

## State of Kansas

### Department of Health and Environment

#### Notice of Public Hearing

The Kansas Department of Health and Environment (KDHE) proposes to revise the *State of Kansas Plan for Implementation, Maintenance and Enforcement of the 2010 National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide (SO<sub>2</sub>)*. If requested, a public hearing for this action will be held on Wednesday, June 26, 2013 at 10:00 a.m. in the Curtis State Office Building, 1000 SW Jackson, Flint Hills Conference Room, Topeka, Kansas. To request a hearing, contact Miles Stotts at [mstotts@kdheks.gov](mailto:mstotts@kdheks.gov), (785) 296-1615, or fax a written request to (785) 296-7455. If no request for hearing is received by Monday, June 24, 2013 at 10:00 a.m., then no hearing will occur and a broadcast announcement will be posted on the KDHE Bureau of Air (BOA) website, <http://www.kdheks.gov/bar/planning/pnplanning.html>.

The State of Kansas Plan for Implementation, Maintenance and Enforcement of National Ambient Air Quality Standards (NAAQS) for sulfur dioxide is proposed in accordance with the requirements of Section 110 of the Federal Clean Air Act Amendments (CAAA) of 1990. The proposed revision demonstrates that Kansas complies with the CAAA, Section 110, providing the necessary plans, programs, and statutory authority to implement Section 110 requirements of the federal Clean Air Act (CAA) as they pertain to SO<sub>2</sub>.

This proposed State Implementation Plan (SIP) revision does not include any rulemaking action. Details concerning this revision may be obtained by contacting Miles Stotts as identified above. The proposed Plan may be viewed at the KDHE BOA website as well as the following locations:

- Department of Air Quality, Unified Government of Wyandotte County - Kansas City, Kansas Health Department, 619 Ann Avenue, Kansas City, KS

- Johnson County Environmental Department, 11811 S. Sunset, Suite 2700, Olathe, KS
- KDHE Northwest District Office, 2301 E. 13<sup>th</sup> St., Hays, KS
- KDHE North Central District Office, 2501 Market Place Ste. D, Salina, KS
- KDHE Northeast District Office, 800 W. 24<sup>th</sup> St., Lawrence, KS
- KDHE Southeast District Office, 1500 W. 7<sup>th</sup> St., Chanute, KS
- Wichita-Sedgwick County Dept. of Community Health, 1900 E. 9<sup>th</sup> St., Wichita, KS
- KDHE Southwest District Office, 302 W. McArtor Rd., Dodge City, KS
- Curtis State Office Building, 1000 SW Jackson St., Ste. 310, Topeka, KS

Please send public comments to KDHE, Bureau of Air, ATTN: Miles Stotts, 1000 SW Jackson, Suite 310, Topeka, KS 66612-1366; email to [mstotts@kdheks.gov](mailto:mstotts@kdheks.gov); or fax to 785-296-7455, ATTN: Miles Stotts. Public comments must be received no later than Wednesday, June 26, 2013 to assure consideration.

Any individual with a disability may request accommodations in order to participate in the public hearing and may request the proposed plan in accessible format. Requests for accommodation to participate in the hearing should be made by Monday, June 17<sup>th</sup> by notifying Miles Stotts; e-mail and phone contact information listed above.

**Robert Moser, M.D., Secretary**  
**Department of Health and Environment**



**Kansas Air Quality State Implementation Plan Revision for the  
Implementation, Maintenance, and Enforcement  
of the  
2010 Sulfur Dioxide Primary National Ambient Air Quality  
Standards (NAAQS)**

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June 2013

Department of Health and Environment  
Division of Environment  
Bureau of Air  
(785) 296-6024

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## Contents

I.	Introduction and Background .....	4
II.	Section 110(a)(2)(A) Emission limits and other control measures.....	6
III.	Section 110(a)(2)(B) Ambient air quality monitoring/data system .....	6
IV.	Section 110(a)(2)(C) Programs for enforcement, PSD, and NSR .....	7
V.	Section 110(a)(2)(D) Interstate and international transport provisions .....	9
VI.	Section 110(a)(2)(E) Adequate personnel, funding, and authority .....	10
VII.	Section 110(a)(2)(F) Stationary source monitoring and reporting .....	11
VIII.	Section 110(a)(2)(G) Emergency episodes .....	12
IX.	Section 110(a)(2)(H) Future SIP revisions .....	13
X.	Section 110(a)(2)(I) Nonattainment area plan or plan revision under Part D.....	13
XI.	Section 110(a)(2)(J) Consultation with government officials, public notification, PSD, and visibility protection .....	13
XII.	Section 110(a)(2)(K) Air quality modeling/data.....	15
XIII.	Section 110(a)(2)(L) Permitting fees .....	15
XIV.	Section 110(a)(2)(M) Consultation/participation by affected local entities .....	16
XV.	APPENDICES.....	17

## I. Introduction and Background

On June 2, 2010, the U.S. Environmental Protection Agency (EPA) promulgated a revision to the Primary National Ambient Air Quality Standard (NAAQS) for sulfur dioxide (SO<sub>2</sub>), and on June 22, 2010, published the final rule in the *Federal Register*. [[75 FR 35520](#)] This revision establishes a new 1-hour SO<sub>2</sub> standard at the level of 75 parts per billion (ppb). The form for the standard is the 3-year average of the 99<sup>th</sup> percentile of the annual distribution of daily maximum 1-hour average concentrations. This revision revokes the existing 24-hour and annual primary SO<sub>2</sub> standards.

