

State of Kansas Air Quality Statutes

Chapter 65.--PUBLIC HEALTH Article 30.--AIR QUALITY CONTROL

65-3001. Title of act. K.S.A. 65-3002, 65-3003, 65-3005 through 65-3013 and 65-3015 through 65-3020 and K.S.A. 65-3008a, 65-3008b and 65-3024 through 65-3028, and amendments thereto, shall be known and may be cited as the Kansas air quality act. **History:** L. 1967, ch. 347, § 1; L. 1970, ch. 261, § 1; L. 1993, ch. 13, § 1; March 25.

65-3002. Definitions. As used in this act, unless the context clearly requires otherwise:

(a) "Air contaminant" means dust, fumes, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof, but not including water vapor or steam condensate.

(b) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants.

(c) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is, or tends significantly to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property, or would contribute to the formation of regional haze.

(d) "Alter" means any physical change in, or change in the method of operation of, an air contaminant emission stationary source which increases the amount of any regulated air pollutant emitted by such source or which results in the emission of any regulated air pollutant not previously emitted.

(e) "Emission" means a release into the outdoor atmosphere of air contaminants.

(f) "Deciview" means an atmospheric haze index that expresses changes in visibility conditions as defined in 40 C.F.R. 51.301 as in effect on July 1, 2005.

(g) "Facility" means any building, structure, machine, equipment, device or installation (or group of buildings, structures, machines, equipment, devices or installations), whether temporary or permanent, located on one or more contiguous or adjacent properties and under common control of the same person (or persons under common control). Such term shall not include locomotives, diesel trucks or truck tractors unless otherwise required by the federal clean air act, as amended in November 1990.

(h) "Modify" or "modification," when used in conjunction with an approval or permit action, means an amendment to an existing approval or permit initiated by the permittee. When used to describe a change in any air contaminant emission stationary source, "modify" shall have the same meaning as the term "alter."

(i) "Permittee" means the holder of an approval or the holder of a permit and includes both the owner and the operator of any approved or permitted air contaminant emission source.

(j) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state or federal government, trust, estate or any other legal entity.

(k) "Regional haze" means visibility impairment, measured in deciviews, occurring over a large geographic area caused by the cumulative emissions of gaseous and particulate air contaminants from numerous sources.

(l) "Reopen" means to seek an amendment to an existing approval or permit initiated by any person other than the permittee.

(m) "Secretary" means the secretary of health and environment.

(n) "Stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant. **History:** L. 1967, ch. 347, § 2; L. 1970, ch. 261, § 2; L. 1974, ch. 352, § 135; L. 1993, ch. 13, § 2; L. 2006, ch. 84, § 1; July 1.

65-3003. Responsibility of secretary; administration. The responsibility for air quality conservation and control of air pollution is hereby placed with the secretary of health and environment. The secretary shall administer this act through the division of environment. **History:** L. 1967, ch. 347, § 3; L. 1970, ch. 261, § 3; L. 1974, ch. 352, § 136; July 1.

65-3004. History: L. 1967, ch. 347, § 4; L. 1970, ch. 261, § 4; L. 1974, ch. 348, § 29; Repealed, L. 1974, ch. 352, § 189; July 1.

65-3005. Powers of the secretary. (a) The secretary shall have the power to:

(1) Adopt, amend and repeal rules and regulations implementing and consistent with this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act concerning air quality control, and in connection therewith, compel the attendance of witnesses and the production of evidence.

(3) Issue such orders, permits and approvals as may be necessary to effectuate the purposes of this act and enforce the same by all appropriate administrative and judicial proceedings.

(4) Require access to records relating to emissions which cause or contribute to air pollution.

(5) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution originating in Kansas that affects air quality in Kansas or in other states or both.

(6) Adopt rules and regulations governing such public notification and comment procedures as authorized by this act.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this act.

(8)(A) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis; (B) provide technical and consultative assistance therefor; and (C) enter into agreements with local units of government to administer all or part of the provisions of the Kansas air quality act in the units' respective jurisdictions.

(9) Encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control.

(10) Encourage air contaminant emission sources to voluntarily implement strategies, including the development and use of innovative technologies, market-based principles and other private initiatives to reduce or prevent pollution.

(11) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state and the several parts thereof.

(12) Establish ambient air quality standards for the state as a whole or for any part thereof.

(13) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution.

(14) Advise, consult and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.

(15) Accept, receive and administer grants or other funds or gifts from public and private entities, including the federal government, for the purpose of carrying out any of the functions of this act. Such funds received by the secretary pursuant to this section shall be deposited in the state treasury to the account of the department of health and environment.

