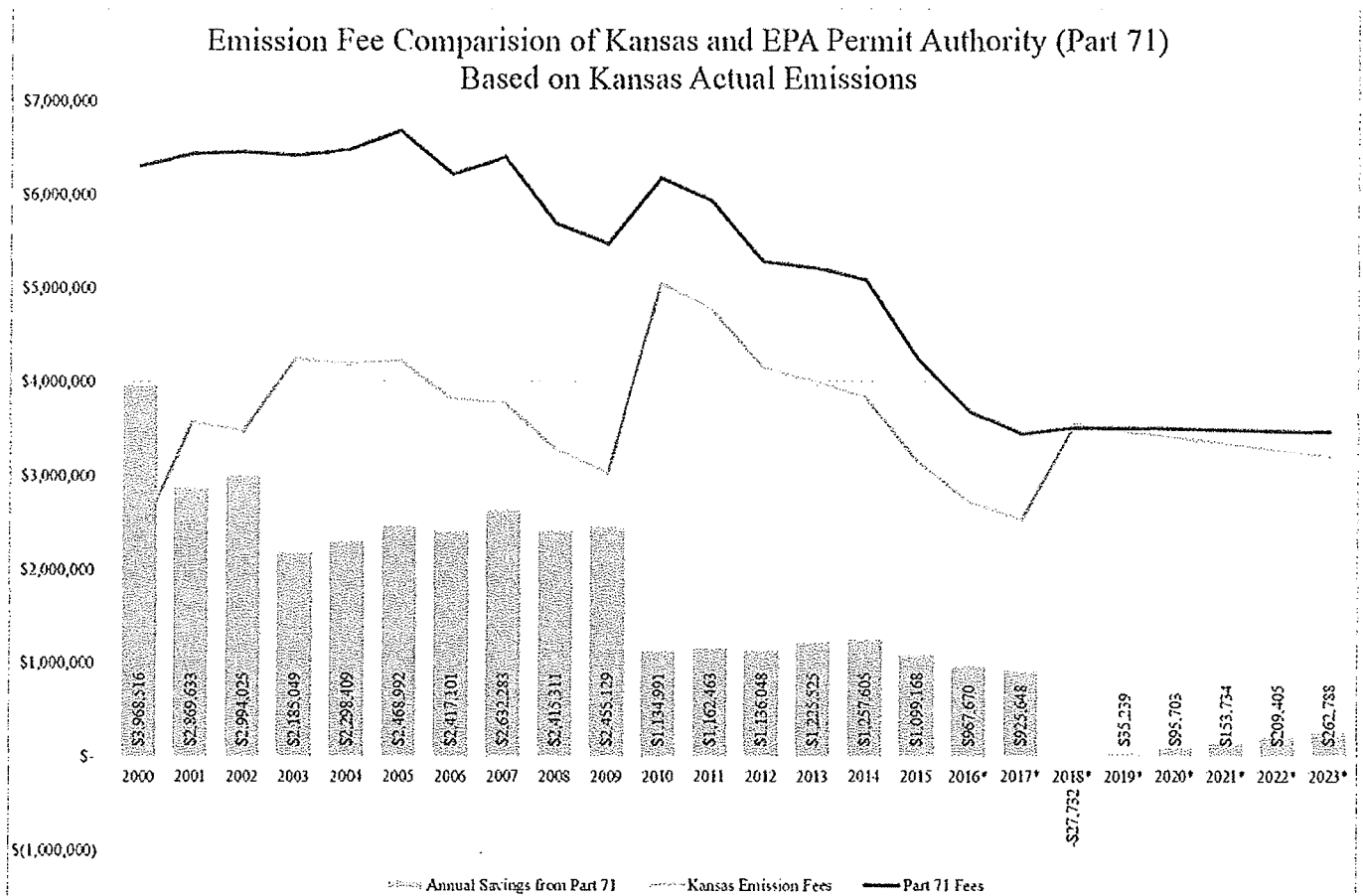
If the proposed amendments to the Class I Operating Permit fee schedule are not adopted, the agency will not receive adequate revenue into the Air Quality Fee Fund to support the air quality program overall. Federal approval of the Class I Operating Permit Program is contingent upon the adequacy of the fee schedule to support the functions of the state agency that implements the permitting program. If the USEPA determines that the fee schedule is not adequate to administer the program they could disapprove the state program and administer the program under 40 C.F.R. Part 71. The regulated community would bear the costs associated with USEPA being the permitting authority instead of the state.

Currently in Region 7, the USEPA merely oversees the implementation of the Title V permitting programs that are administered by each state or local program. Since the inception of the program, Kansas has maintained the authority for the program. The only direct comparable cost would be the 40 C.F.R. Part 71 prescribed fee of \$50.56 per ton for calendar year 2017. As illustrated below the cumulative savings for Kansas sources from 2000 to 2015 is approximately \$33,720,247. The direct and indirect costs and associated delays for USEPA to take over all other related construction permitting, compliance, inventory, and planning activities cannot be directly calculated. The regulated community has continually showed support for the State of Kansas to maintain the administrative authority for all programmatic activities and continues to do so.