EPA anticipated initially designating areas based on 2008-2010 monitoring data or refined dispersion modeling conducted by states, as time and resources allowed. Areas that violated the standard would be designated as “nonattainment.” Areas with both monitoring data and refined modeling results showing no violations would be designated as “attainment.” All other areas would be designated as “unclassifiable.” Based on this criteria set by EPA, the State of Kansas submitted its recommendation for each of the 105 Kansas counties to be designated as “unclassifiable” in a June 13, 2011, letter to EPA.<sup>1</sup>

On July 27, 2012, the EPA announced that it had insufficient information to complete the designations for the 1-hour SO<sub>2</sub> standard within two years and extended the designations deadline to June 3, 2013.<sup>2</sup> In a February 6, 2013, letter to Kansas Governor Sam Brownback, the EPA stated that they were proceeding to designate as nonattainment most areas in locations where 2009-2011 monitoring data indicate violations of the standard. (See Appendix A for EPA’s preliminary SO<sub>2</sub> designations map.) EPA’s review of the 2009-2011 monitored air quality data showed no violations in any areas of Kansas. As a result, EPA stated that they were not yet prepared to propose designation action in Kansas and were deferring action to designate areas in Kansas until additional data are gathered pursuant to EPA’s “comprehensive implementation strategy.”<sup>3</sup>

The Kansas Department of Health and Environment (KDHE) submitted formal comments on EPA’s proposed designation actions in an April 5, 2013, letter to the regulatory docket.<sup>4</sup> KDHE disagreed with EPA’s deferral of designations for all areas of Kansas beyond the statutory deadline and reiterated the State’s recommendation that EPA designate each of the 105 Kansas counties as “unclassifiable.”

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<sup>1</sup> [http://www.epa.gov/airquality/sulfurdioxide/designations/recletters/R7\\_KS\\_rec.pdf](http://www.epa.gov/airquality/sulfurdioxide/designations/recletters/R7_KS_rec.pdf)

<sup>2</sup> This extension was published in the *Federal Register* on August 3, 2012. [77 FR 46295](#)

<sup>3</sup> [http://www.epa.gov/airquality/sulfurdioxide/designations/eparesp/07\\_KS\\_resp.pdf](http://www.epa.gov/airquality/sulfurdioxide/designations/eparesp/07_KS_resp.pdf)

<sup>4</sup> <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2012-0322-0129>

Section 110(a) of the federal Clean Air Act (CAA) requires states to submit an implementation plan to the EPA Administrator that provides for implementation, maintenance, and enforcement of the NAAQS. Section 110(a)(2) lists the elements that are to comprise the State Implementation Plan (SIP).

The elements of Section 110(a)(2) are listed below.

110(a)(2)(A)	Emission limits and other control measures
110(a)(2)(B)	Ambient air quality monitoring/data system
110(a)(2)(C)	Programs for enforcement, PSD, and NSR
110(a)(2)(D)	Interstate and international transport provisions
110(a)(2)(E)	Adequate personnel, funding, and authority
110(a)(2)(F)	Stationary source monitoring and reporting
110(a)(2)(G)	Emergency episodes
110(a)(2)(H)	Future SIP revisions
110(a)(2)(I)	Nonattainment area plan or plan revision under Part D
110(a)(2)(J)	Consultation with government officials, public notification, PSD, and visibility protection
110(a)(2)(K)	Air quality modeling/data
110(a)(2)(L)	Permitting fees
110(a)(2)(M)	Consultation/participation by affected local entities

When the EPA promulgates a new standard or revises an existing standard, CAA Section 110(a)(1) requires each state to revise their SIP to demonstrate that they have the authority and programs needed to implement, maintain, and enforce the standard. Several of the elements listed in Section 110(a)(2) specifically address this requirement and are sometimes compiled and submitted separately in what is referred to as an Infrastructure SIP. This document is the Kansas Infrastructure SIP revision for the revised SO<sub>2</sub> NAAQS promulgated on June 2, 2010.

Most of the infrastructure requirements already are addressed in the comprehensive Section 110(a)(2) SIP submitted by Kansas in 1972 in response to the CAA of 1970. The Kansas revision for the 2010 federal SO<sub>2</sub> air quality standard continues to affirm Kansas' commitment to comply with the Section 110(a)(2) requirements and is incorporated by reference into the overall Kansas State Implementation Plan.

The following discussions list the statutory and regulatory requirements by each paragraph in Section 110(a)(2) and demonstrate that the Kansas Department of Health and Environment (KDHE) has the necessary plans, programs, and statutory authority to implement the requirements of Section 110 of the federal Clean Air Act (CAA) as they pertain to SO<sub>2</sub>.

## **II. Section 110(a)(2)(A) Emission limits and other control measures**

*“(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;” [42 U.S.C. 7410(a)(2)(A)]<sup>5</sup>*

The Kansas Department of Health and Environment (KDHE) fulfills the requirements of Section 110(a)(2)(A) through the Kansas Statutes, Kansas Administrative Regulations, permits, and consent orders and agreements. The Secretary of the KDHE has the power to adopt, amend and repeal rules and regulations implementing air quality standards and to prepare and develop plans for the prevention, abatement, and control of air pollution in Kansas that affects air quality in Kansas, in other states, or both. [K.S.A. 65-3005]

The Kansas Air Quality Program, located within the KDHE’s Bureau of Air (BOA), monitors and tracks air pollutants across Kansas to assure that health-based standards set by the EPA are not exceeded. Data are used to develop the appropriate regulatory or outreach strategies to reduce air pollution levels and improve air quality. The program is also responsible for issuing air emission permits for facilities and ensuring compliance with state and federal regulations for air pollutants. The statutory authority granted at K.S.A. 65-3010, Emission Control Requirements, as well as Kansas Air Quality Regulations applicable to individual facilities, fulfills the requirements of Section 110(a)(2)(A).