(16) Enter into contracts and agreements with other state agencies or subdivisions, local governments, other states, interstate agencies, the federal government or its agencies or private entities as is necessary to accomplish the purposes of the Kansas air quality act.

(17) Conduct or participate in intrastate or interstate emissions trading programs or other programs that demonstrate equivalent air quality benefits for the prevention, abatement and control of air pollution in Kansas or in other states or both.

(18) Prepare and adopt a regional haze plan as may be necessary to prevent, abate and control air pollution originating in Kansas that affects air quality in Kansas or in other states or both. Any regional haze plan prepared by the secretary shall be no more stringent than is required by 42 U.S.C. 7491.

(19) Participate in the activities of any visibility transport commission established under 42 U.S.C. 7492. The secretary shall report to the governor and the legislature on the activities of any such visibility transport commission annually.

(b) It is a policy of the state to regulate the air quality of the state and implement laws and regulations that are applied equally and uniformly throughout the state and consistent with those of the federal government.

(1) The secretary shall have the authority to promulgate rules and regulations to establish standards to ensure that the state is in compliance with the provisions of the federal clean air act, as amended (42 U.S.C. section 7401 et seq.). The standards so established shall not be any more stringent, restrictive or expansive than those required under the federal clean air act, as amended, nor shall the rules and regulations be enforced in any area of the state prior to the time required by the federal clean air act. If the secretary determines that more stringent, restrictive or expansive rules and regulations are necessary, the secretary may implement the rules and regulations only after approval by an act of the legislature. The restrictions of this subsection shall not apply to the parts of the state implementation plan developed by the secretary to bring a nonattainment area into compliance when needed to have a United States environmental protection agency approved state implementation plan.

(2) For any application for a permit required by federal or state law, the secretary shall not deny or delay the issuance of such permit when the requirements of this act have been met. **History:** L. 1967, ch. 347, § 5; L. 1970, ch. 261, § 5; L. 1974, ch. 352, § 137; L. 1993, ch. 13, § 3; L. 2006, ch. 84, § 2; L. 2009, ch. 141, § 23; May 28.

65-3006. Same; publication and enforcement of regulations; employment of personnel; services. The secretary shall:

(a) Publish and enforce the rules, regulations and standards promulgated hereunder. The secretary shall furnish a copy of such rules, regulations or standards adopted hereunder to any citizen upon request.

(b) Employ such professional, technical and other staff, and provide such technical, scientific and other services as may be required, including laboratory facilities, for the purpose of effectuating the provisions of this act from funds appropriated and available for the purposes of this act. **History:** L. 1967, ch. 347, § 6; L. 1970, ch. 261, § 6; L. 1974, ch. 352, § 138; L. 1975, ch. 312, § 10; July 1.

65-3007. Air contaminant sources; classification; monitoring; reporting. (a) The secretary, by rule and regulation, shall classify air contaminant sources which, in the secretary's judgment, may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. The classifications promulgated by the secretary shall be made to apply to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(b) The secretary shall require air contaminant emission sources to monitor emissions, operating parameters, ambient impact of any source emissions or any other parameters deemed necessary by the secretary. The secretary may require air contaminant emission sources to keep records and make reports consistent with the purposes of this act.

(c) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules and regulations of the secretary require reporting shall make reports containing information as may be required by the secretary concerning location, size and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled. **History:** L. 1967, ch. 347, § 7; L. 1970, ch. 261, § 7; L. 1974, ch. 352, § 139; L. 1975, ch. 312, § 11; L. 1993, ch. 13, § 4; March 25.

65-3008. Approvals and permits for emission stationary sources. (a) No person shall construct, own, operate, install, alter or use any air contaminant emission stationary source which, in accordance with rules and regulations, the secretary finds may cause or contribute to air pollution, unless an appropriate approval or permit has been issued for the source by the secretary under this act. Approvals or permits issued by the secretary may be subject to conditions consistent with the purposes of this act and rules and regulations promulgated under this act.

(b) The secretary shall require that applications for approvals and permits, and renewals thereof, under this act shall be accompanied by application fees and such plans, specifications, compliance plans or other information as the secretary deems necessary. Applications shall be submitted on forms provided by the secretary and shall be signed by a responsible official of the source, who shall certify the accuracy of the information submitted.

(c) The issuance or holding of an approval or permit shall not convey any property right or exclusive privilege to the holder thereof.

(d) Without any further action on the part of the secretary, an approval or a permit shall become void and without effect on its expiration date unless a completed

application form and any required fee are filed with the secretary on or before the expiration date of the approval or the permit. For purposes of this subsection, the secretary may specify by rule and regulation an amount of time prior to the expiration date of an operating permit by which a complete application form and any required fee must be filed with the secretary in order to be considered timely filed. The secretary may provide for a grace period by rule and regulation.