The historic costs of each program are significant in the analysis of projected costs for each program. KDHE postulates that the USEPA would need to modify the current fee structure if required to administer the program for Kansas sources, as the accrued revenue from the preceding years would not be available to fund the program. Additionally, due to the continual and significant reductions in emissions from utilities in Kansas, the future Part 71 fee would need be significantly higher than that projected. The projections for Part 71 are based on the linear interpolation of the annual adjustment for the published consumer price index (CPI) applied to actual and projected Kansas emission data.



Proposed



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. and a web-based State and Local Emissions Inventory System (SLEIS) developed by Windsor Solutions, to collect and store actual permitting and emissions inventory data and associated fees. This data was utilized to determine past actuals and to estimate future projections of emissions and fees. Future projections are based on the last complete quality assured 2015 emission inventory and account for reductions projected at two major utilities based on unit closures in emission year 2016 and permitted allowable emissions from installation of controls projected in emissions year 2017.

The following graphic illustrates the decline in tons of emissions and corresponding fees over the last ten years and the projected reductions in emissions for emission year 2016* to 2023*. Please note the year represents the actual and projected emissions year, which requires reporting and assessment for fees in the corresponding following calendar year. As emissions decline, revenues decline proportionally. The notable increase in emissions and fees in emission year 2010 was due to the last regulatory action increasing the fee from \$25 to \$37 and eliminating the minimum threshold of 100 tons for the assessment of fees.

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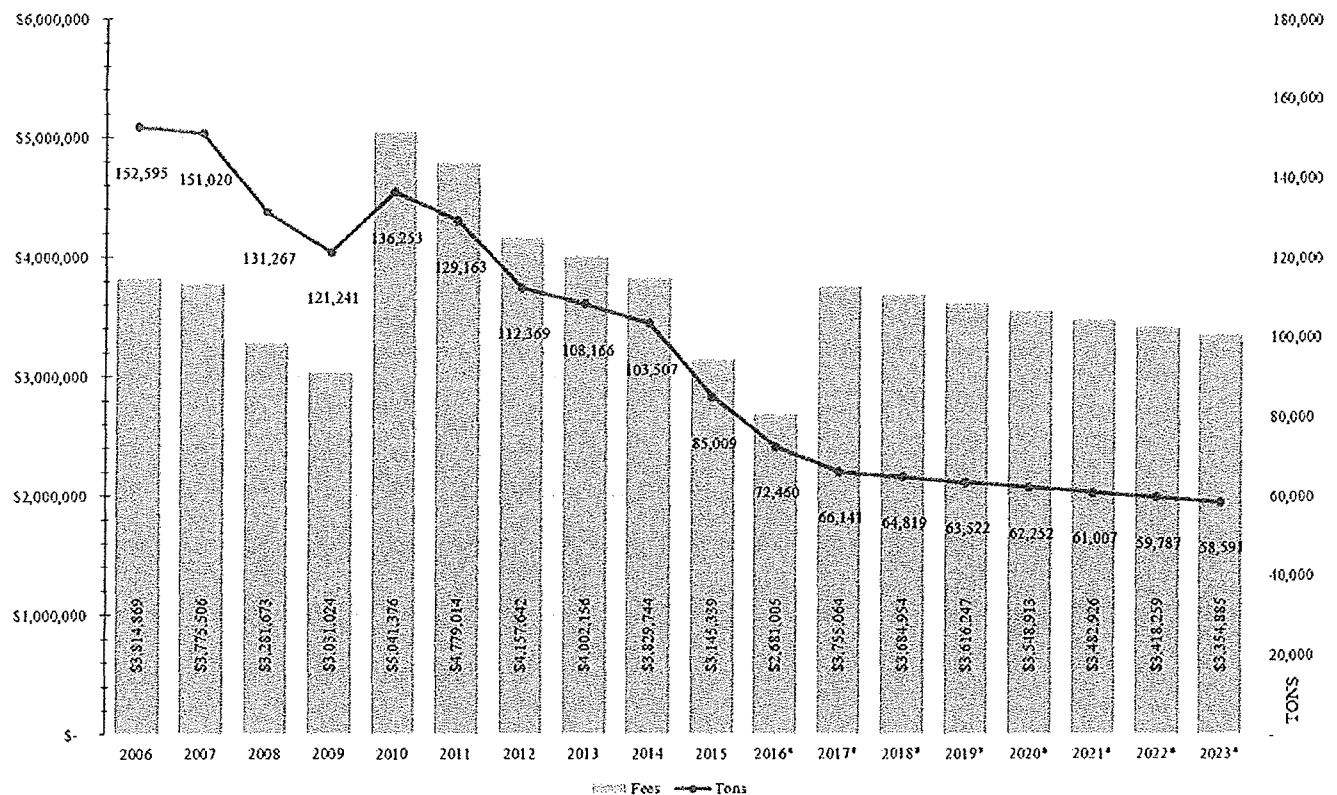
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Proposed

From emissions year 2006 to 2015 there were a total of 67,586 tons of actual emissions reduced. KDHE is projecting an additional 11,478 tons of emissions reductions from the 2015 total reported emissions due to the closure of three electric generating units (EGU's) in emission year 2016*. For projected emissions year 2017*, KDHE is estimating an additional 5,268 ton reduction in emissions from the continuous operation of installed emission control equipment at EGU's, and from 2018* through 2023* an additional reduction of two percent annually for electric generating units. KDHE is projecting a two percent reduction in emissions annually for future emission years 2018* to 2023* for all other sources as well. These combined reductions account for a total of 94,004 tons of emissions since emission year 2006.