## **III. Section 110(a)(2)(B) Ambient air quality monitoring/data system**

*“(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—*

*(i) monitor, compile, and analyze data on ambient air quality, and*

*(ii) upon request, make such data available to the Administrator;”[42 U.S.C. 7410(a)(2)(B)]*

The Kansas ambient air monitoring network, operated by the KDHE’s Bureau of Air and local air quality agencies, fulfills the requirements of 110(a)(2)(B). Monitoring data from 20 sites across the state are analyzed to determine compliance with federal standards for criteria pollutants and to evaluate air quality trends. The quality assured data are compiled and reported to the EPA.

Each year, in accordance with 40 C.F.R. Part 58, KDHE submits the annual monitoring network plan to EPA for approval. The *State of Kansas 2012-2013 Ambient Air Monitoring Network Plan* was approved by EPA in January 2013. EPA-approved monitoring plans can be found on the following EPA website: <http://www.epa.gov/region07/air/quality/quality.htm>. The monitoring plan describes the current Kansas SO<sub>2</sub> monitoring network, which includes four monitors located throughout the state.

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<sup>5</sup> The Clean Air Act (CAA) was incorporated into the United States Code (U.S.C.) as Title 42, Chapter 85. Both the CAA and U.S.C. references are provided. See <http://www.epa.gov/air/caa> for more information.

The collection of emissions monitoring data is authorized by K.S.A. 65-3005, and authorization for the public availability of this data is provided by K.S.A. 65-3015.

KDHE commits to continue operating an air quality monitoring network that complies with EPA requirements and to provide quarterly reports of compiled and analyzed air quality monitoring data to the EPA.

#### **IV. Section 110(a)(2)(C) Programs for enforcement, PSD, and NSR**

*“(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter;” [42 U.S.C. 7410(a)(2)(C)]*

Kansas fulfills the requirements of Section 110(a)(2)(C) with the implementation of a program for the enforcement of control measures associated with the State Implementation Plan and a permit program for stationary sources. KDHE’s Bureau of Air implements and manages these programs through its Air Compliance and Enforcement Section and its Air Permitting Section in coordination with the Bureau of Environmental Field Services district offices.

The Air Compliance and Enforcement Section (ACES) is responsible for determining compliance and, if needed, issuing enforcement actions due to non-compliance as authorized by K.S.A. 65-3011. Air emissions sources in Kansas are subject to state and federal air quality regulations. Depending on the type and quantity of emissions, sources are required to obtain permits and conduct activities such as testing, monitoring, recordkeeping, and reporting to demonstrate compliance as authorized by K.S.A. 65-3008 and 65-3008b. The ACES staff uses a combination of inspections, performance test evaluations, report reviews, technical assistance, and enforcement actions to ensure facilities comply with the applicable air quality regulations and permits. Staff from KDHE’s district offices, as well as the cooperating local agencies, conduct inspections and investigate complaints, as authorized by K.S.A. 65-3009, and forward the results to the ACES staff for review and response. The ACES staff oversees performance tests through approval of proposed test plans, on-site observation of performance tests, and review and approval of the reported test results. Periodic reports are evaluated for compliance. The ACES staff also provides public outreach and compliance assistance. When a source violates an air quality standard, the ACES staff issues a notice of violation, works with the source to return them to a compliant regulatory status, and pursues formal enforcement action when necessary as authorized by K.S.A. 65-3011. Information about the compliance and enforcement program is available at <http://www.kdheks.gov/air-permit/indexCE.html>.

The Air Permitting Section (APS) is responsible for reviewing air quality control permit applications and issuing permits for air emissions in accordance with state and federal air quality regulations. The state authority is granted at K.S.A. 65-3008. The APS issues construction permits and approvals prior to construction or modification. The construction permit application allows the APS to determine if or what requirements need to be established for the facility (or emission source) when equipment is constructed or modified. Whether a construction permit or an approval is required depends on the potential-to-emit (PTE) of the proposed construction or modification. The proposed construction or modification is reviewed to assure that potential emissions from the new or modified equipment will comply with the requirements of

state and federal regulations. The construction permit program is also the vehicle by which Kansas implements several other federal programs that have been delegated to the state and are applicable to new or modified sources. These include the New Source Performance Standards (NSPS), 40 C.F.R. Part 60, and the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. Parts 61 and 63. Part 63 is based on maximum achievable control technology and is usually referred to as the MACT regulations.

The Air Permitting Section also issues operating permits. The PTE of the facility determines the type of operating permit required, if any. The two types of operating permits are Class I (also known as a Title V permit) and Class II (also known as a federally enforceable state operating permit). The Kansas Class I operating permit program satisfies the requirements of the federal Title V program and closely parallels the requirements of 40 C.F.R. Part 70. A Class I operating permit is required for major sources of air pollution and provides a complete listing of all air quality regulatory requirements in one document. The Class II operating permit program provides a method to reduce the PTE of a source below the major source thresholds and thereby allows the source to operate without a Class I operating permit. Information about the permits program is available at <http://www.kdheks.gov/air-permit/indexPrmt.html>.

The Department of Air Quality of the Unified Government of Wyandotte County assists in the permitting process by issuing construction and operating permits in Wyandotte County.