(e) The secretary may issue by rule and regulation a general approval or permit covering numerous similar sources. Any general approval or permit shall comply with all requirements applicable to approvals or permits under this act. Any source covered by a general approval or permit must apply to the secretary and receive authority to operate under the general approval or permit.

(f) The secretary may 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 Kansas air quality act, other than K.S.A. 65-3027. The secretary shall adopt rules and regulations fixing such fees. The fees shall be deposited in the state treasury and credited to the state general fund, except that if all or any portion of the regulatory services for which a fee is collected under this section is performed by a county, city-county or multicounty health department, that portion of such fee which pertains to such services, as determined by the secretary, shall be credited to the local air quality control authority regulation services fund, which is hereby created in the state treasury, and shall be paid from such fund to such local air quality control authority. **History:** L. 1967, ch. 347, § 8; L. 1970, ch. 261, § 8; L. 1974, ch. 352, § 140; L. 1981, ch. 250, § 1; L. 1983, ch. 286, § 3; L. 1984, ch. 313, § 126; L. 1993, ch. 13, § 5; March 25.

65-3008a. Same; public comment and hearing; review. (a) No permit shall be issued, modified, renewed or reopened without first providing the public an opportunity to comment and request a public hearing on the proposed permit action. The request for a public hearing on the issuance of a permit shall set forth the basis for the request and a public hearing shall be held if, in the judgment of the secretary, there is sufficient reason.

(b) The secretary shall affirm, modify or reverse the decision on such permit after the public comment period or public hearing, and shall affirm the issuance of any permit the terms and conditions of which comply with all requirements established by rules and regulations promulgated pursuant to the Kansas air quality act. Any person who participated in the public comment process or the public hearing who otherwise would have standing under K.S.A. 77-611, and amendments thereto, shall have standing to obtain judicial review of the secretary's final action on the permit pursuant to the act for judicial review and civil enforcement of agency actions in the court of appeals. Any such person other than the applicant for or holder of the permit shall not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action. The record before the court of appeals shall be confined to the agency record for judicial review and consist of the documentation submitted to or developed by the secretary in making the final permit decision, including the permit application and any addenda or amendments thereto, the permit summary, the draft permit, all written comments properly submitted to the secretary, all testimony presented at any public hearing held on the permit application, all responses by the applicant or permit holder to any written comments or testimony, the secretary's response to the public comments and testimony and the final permit.

(c) When determined appropriate by the secretary, the procedures set out in subsection (a) may be required prior to the issuance, modification, renewal or reopening of an approval. **History:** L. 1993, ch. 13, § 6; L. 2006, ch. 79, § 1; L. 2009, ch. 141, § 24; May 28.

65-3008b. Same; suspension, revocation, denial, modification, issuance. (a) The secretary may suspend or revoke an approval or a permit if the permittee has violated any provision of the approval or the permit, any provision of this act or any rule and regulation adopted under this act and applicable to the permitted source.

(b) As applicable to the source for which the approval or permit is sought, the secretary may deny an approval or permit, or a renewal thereof, if the applicant fails to: (1) Submit a complete application; or (2) submit an application fee.

(c) The secretary may deny a permit for any proposed new stationary source if the owner or operator of such a source fails to demonstrate to the satisfaction of the secretary that any other stationary source owned or operated by such person, or by any entity controlling, controlled by or under common control with such person, in this state is in compliance, or meeting a schedule for compliance, with all applicable emission limitations and standards under this act and the federal clean air act, and amendments thereto.

(d) The secretary may modify or reopen an approval or a permit for cause. The secretary shall reopen a permit whenever requirements under this act become applicable to a permitted source and three or more years remain on the original term of the permit. Any permit revision incorporating a requirement adopted by the secretary shall be effective as soon as practicable, but not later than 18 months after the promulgation of the requirement by the United States environmental protection agency.

(e) Within 15 days after the issuance of a notice of intent to take any action authorized by subsection (a), (b), (c) or (d), or within 15 days after the secretary's written decision to affirm, modify or reverse a permit decision pursuant to subsection (b) of K.S.A. 65-3008a, the permittee may file a request for a hearing with the secretary. Each such notice of intent shall specify the provision of this act or rule and regulation allegedly violated, the facts constituting the alleged violation and the secretary's intended action. Each notice of intent or written decision to affirm, modify or reverse a permit decision shall state the permittee's right to request a hearing. Such hearing shall be conducted in accordance with the Kansas administrative procedure act.

(f) The filing of a request by the permittee for an approval or permit modification, revocation or amendment, or the filing by the permittee of a notification of planned changes or anticipated noncompliance, does not stay any approval or permit condition.

