



Division of Environment

Bureau of Air

REGULATORY IMPACT STATEMENT CONSISTING OF:

I. ENVIRONMENTAL BENEFIT STATEMENT

AND

II. ECONOMIC IMPACT STATEMENT

Pursuant to K.S.A. 77-416

PROPOSED AMENDMENT OF EXISTING AIR QUALITY REGULATION:

K.A.R. 28-19-304

February 2016

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Background of Proposed Amendments

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

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

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

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

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

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

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

I. Environmental Benefit Statement

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

a) Need

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

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

b) Environmental benefit

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

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

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

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

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

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

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

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

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

II. Economic Benefit Statement

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

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

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

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

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

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

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

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

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

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

Approvals

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

NSR Permits

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

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

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

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

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

PSD and Nonattainment NSR Permits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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