Federally approved Kansas air quality regulations K.A.R. 28-19-300 through 304 apply to preconstruction permits and approvals, K.A.R. 28-19-350 applies to prevention of significant deterioration (PSD), and K.A.R. 28-19-500 *et seq.* apply to operating permits. Kansas adopted the requirements of the federal *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule* as published on June 3, 2010, in the *Federal Register*. [75 FR 31514] The Kansas regulations, K.A.R. 28-19-200a and K.A.R. 28-19-350, were published as final regulations in the *Kansas Register* on November 11, 2010, and became effective on January 2, 2011. [Kansas Register Vol. 29, No. 45, pages 1634-1636] A Kansas SIP revision reflecting these changes was submitted in a final version to EPA on December 23, 2010. EPA published its approval of the SIP revision in the *Federal Register* on February 22, 2011. [76 FR 9658] In the final action, EPA stated: “The SIP revision Kansas submitted on December 23, 2010, (1) provides the state with the authority to regulate GHGs under its PSD program, and (2) establishes appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting stationary sources in accordance with EPA’s Tailoring Rule. EPA has made the determination that the December 23, 2010, SIP revision is approvable because it is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs.” [76 FR 9663] The most recent amendments to K.A.R. 28-19-350 maintain the alignment of the Kansas PSD regulation with the federal PSD regulation codified at 40 C.F.R. 52.21. These amendments became effective on December 28, 2012, and were submitted for EPA approval into the Kansas SIP.<sup>6</sup>

The Kansas Department of Health and Environment (KDHE) commits to continued enforcement of control measures for which it has jurisdiction and to the continued oversight of local agency permitting and enforcement programs with respect to measures required by the CAA.

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<sup>6</sup> EPA proposed approval in *Approval and Promulgation of Implementation Plans; State of Kansas; Infrastructure SIP Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards*, 78 FR 22827, April 17, 2013.

## V. Section 110(a)(2)(D) Interstate and international transport provisions

“(D) contain adequate provisions—

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);” [42 U.S.C. 7410(a)(2)(D)]

On November 19, 2012, EPA issued a memorandum regarding [“Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule.”](#) In this memo, Gina McCarthy noted that “the recent CSAPR decision made certain holdings regarding the requirement for states to submit SIPs addressing the provisions of Clean Air Act section 110(a)(2)(D)(i)(I), the good neighbor provision that addresses upwind emissions linked to NAAQS attainment problems in downwind states. The decision states that a SIP cannot be deemed deficient for failing to meet the good neighbor obligation before the EPA quantifies that obligation. Gina McCarthy further declared that “at this time the EPA does not intend to make findings that states failed to submit SIPs to comply with Section 110(a)(2)(D)(i)(I). To the extent states may inquire about their obligations to submit SIPs addressing this provision, we believe it would be appropriate to convey that at this time we do not intend to make such findings with respect to section 110(a)(2)(D)(i)(I).” Therefore, section 110(a)(2)(D)(i)(I) is not addressed at this time.<sup>7</sup> This submittal is intended to satisfy section 110(a)(2)(D)(i)(II) and (D)(ii).

KDHE conducted an analysis of actual SO<sub>2</sub> emissions inventory data for 2007 to 2011 to demonstrate the declining contribution of Kansas SO<sub>2</sub> emissions. Actual point source SO<sub>2</sub> emissions decreased from 125,301 tons in 2007 to 46,833 tons in 2011. Kansas point source SO<sub>2</sub> emissions are projected to decrease to around 28,769 tons by 2016. (See Appendix B for details of this analysis.)

Kansas’ federally approved Prevention of Significant Deterioration (PSD) permitting program applies statewide, with all counties recommended to be designated unclassifiable for the 2010 SO<sub>2</sub> NAAQS, to ensure that new and modified sources of pollution do not cause or contribute to violations of air quality standards. Section 126(a) of the Clean Air Act (CAA) directs that the SIP include provisions requiring a new or modified source to notify neighboring states of potential impacts from the source. Kansas fulfills this requirement with a regulatory provision in K.A.R. 28-19-350(k)(2) that is consistent with 40 C.F.R. 51.166(q)(2)(iv).

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<sup>7</sup> EPA has not completed its Transport SIP guidance establishing technical requirements for demonstrating whether or not a state has transport impacts on downwind states. KDHE will review the guidance once it becomes available and apply as necessary should there be an EPA determination of significant contribution by Kansas with respect to the 2010 SO<sub>2</sub> standard.

On December 27, 2011, EPA published final approval of the State of Kansas Regional Haze Plan, submitted in November 2009, with supplemental information provided in December 2011. [76 FR 80754] All associated Regional Haze Plan documents are available in the regulatory docket: <http://www.regulations.gov/#!docketDetail;D=EPA-R07-OAR-2011-0675>. EPA determined that the plan submitted by Kansas satisfies the requirements of the Clean Air Act (CAA) for states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas caused by emissions of air pollutants located over a wide geographic area. The State of Kansas aims to provide a five-year report by November 9, 2014, and a SIP revision by July 31, 2018, and every ten years after.