(g) No permit shall be issued, modified, amended, revised or renewed unless the United States environmental protection agency has certified that such permit complies with the requirements of the federal clean air act, except that a permit may be issued if the United States environmental protection agency has not notified the secretary of the United States environmental protection agency's decision within 45 days after receipt of the proposed permit by such agency.

(h) The secretary shall issue or deny the permit (including requests for modification or to reopen the permit):

(1) Within three years of the date the United States environmental protection agency approves the state permitting program pursuant to the provisions of the federal

clean air act, as amended in November 1990, for permit applications submitted within the first full year after such date;

(2) pursuant to the time schedule provided by title IV (acid rain) of the 1990 amendments to the federal clean air act, for air contaminant emission sources subject to that title; or

(3) within 18 months after receiving a complete application, in all other cases.

(i) Failure of the secretary to issue or deny the permit, or grant or deny a request to modify or reopen the permit, within the period stated in subsection (h) shall not result in the default issuance of a permit, permit amendment, permit modification or permit renewal nor shall such failure result in any other entity assuming jurisdiction to act on the permit or the request. **History:** L. 1993, ch. 13, § 7; March 25.

65-3009. Inspections. The secretary may designate competent representatives who may enter and inspect any property, premise or place at any reasonable time for the purpose of investigating either an actual or possible source of air pollution or of ascertaining the state of compliance with this act and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the secretary who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth levels of emissions and any other facts found which relate to compliance status. **History:** L. 1967, ch. 347, § 9; L. 1970, ch. 261, § 9; L. 1974, ch. 352, § 141; July 1.

65-3010. Emission control requirements. (a) The secretary shall establish emission control requirements, and requirements for open burning (including appropriate prohibition thereof). Such requirements may be either for such areas as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this act and in order to take necessary or desirable account of varying local conditions. Any emission which does not conform to a requirement in force pursuant to this subsection shall constitute a violation of this act.

(b) Every local air quality conservation program that is established pursuant to K.S.A. 65-3016, as amended, shall be in compliance with the rules and regulations set forth for that area by the secretary.

(c) Variations from the requirements of subsection (b) of this section may be included in a local air quality conservation program only after approval by the secretary, following demonstration to the satisfaction of the secretary that the proposed requirements are not less stringent than the standards and requirements established by the secretary and are otherwise consistent with the purposes of this act. Any requirement placed in force pursuant to this subsection shall be preceded by public hearing. The secretary, upon evidence that conditions have changed or that additional or other information is relevant to a decision with respect to the emission control or open burning requirements concerned may, after public hearing, withdraw any approval previously given to a local requirement pursuant to this subsection.

(d) The secretary shall establish reasonable ambient air quality standards for the state as a whole, or any part thereof, and shall require the emission control requirements of any local program to be consistent with such standards in addition to meeting any other requirements pursuant to this section. **History:** L. 1967, ch. 347, § 10; L. 1970, ch. 261, § 10; L. 1974, ch. 352, § 142; July 1.

65-3011. Enforcement; procedure. (a) If the secretary or the director of the division of environment finds that any person has violated any provision of any approval, permit or compliance plan or any provision of this act or any rule and regulation promulgated under this act, the secretary may issue an order finding such person in violation of the act and directing the person to take such action as necessary to correct the violation. Any order issued shall specify the length of time after receipt of the order during which the person must correct the violations.

(b) Any person to whom an order is issued pursuant to subsection (a) may request a hearing within 15 days after service of the order. Hearings before the secretary shall be conducted in accordance with the Kansas administrative procedure act. **History:** L. 1967, ch. 347, § 11; L. 1970, ch. 261, § 11; L. 1974, ch. 352, § 143; L. 1988, ch. 356, § 201; L. 1993, ch. 13, § 9; March 25.

65-3012. Action to protect health or environment; judicial review procedures. (a) Upon receipt of evidence that emissions from an air pollution source or combination of air pollution sources presents: (1) An imminent and substantial endangerment to public health or welfare or to the environment; or (2) for an imminent or actual violation of this act, any rules and regulations adopted under this act, any orders issued under this act or any permit conditions required by this act, the secretary may issue a temporary order not to exceed seven days in duration, directing the owner or operator, or both, to take such steps as necessary to prevent the act or eliminate the practice.

(b) Upon issuance of the temporary order, the secretary may commence an action in the district court to enjoin acts or practices specified in subsection (a) or request the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices.

(c) The secretary may bring suit in any court of competent jurisdiction to immediately restrain the acts or practices specified in subsection (a). An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.