Kansas Historic (2006 - 2015) and Projected* (2016 - 2023)
Emission and Fee Trends



Revenue projections were estimated utilizing the above inventory and fee projections and current budget estimates based on program requirements. The following tables provide projections for the Title V fee schedule. Table 1 demonstrates the potential *deficit* if these proposed changes are not enacted. Table 2 demonstrates the effect of only changing the emissions fee per ton. Table 3 represents the projection for the proposed change to both the fee per ton increase and the establishment of the base fee. Table 4 provides the projection accounting for the increase in the emissions fee per ton, the base fee and the application fee increase (late fee amendment not included).

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Table 1. Title V Fee Schedule Projection - Business as Usual; \$37.00/ton.

Emission Year	Calendar Year	SFY	Revenue	Expenditure	Balance
2016*	2017	2018	\$ 2,681,005	\$ 4,946,496	\$ 3,824,916
2017*	2018	2019	\$ 2,447,234	\$ 4,926,180	\$ 1,345,970
2018*	2019	2020	\$ 2,398,289	\$ 5,270,956	\$ (1,526,697)
2019*	2020	2021	\$ 2,350,324	\$ 5,322,175	\$ (4,498,548)
2020*	2021	2022	\$ 2,303,317	\$ 5,374,079	\$ (7,569,311)
2021*	2022	2023	\$ 2,257,251	\$ 5,426,680	\$ (10,738,740)
2022*	2023	2024	\$ 2,212,106	\$ 5,479,991	\$ (14,006,625)
2023*	2024	2025	\$ 2,167,864	\$ 5,534,019	\$ (17,372,780)

Table 2. Title V Fee Schedule Projection - Proposed \$53.00/ton beginning in 2017* Emissions Year.

Emission Year	Calendar Year	SFY	Revenue	Expenditure	Balance
2016*	2017	2018	\$ 2,681,005	\$ 4,946,496	\$ 3,824,916
2017*	2018	2019	\$ 3,505,497	\$ 4,926,180	\$ 2,404,233
2018*	2019	2020	\$ 3,435,387	\$ 5,270,956	\$ 568,664
2019*	2020	2021	\$ 3,366,680	\$ 5,322,175	\$ (1,386,831)
2020*	2021	2022	\$ 3,299,346	\$ 5,374,079	\$ (3,461,564)
2021*	2022	2023	\$ 3,233,359	\$ 5,426,680	\$ (5,654,885)
2022*	2023	2024	\$ 3,168,692	\$ 5,479,991	\$ (7,966,183)
2023*	2024	2025	\$ 3,105,318	\$ 5,534,019	\$ (10,394,884)

Table 3. Title V Fee Schedule Projection - Proposed \$53.00/ton plus base fee beginning in 2017* emissions year.

Emission Year	Calendar Year	SFY	Revenue	Expenditure	Balance
2016*	2017	2018	\$ 2,681,005	\$ 4,946,496	\$ 3,824,916
2017*	2018	2019	\$ 3,575,064	\$ 4,926,180	\$ 2,473,800
2018*	2019	2020	\$ 3,504,954	\$ 5,270,956	\$ 707,798
2019*	2020	2021	\$ 3,436,247	\$ 5,322,175	\$ (1,178,130)
2020*	2021	2022	\$ 3,368,913	\$ 5,374,079	\$ (3,183,296)
2021*	2022	2023	\$ 3,302,926	\$ 5,426,680	\$ (5,307,050)
2022*	2023	2024	\$ 3,238,259	\$ 5,479,991	\$ (7,548,781)
2023*	2024	2025	\$ 3,174,885	\$ 5,534,019	\$ (9,907,915)

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Table 4. Title V Fee Schedule Projection - Proposed \$53.00/ton plus base fee, and application fees beginning in 2017* emissions year.

Emission Year	Calendar Year	SFY	Revenue	Expenditure	Balance
2016*	2017	2018	\$ 2,681,005	\$ 4,946,496	\$ 3,824,916
2017*	2018	2019	\$ 3,755,064	\$ 4,926,180	\$ 2,653,800
2018*	2019	2020	\$ 3,684,954	\$ 5,270,956	\$ 1,067,798
2019*	2020	2021	\$ 3,616,247	\$ 5,322,175	\$ (638,130)
2020*	2021	2022	\$ 3,548,913	\$ 5,374,079	\$ (2,463,296)
2021*	2022	2023	\$ 3,482,926	\$ 5,426,680	\$ (4,407,050)
2022*	2023	2024	\$ 3,418,259	\$ 5,479,991	\$ (6,468,781)
2023*	2024	2025	\$ 3,354,885	\$ 5,534,019	\$ (8,647,915)

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 this proposed regulatory action.

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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