## **VI. Section 110(a)(2)(E) Adequate personnel, funding, and authority**

*“(E) provide*

*(i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof),*

*(ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and*

*(iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;” [42 U.S.C. 7410(a)(2)(E)]*

The Kansas Department of Health and Environment (KDHE) has adequate personnel, funding, and authority to fulfill the requirements of the SIP. As stated above in “II. Section 110(a)(2)(A) Emission limits and other control measures” of this document, KDHE fulfills the requirements of the SIP through the Kansas Statutes, Kansas Administrative Regulations, permits, and consent orders and agreements. The Bureau of Air (BOA) program’s budget is funded by Title V and non-Title V fees authorized by K.S.A. 65-3024, permit fees authorized by K.S.A. 65-3008, EPA grants authorized under Sections 103 and 105 of the Clean Air Act (CAA), and the State General Fund.<sup>8</sup>

The Kansas Legislature annually approves KDHE’s funding and personnel resources for carrying out the programs of the SIP. The annual budget process provides a periodic update that enables KDHE and the local agencies to adjust funding and personnel needs. While it is not legally possible for KDHE and the local agencies to provide specific commitments about future budgets (funding and staff resources), the annual budget appropriations process undertaken by the Kansas State Legislature enables KDHE to present a request for resources required to meet the mandates of the CAA. Since KDHE’s CAA-mandated programs have received state funding for more than 40 years, and since there is consistent public support in Kansas for providing clean air, it is reasonable to assume that implementation of the CAA mandates in Kansas will continue to obtain the necessary funding.

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<sup>8</sup> The term “non-Title V fee” refers to those fees collected under the provisions of K.S.A. 65-3024 and K.A.R. 28-19-202 that are used to implement the provisions of the Kansas Air Quality Act that involve clean air act requirements other than Title V.

The majority of the BOA budget currently consists of dedicated funds that are collected from regulated emission sources and can only be used for air pollution control. These dedicated fees are periodically adjusted in order to provide necessary funding for the BOA programs. The last such fee adjustment was an increase to K.A.R. 28-19-202 *Emissions Fee* on November 5, 2010. Collectively, the BOA and local agency budgets adequately support the Kansas air program with about 53 full-time equivalent staff positions.

Kansas Statutes from Chapter 46, Article 2, specify conflict of interest requirements to which members of KDHE are subject. These requirements specifically prohibit all state and local public officials from participating in governmental decisions for which they have a substantial financial interest as defined at K.S.A. 46-229. The Secretary and employees of KDHE are required to file statements of substantial interests pursuant to the statutes found at K.S.A. 46-247 *et seq.* Specifically, the following statutes fulfill the CAA Section 128 (42 U.S.C. 7428) requirements referenced in Section 110(a)(2)(E) for disclosure of financial interests by the “head of an executive agency” responsible for issuing permits and enforcement orders:

46-247. *Individuals required to file written statements of substantial interests; exception.*

(c) State officers, employees and members of boards, councils and commissions under the jurisdiction of any state agency who are listed as designees by the head of a state agency pursuant to K.S.A. 46-285, and amendments thereto.

46-221. *State officer or employee, candidate and state officer elect defined.*

46-229. *“Substantial interest” and “client or customer” defined.*

The KDHE oversees local agencies to implement the Kansas Air Quality Act (Kansas Statutes Chapter 65, Article 30) and to provide air quality protection services. Partner agencies include:

- City of Wichita Department of Environmental Services
- Johnson County Environment Department
- Unified Government of Wyandotte County and Kansas City-Kansas Health Department.

The KDHE commits to actively maintain programs for the enforcement of control measures included in the approved State Implementation Plan (SIP) and measures required by the Clean Air Act (CAA).

## **VII. Section 110(a)(2)(F) Stationary source monitoring and reporting**

*“(F) require, as may be prescribed by the Administrator—*

*(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,*

*(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and*

*(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;” [42 U.S.C. 7410(a)(2)(F)]*

The KDHE maintains a database with emissions inventory data for more than 900 stationary source facilities in Kansas. The inventory includes SO<sub>2</sub> emissions data. KDHE posts a summary report of emissions from stationary sources, both major and minor, for the National Emissions Inventory Year on its website (<http://www.kdheks.gov/emission/data.html>). The data are reported to the EPA every three years.

Emissions monitoring data provide a basis for determining whether facilities meet established performance standards. KDHE uses this data to identify sources and emission levels, determine compliance with regulations and other enforceable requirements, develop control and maintenance strategies, and analyze progress in maintaining the NAAQS.

KDHE commits to its continued oversight of the stationary source monitoring requirements and to the reporting of data collected by such monitoring activities as authorized respectively by K.S.A. 65-3007 and 65-3015.

### **VIII. Section 110(a)(2)(G) Emergency episodes**

*“(G) provide for authority comparable to that in section 7603 of this title and adequate contingency plans to implement such authority;” [42 U.S.C. 7410(a)(2)(G)]*

Kansas meets the requirements of Section 110(a)(2)(G), which requires states to provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or to the environment and adequate contingency plans to implement such authority. This authority is provided to the KDHE Secretary in the Kansas air quality statutes, specifically K.S.A. 65-3012 and 65-3005.

Upon receipt of evidence that emissions present an imminent and substantial endangerment to public health or welfare or to the environment or that a violation is imminent or has occurred, the Secretary is granted authority by K.S.A. 65-3012 to direct the source owner or operator to take the necessary steps to prevent the act or eliminate the practice. The Secretary is authorized by K.S.A. 65-3005 to promulgate implementing regulations and to prepare and develop plans for the prevention, abatement, and control of air pollution, including emergency episodes.