(d) The owner or operator, or both, aggrieved by an order of the secretary issued pursuant to this section shall be immediately entitled to judicial review of such agency action by filing a petition for judicial review in district court. The aggrieved party shall not be required to exhaust administrative remedies. A petition for review under this subsection shall have precedence over other cases in respect to order of trial. **History:** L. 1967, ch. 347, § 12; L. 1970, ch. 261, § 12; L. 1974, ch. 352, § 144; L. 1993, ch. 13, § 12; L. 2009, ch. 141, § 25; May 28.

65-3013. Variances; hearing. (a) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the secretary for a variance from rules and regulations governing the quality, nature, duration or extent of emissions. The application shall be accompanied by such information and data as the secretary may reasonably require. The secretary may grant such variance if the secretary finds that:

(1) The emissions occurring or proposed to occur do not endanger or tend significantly to endanger human health or safety; and

(2) Compliance with the rules and regulations from which variance is sought would produce serious hardships without equal or greater benefits to the public.

(b) No variance shall be granted pursuant to this section except after public hearing on due notice and until the secretary has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available and subject to the taking of any substitute or alternate measures that the secretary may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as the secretary finds is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (c)(1) and (2), it shall be for not more than one year.

(d) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the secretary on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the secretary finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least 60 days prior to the expiration of the variance. Immediately upon receipt of an application for renewal the secretary shall give public notice of such application in accordance with rules and regulations of the secretary.

(e) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the secretary. Within 15 days after the secretary's written decision to grant or deny a variance or renewal thereof, the applicant or holder of a variance or renewal may file a request for a hearing with the secretary. Such hearing shall be conducted in accordance with the Kansas administrative procedure act. However, any person who participated in the public comment process or the public hearing or who otherwise would have standing under K.S.A. 77-611, and amendments thereto, and is adversely affected by any final action of the secretary pursuant to this section shall have standing to obtain judicial review of the secretary's final action on the variance or renewal in the court of appeals. Any such person other than the applicant for or holder of the permit shall not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action. The record before the court of appeals shall be confined to the agency record for judicial review and consist of the documentation submitted to or developed by the secretary in making the final variance or renewal decision, including the variance or renewal application and any addenda or amendments thereto, the variance or renewal summary, the draft variance or renewal, all written comments properly submitted

to the secretary, all testimony presented at any public hearing held on the variance or renewal application, all responses by the applicant or holder of a variance or renewal to any written comments or testimony, the secretary's response to the public comments and testimony and the final variance or renewal.

(f) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of K.S.A. 65-3012, and amendments thereto, to any person or any person's property. **History:** L. 1967, ch. 347, § 13; L. 1970, ch. 261, § 13; L. 1974, ch. 352, § 145; L. 1986, ch. 318, § 93; L. 1988, ch. 356, § 202; L. 2006, ch. 79, § 2; April 13.

65-3014. History: L. 1967, ch. 347, § 14; L. 1970, ch. 261, § 14; L. 1974, ch. 352, § 146; L. 1986, ch. 318, § 94; Repealed, L. 1993, ch. 13, § 18; March 25.

65-3015. Records and information open; trade secret exception. (a) Except as provided in subsection (b), any records, reports or information obtained pursuant to this act shall be available to the public.

(b) Upon a showing satisfactory to the secretary by any person that records, reports or information, or a particular part thereof (other than emission data), to which the secretary has access under this act, if made public, would divulge methods or processes entitled to protection as trade secrets of such person under the uniform trade secrets act (K.S.A. 60-3320 et seq. and amendments thereto), the secretary shall consider such record, report or information, or particular portion thereof, confidential, except that: (1) Such record, report or information may be disclosed to officers, employees or authorized representatives of the United States government concerned with carrying out responsibilities under the federal clean air act and amendments thereto; and (2) this subsection shall not apply to any provision in any air quality approval or permit issued by the secretary and the public shall have access to such approvals and permits in their entirety. **History:** L. 1967, ch. 347, § 15; L. 1970, ch. 261, § 15; L. 1973, ch. 254, § 1; L. 1974, ch. 352, § 147; L. 1993, ch. 13, § 13; L. 2005, ch. 67, § 7; July 1.

65-3015a. History: L. 1970, ch. 261, § 20; Repealed, L. 1973, ch. 254, § 2; July 1.

65-3016. Local air quality conservation programs. Any city, county, city and county, or any combination of two (2) or more cities, counties or cities and counties are authorized to conduct tests and surveys to determine the degree of purity of the air within its jurisdiction, and may request consultation, technical assistance and cooperation from the secretary in conducting such tests and surveys. If such tests and surveys indicate that unsatisfactory air quality exists, is likely to exist or is likely to occur, the governing body of said city or county shall have the authority, upon approval of the secretary, to establish a local air quality conservation authority: *Provided*, That no local air quality conservation authority shall be so approved, except after a public hearing as provided in this act. Any local air quality conservation authority which was in existence prior to May 1, 1967, may apply to the secretary for approval as a local air quality conservation authority hereunder. In approving or disapproving the formation of a local air quality conservation authority, the secretary shall determine: (1) The need for a local air quality conservation authority in the jurisdiction proposed; (2) the likely ability of the local air quality conservation authority, as proposed, to maintain satisfactory air quality in its jurisdiction; and (3)

whether or not the jurisdiction of the proposed local air quality conservation authority completely contains the affected area.

Local air quality control authorities shall have authority to enforce the rules, regulations and standards adopted by the secretary and to establish such additional rules, regulations and standards as necessary to maintain satisfactory air quality within their jurisdiction: *Provided*, That any rule, regulation or standard established by a local air quality conservation authority pertaining to health hazard shall be in compliance with the rules and regulations set forth for that area by the secretary: *Provided further*, That until the secretary shall adopt rules, regulations and standards respecting any area within the jurisdiction of a local air quality conservation authority, the rules, regulations and standards of such local authority respecting said area or areas shall have full force and effect without approval thereof by the secretary.

Upon the establishment of a local air quality conservation authority, such authority and the secretary shall have concurrent jurisdiction over the local area with power and authority to maintain adequate air quality in accordance with the rules, regulations and standards adopted by the secretary.

When two (2) or more cities, two (2) or more counties or a city and a county, or any combination thereof, are affected by a common air mass of unsatisfactory quality and the respective local air quality control authorities, if such exist, are for any reason unable to agree upon a solution or settlement to such air quality problem, the secretary shall, after review and investigation, render decisions and make findings in settlement thereof. **History:** L. 1967, ch. 347, § 16; L. 1970, ch. 261, § 16; L. 1974, ch. 352, § 148; July 1.

65-3017. Motor vehicle pollution. (a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this act, the secretary may provide by rules and regulations for the control of emissions from motor vehicles. Such rules and regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any rules or regulations pursuant to this section shall be consistent with provisions of federal law or regulations, if any, relating to control of emissions from the vehicles concerned. The secretary shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(b) As used in this section "motor vehicle" shall have the same meaning as in K.S.A. 8-1437. **History:** L. 1967, ch. 347, § 17; L. 1970, ch. 261, § 17; L. 1974, ch. 352, § 149; L. 1975, ch. 33, § 8; L. 1976, ch. 52, § 4; July 1.

65-3018. Administrative fines. (a) The secretary or the director of the division of environment, upon a finding that a person has violated any provision of K.S.A. 65-3025 and amendments thereto, may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the

director of the division of environment issued to the person who committed the violation. The order shall state the violation, the penalty to be imposed and the right to request a hearing thereon. The request for hearing shall be in writing, directed to the secretary and filed with the secretary within 15 days after service of the order. Hearings under this section shall be conducted in accordance with the Kansas administrative procedure act.

(c) Nothing in this act shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor. **History:** L. 1967, ch. 347, § 18; L. 1970, ch. 261, § 18; L. 1974, ch. 352, § 150; L. 1993, ch. 13, § 14; March 25.

65-3019. Application of act; limitations. Nothing in this act shall be construed to:

(a) Grant the secretary any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works and shops.

(b) Affect the relations between employers and employees.

(c) Supersede or limit the applicability of any law or ordinance relating to industrial health, safety or sanitation. **History:** L. 1967, ch. 347, § 19; L. 1970, ch. 261, § 19; L. 1974, ch. 352, § 151; July 1.

65-3020. Severability. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such clause, paragraph, subsection or section. **History:** L. 1967, ch. 347, § 20; May 2.

65-3021. Power generation facility; impact upon air quality; definitions. As used in this act the following terms shall have the meanings ascribed to them herein: (a) "Power generation facility" means any physical plant used for the production or generation of electricity, or coal gasification facility.

(b) "Secretary" means the secretary of health and environment.

(c) "Person" means any individual, company, corporation, institution, municipality, township, county, state agency or federal agency. **History:** L. 1978, ch. 352, § 1; July 1.

65-3022. Same; determining and monitoring of power generation facilities environmental impact; programs for; fees; rules and regulations. In order to defray costs in determining and monitoring the environmental impact of power generation facilities with respect to air quality and, in the case of nuclear powered generation facilities, the overall radiological impact thereof, the secretary is authorized and directed to adopt rules and regulations to provide for the establishment of fees and for the collection thereof from each such facility. Such fees shall be determined and collected annually, and such determination shall be based upon the size and type of such facilities. In establishing programs for determining and monitoring environmental impact, the secretary shall take into consideration monitoring programs conducted by other persons and where possible avoid duplication of effort and expense. The secretary may also provide for quality review and evaluation of monitoring conducted by other persons in order to further the objectives of this act and to determine the extent and necessity of

monitoring programs to be conducted by the department of health and environment. **History:** L. 1978, ch. 352, § 2; July 1.