Kansas’ Air Pollution Emergency Plan includes the regulations found at K.A.R. 28-19-55 *et seq.* that address excessive buildup of air contaminants during air pollution episodes in Kansas. K.A.R. 28-19-55 addresses general provisions; K.A.R. 28-19-56 details episode criteria, specifically addressing SO<sub>2</sub>, NO<sub>2</sub>, PM<sub>10</sub>, CO, and ozone; K.A.R. 28-19-57 specifies emission reduction requirements; and K.A.R. 28-19-58 specifies requirements for emergency episode plans. Emergency episode plans are required in areas that record pollutant concentrations in excess of threshold levels specified in 40 CFR 51.150. Regardless of the nature and scope of the emergency episode, the Secretary of KDHE has the authority to respond as necessary and appropriate.

KDHE commits to submit any necessary revisions to its Air Pollution Emergency Plan upon adoption of amended guidance by EPA in future.

**IX. Section 110(a)(2)(H) Future SIP revisions**

*“(H) provide for revision of such plan—*

*(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and*

*(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;” [42 U.S.C. 7410(a)(2)(H)]*

The Kansas Department of Health and Environment (KDHE) is submitting a revised State Implementation Plan (SIP) that responds to revised air quality standards for SO<sub>2</sub>. As authorized by K.S.A. 65-3005(a)(5), KDHE commits to submit SIP revisions whenever revised air quality standards are promulgated by the EPA or when existing provisions are found to be inadequate.

**X. Section 110(a)(2)(I) Nonattainment area plan or plan revision under Part D**

*“(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas);” [42 U.S.C. 7410(a)(2)(I)]*

As per EPA guidance, nonattainment area plans required under part D are required on a different schedule from the Section 110 infrastructure elements and will be reviewed and acted upon through a separate process.

Currently, there are no nonattainment areas for the 2010 SO<sub>2</sub> NAAQS in Kansas.

**XI. Section 110(a)(2)(J) Consultation with government officials, public notification, PSD, and visibility protection**

*“(J) meet the applicable requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection);” [42 U.S.C. 7410(a)(2)(J)]*

Section 121 requires a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments, and any affected federal land manager in carrying out CAA requirements. The Secretary of KDHE is authorized by K.S.A. 65-3005(a)(8) to provide consultation assistance, and KDHE is required by K.A.R. 28-19-350(k) to consult with local governments, officials, and federal land managers before the issuance of a permit under the PSD program.

The Bureau of Air's rulemaking process for public participation fulfills the requirements of 110(a)(2)(J) and is conducted under the statutory authority at K.S.A. 77-421. KDHE commits to maintaining a process of consultation with parties designated under CAA Section 121 (42 U.S.C. 7421).

The State's rulemaking process includes:

- Department approvals
- Review and approval by the Secretary of Administration and Attorney General
- Notification to municipalities, counties, school boards, and neighboring states
- Public hearings and comments
- Filing regulations with the Secretary of State
- Publication in the *Kansas Register*
- Review by Citizens Regulatory Review Board
- Review by Joint Committee on Administrative Rules and Regulations

Section 127 (42 U.S.C. 7427) requires measures that will be effective to notify the public during any calendar year on a regular basis of instances or areas in which any air quality standard is exceeded or was exceeded during any portion of the preceding calendar year, to advise the public of the health hazards associated with such pollution, and to enhance public awareness of measures that can be taken to prevent such standards from being exceeded.

KDHE maintains air quality data and other information on its website, which is available to the public. (<http://www.kdheks.gov/bar/air-monitor>) Information that can be found on the website includes:

- An overview of air quality
- Information regarding the NAAQS
- Air pollution sources
- Health effects of poor air quality
- How to find out about Kansas air quality

This website also provides links to the Kansas Air Quality Monitoring Network and to AIRNow (<http://www.airnow.gov>) for live monitoring data. Also available to the public is the KDHE News Release website (<http://www.kdheks.gov/news/index.html>) that posts air quality health advisories when necessary.

KDHE commits to maintaining a public information and education program that satisfies the requirements of Section 127.

KDHE commits to ensuring that PSD regulations are implemented in Kansas. (See also the PSD discussion in "IV. Section 110(a)(2)(C) Programs for enforcement, PSD, and NSR" of this document.) The Kansas PSD program meets the requirements to protect visibility with the adoption of federal regulation 40 C.F.R. 52.21 in K.A.R. 28-19-350. EPA has finalized approval of the Kansas Regional Haze SIP as published in the *Federal Register* on December 27, 2011. [76 FR 80754] Legal authority to implement and develop the PSD program and the Regional Haze SIP exists under K.S.A. 65-3005.

## **XII. Section 110(a)(2)(K) Air quality modeling/data**

*“(K) provide for—*

- (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and*
- (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;”*  
*[42 U.S.C. 7410(a)(2)(K)]*

Authority to conduct air dispersion modeling for ambient air quality analyses is provided to KDHE by K.S.A. 65-3005(a)(9). Air dispersion modeling is used to predict ground level ambient air concentrations of pollutants for comparison to air quality standards. The preconstruction permitting process uses the results of such modeling to determine the potential impacts of pollution from a proposed source before the source is constructed or modified.

KDHE’s air quality modeling work is conducted in accordance with both EPA’s and KDHE’s currently approved modeling guidance and protocols and with Appendix W of 40 C.F.R. Part 51. KDHE commits to the continued use of air quality models in accordance with current guidance and protocols and to the continued submittal of data and modeling results to EPA.

## **XIII. Section 110(a)(2)(L) Permitting fees**

*“(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—*

- (i) the reasonable costs of reviewing and acting upon any application for such a permit, and*
- (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator’s approval of a fee program under subchapter V of this chapter;”* [42 U.S.C. 7410(a)(2)(L)]

The Title V fee program, part of the operating permit program that is discussed in “IV. Programs for enforcement, PSD, and NSR” of this document, is adequate to meet the requirements of Section 110(a)(2)(L). This program includes permit fees and emissions fees for major stationary sources. In addition to fees directly related to the implementation and enforcement of the Kansas Title V Program, KDHE assesses and collects construction permit and approval fees and other non-Title V fees. The Kansas air program’s annual emissions fee regulation, K.A.R. 28-19-202, was last amended on November 5, 2010, implementing a change in fee rate and formulation as necessary to sustain the Kansas air program. The Kansas Department of Health and Environment (KDHE) commits to continue to implement major stationary source permit and emissions fee regulations as authorized by K.S.A. 65-3008 and 65-3022 through 65-3024.

#### **XIV. Section 110(a)(2)(M) Consultation/participation by affected local entities**

*“(M) provide for consultation and participation by local political subdivisions affected by the plan.” [42 U.S.C. 7410(a)(2)(M)]*

KDHE’s Bureau of Air has signed State and/or Local Agreements with the following:

- Department of Air Quality, Unified Government of Wyandotte-Kansas City, Kansas
- Wichita Department of Environmental Services
- Johnson County Environmental Department
- Mid-America Regional Council

These agreements establish formal partnerships between the Bureau of Air and local agencies who work together to develop and annually update strategic goals, objectives, and strategies for reducing emissions and improving air quality. In addition, public participation in the rulemaking process is conducted in accordance with EPA regulations at 40 C.F.R. Part 51, Subpart F, and involves the following entities: League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.

This participation enhances the requirements of 110(a)(2)(M).

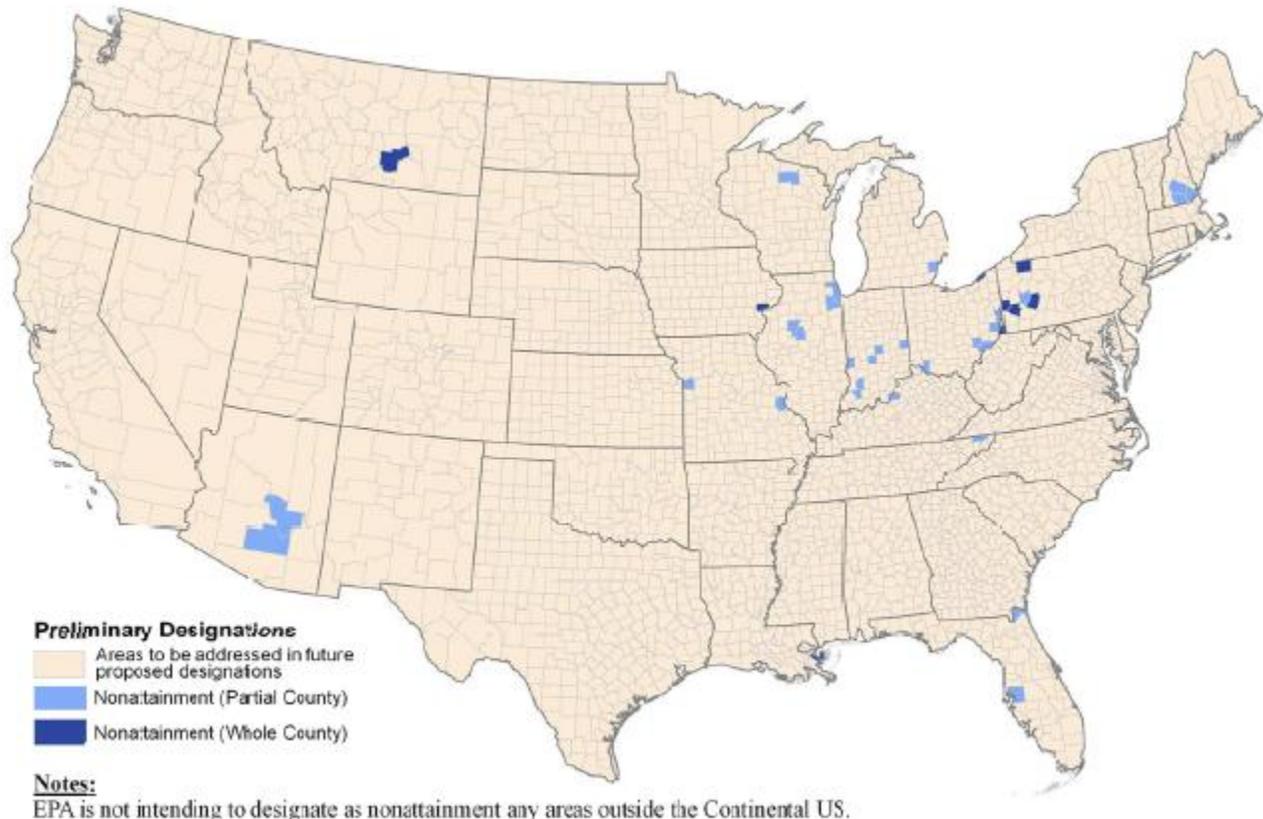
KDHE commits to maintaining a consultation process with local political subdivisions affected by the SIP as authorized by K.S.A. 65-3016.