65-3023. Same; fees; disposition of moneys; power generating facility fee fund created. The secretary shall remit all moneys received from fees under K.S.A. 65-3022, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the power generating facility fee fund, which fund is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary. **History:** L. 1978, ch. 352, § 3; L. 1983, ch. 286, § 4; L. 2001, ch. 5, § 242; July 1.

65-3024. Emissions fees. (a) The secretary may fix, charge and collect annual emissions fees in amounts necessary to pay the direct and indirect costs of administering the provisions of the Kansas air quality act. The secretary shall adopt rules and regulations fixing such fees and shall periodically increase or decrease such fees consistent with the need to cover the direct and indirect costs of administering the program. To the extent possible, annual emission fees shall be based upon actual emissions determined pursuant to rules and regulations adopted by the secretary. For purposes of determining emission fees for a facility, emissions of any single regulated pollutant in excess of 4,000 tons per year shall not be included in the calculation when determining the total emissions from the facility.

(b) There is hereby established in the state treasury the air quality fee fund. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

(1) Fees collected under subsection (a);

(2) any moneys recovered by the state under the provisions of this act, including administrative expenses, civil penalties and moneys paid under any agreement, stipulation or settlement; and

(3) interest attributable to investment of moneys in the fund.

(c) Moneys deposited in the fund shall be expended only for the purpose of administering the Kansas air quality act, including funding of a technical and environmental compliance assistance program, and for no other governmental purposes.

(d) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the air quality fee fund interest earnings based on:

(1) The average daily balance of moneys in the air quality fee fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section. **History:** L. 1993, ch. 13, § 8; L. 1996, ch. 253, § 13; May 23.

65-3025. Unlawful acts. It shall be unlawful for any person to do any of the following:

(a) Violate any provision of an order issued under this act.
(b) Violate any provision of an approval or permit issued under this act.
(c) Violate any provision of this act or any rule and regulation promulgated under this act, unless the secretary makes a determination relating to the permittee that the specified provisions referred to in such determination are not applicable to the source and the permit includes that determination or a concise summary thereof. Compliance with the provisions of a permit shall be deemed compliance with applicable provisions of this act or any rule and regulation promulgated under this act if the permit includes the applicable requirements of such provisions. Nothing in this subsection (c) or in any permit shall alter or affect: (1) The provisions of section 303 of the federal clean air act (emergency orders), including the authority of the administrator of the United States environmental protection agency under that section; (2) the provisions of K.S.A. 65-3012 and amendments thereto; (3) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance; (4) the applicable requirements of the acid rain program consistent with section 408a of the federal clean air act; (5) the ability of the United States environmental protection agency to obtain information from a source pursuant to section 114 of the federal clean air act; or (6) the ability of the secretary to obtain information from a source pursuant to this act.

(d) Construct, modify, alter, use or operate an air contaminant emission stationary source without an approval or permit allowing such construction, modification, alteration, use or operation.

(e) At any time, refuse or hinder entry, inspection, sampling or examination or copying of records related to the purposes of this act by an agent or employee of the secretary after such agent or employee identifies and gives notice of the agent's or employee's purpose.

(f) Fail to pay any fee required by this act or rules and regulations promulgated under this act.

(g) Knowingly make any false material statement, representation or certification in any application, record, report, permit or other document filed, maintained or used for purposes of compliance with this act.

(h) Knowingly destroy, alter or conceal any record required to be maintained under rules and regulations promulgated by the secretary under this act. **History:** L. 1993, ch. 13, § 10; March 25.

65-3026. Criminal penalties. (a) Violation of any provision of subsections (a) through (f) of K.S.A. 65-3025, and amendments thereto, is a class A nonperson misdemeanor.

(b) Knowingly violating any provision of K.S.A. 65-3025 is a severity level 10, nonperson felony.

(c) In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(d) The county or district attorney of every county shall file appropriate actions for enforcement of this section upon request of the secretary or upon the county or district attorney's own motion after consultation with the secretary. **History:** L. 1993, ch. 13, § 11; L. 1995, ch. 251, § 19; July 1.

65-3027. Small business assistance program; compliance advisory panel. (a) There is hereby created the small business stationary source technical and environmental

compliance assistance program, to be administered by the secretary. The program shall include each of the following:

(1) Adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources and programs to encourage lawful cooperation among such sources and other persons to further compliance with this act.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution.