## **XV. APPENDICES**

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## APPENDIX A

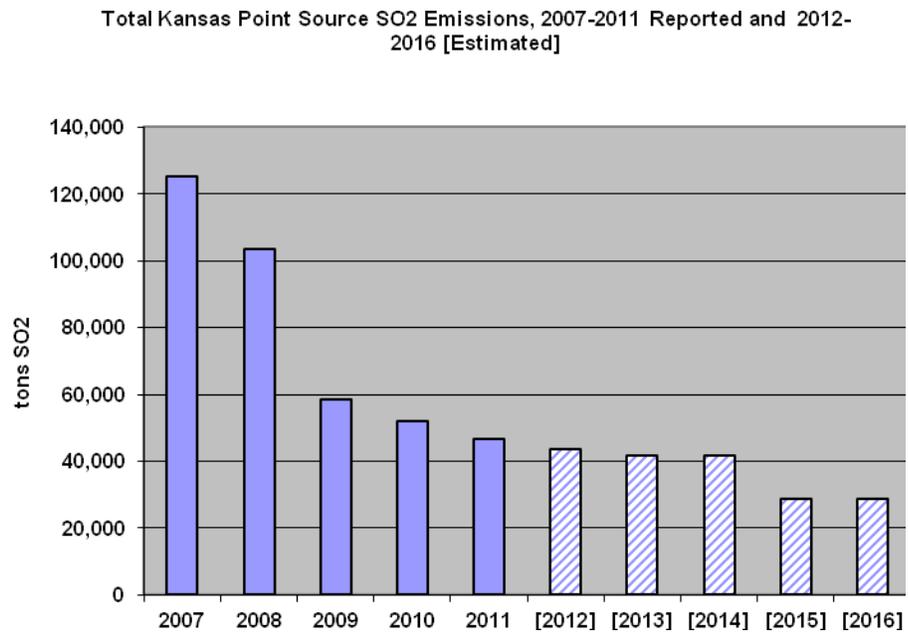
Figure A1.



<http://www.epa.gov/so2designations/pdfs/20130207map.pdf>  
<http://www.epa.gov/so2designations/regs.html>

## APPENDIX B

**Figure B1.**



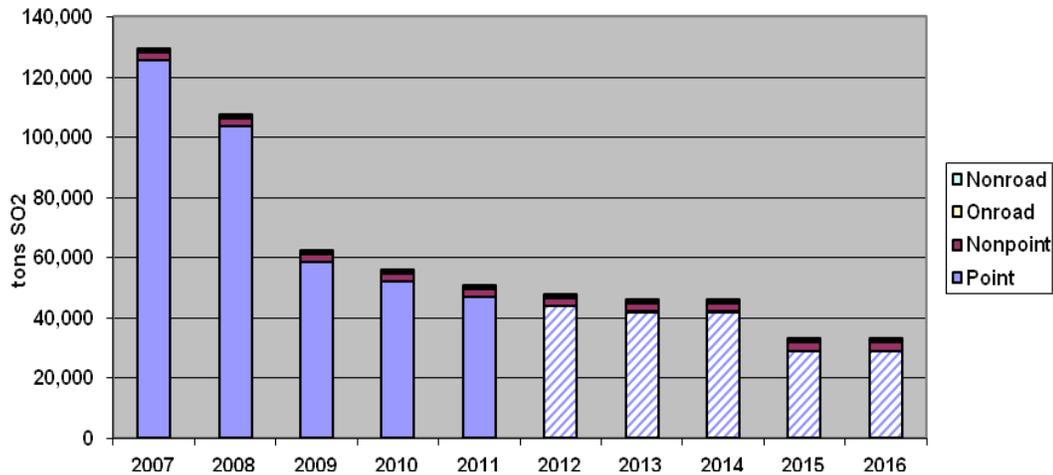
**Total tons SO<sub>2</sub> - point sources**

2007	2008	2009	2010	2011	[2012]	[2013]	[2014]	[2015]	[2016]
125,301	103,365	58,449	51,934	46,833	43,777	41,826	41,835	28,769	28,769

## APPENDIX B

**Figure B2.**

**Total Estimated Kansas Anthropogenic SO<sub>2</sub> Emissions, 2007-2016**



**Total tons SO<sub>2</sub> - all source categories**

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
<b>Point</b>	125,301	103,365	58,449	51,934	46,833	43,777	41,826	41,835	28,769	28,769
<b>Nonpoint</b>	2,574	2,594	2,614	2,646	2,663	2,686	2,710	2,733	2,757	2,781
<b>Onroad</b>	486	490	494	500	503	507	512	516	521	525
<b>Nonroad</b>	810	816	822	832	838	838	845	852	860	867

### Anthropogenic SO<sub>2</sub> emissions 2007-2016

Point source emissions of SO<sub>2</sub> from 2007 through 2011 were taken from the Kansas Emissions Inventory. Sources included Title V and synthetic minor sources. Projected emissions estimates for 2012 through 2016 were made by reviewing recent permit activity for all Kansas facilities with 2011 SO<sub>2</sub> emissions greater than 10 tons, as well as by querying the i-STEPS database for recent construction permits. For each facility found via these queries where significant changes in SO<sub>2</sub> (i.e., greater than 5 tons per year) occurred, SO<sub>2</sub> emission decreases (for emissions reduction projects or plant closures) and increases (for new emissions sources) were logged under the expected year of completion. Note that the Sunflower Electric - Holcomb Unit 2 project was not included due to uncertainty with both its current litigation and eventual financing.

The remaining source categories of anthropogenic SO<sub>2</sub> emissions—nonpoint and mobile (onroad and nonroad)—are given estimates once every three years in the National Emissions Inventory (NEI). The last complete NEI was conducted for 2011, and those values provided the basis for the estimates made in this document. The single modification made to the 2011 NEI values was to grow them based on the growth in the general Kansas population. For years 2012 to 2016, where the annual growth is unknown, the average annual growth for 2008-2011 (0.87%) was used.