(3) A designated office within the Kansas department of health and environment, reporting directly to the secretary, to serve as ombudsman for small business stationary sources in connection with implementation of this act.

(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this act in a timely and efficient manner.

(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final rule and regulation or standard adopted under this act.

(6) Adequate mechanisms for informing small business stationary sources of their obligations under this act, including mechanisms for referring such sources to qualified auditors or for providing audits of the operations of such sources to determine compliance with this act.

(7) Procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirement of this act and rules and regulations promulgated hereunder.

(b) "Small business stationary source" means a stationary air contaminant emission source that:

- (1) Is owned or operated by a person that employs 100 or fewer individuals;
- (2) is a small business concern as defined in the federal small business act;
- (3) is not a major stationary source;
- (4) does not emit 50 tons or more per year of any regulated air contaminant; and
- (5) emits less than 75 tons per year of all regulated air contaminants.

(c) Upon petition by a source, the secretary, after notice and opportunity for public comment, may include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subsection (b)(3), (4) or (5) but which does not emit more than 100 tons per year of all regulated air contaminants.

(d) The secretary may exclude from the small business stationary source definition any category or subcategory of sources that the administrator of the United States environmental protection agency determines to have sufficient technical and financial capabilities to meet the requirements of the federal clean air act without the application of this program, as provided by section 507(c)(3)(A) of the 1990 amendments to the federal clean air act.

(e) The secretary, in consultation with the administrator of the United States environmental protection agency and the administrator of the United States small business administration and after providing notice and the opportunity for public hearing, may exclude from the small business stationary source definition any category or subcategory of sources that the secretary determines to have sufficient technical and financial capabilities to meet the requirements of the act without the application of this section.

(f) There is hereby created a compliance advisory panel composed of seven individuals. The compliance advisory panel shall:

(1) Render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered and degree and severity of enforcement;

(2) make periodic reports to the administrator of the United States environmental protection agency concerning compliance of the small business stationary source technical and environmental compliance assistance program with the requirements of the federal paperwork reduction act, the regulatory flexibility act and the equal access to justice act;

(3) review information for small business stationary sources to assure such information is understandable by the layperson; and

(4) have the small business stationary source technical and environmental compliance assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(g) The compliance advisory panel shall consist of:

(1) Two members who are not owners, or representatives of owners, of small business stationary sources, appointed by the governor to represent the general public;

(2) two members who are owners, or who represent owners, of small business stationary sources, one appointed by the speaker and one appointed by the minority leader of the Kansas house of representatives;

(3) two members who are owners, or who represent owners, of small business stationary sources, one appointed by the president and one appointed by the minority leader of the Kansas senate; and

(4) one member appointed by the secretary to represent the department of health and environment.

(h) Members of the compliance advisory panel serving on the effective date of this act by appointment by the governor, the speaker of the house of representatives or the president of the senate shall serve for terms ending June 30, 1998; members serving on the effective date of this act by appointment by the minority leader of the house of representatives, the minority leader of the senate or the secretary of health and environment shall serve for terms ending June 30, 1997. Upon expiration of such terms, the term of each member appointed to a vacancy created by expiration of a term shall be two years commencing on July 1 immediately following expiration of the term of the member's predecessor. Any vacancy occurring on the panel shall be filled for the unexpired term by appointment by the original appointing authority.

(i) A chairperson shall be elected annually by the members of the compliance advisory panel. A vice-chairperson shall be designated by the chairperson to serve in the absence of the chairperson.

(j) The secretary may reduce any fee required by this act for any classification of small business sources to take into account the financial resources of such classification. **History:** L. 1993, ch. 13, § 15; L. 1997, ch. 18, § 1; Apr. 3.

65-3028. Rules and regulations continued in effect. All rules and regulations promulgated pursuant to K.S.A. 65-3001 *et seq.*, and amendments thereto, in existence on the effective date of this act shall continue to be effective until revised, amended, repealed or nullified pursuant to law. **History:** L. 1993, ch. 13, § 16; March 25.

65-3029. Duties of secretary; approval of prevention of significant deterioration permit. (a) The secretary shall timely approve a prevention of significant deterioration permit (PSD) to sunflower electric power corporation to be issued consistent with the settlement agreement executed May 4, 2009, by sunflower electric power corporation and the governor of the state of Kansas to resolve all claims or causes of action, or both, pending before various courts and administrative agencies consistent with article V of the settlement agreement.

(b) This section shall be part of and supplemental to the Kansas air quality act. **History:** L. 2009, ch. 141, § 42; May 28.

65-3030. Severability clause. The provisions of this act [*] are declared to be severable and if any provision, word, phrase or clause of the act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this act. **History:** L. 2009, ch. 141, § 43; May 28.

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