

**Kansas Department of Health and Environment
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 AMENDMENTS TO AIR QUALITY REGULATIONS:
K.A.R. 28-19-202 and K.A.R. 28-19-517**

May 2010

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Background for Proposed Amendments

The 1990 amendments to the Clean Air Act (CAA) required the U.S. Environmental Protection Agency (USEPA) to promulgate regulations requiring state or local government permitting authorities to establish air quality operating permit programs. These requirements were codified at 40 CFR Part 70. One of the requirements of permit programs is a provision that permitting authorities collect an annual emissions fee sufficient to cover all reasonable indirect and direct costs of developing and administering the program. K.S.A. 65-3024, enacted by the 1993 Kansas Legislature, authorized the Secretary of the Kansas Department of Health and Environment (KDHE) to establish an emissions fee program to administer the Kansas Air Quality Act. The Secretary was required to adopt rules and regulations fixing such fees and to periodically increase or decrease such fees consistent with the need to cover the direct and indirect costs of administering the program.

Summary of Substantive Changes

The principal changes made by this proposed amendment for K.A.R. 28-19-202, “Annual Emissions Fee,” are the removal of the minimum thresholds for calculating emissions fees for class I stationary sources in paragraph (b), the increase of the emissions fee in paragraph (c) from \$25.00 per ton to \$37.00 per ton of annual emissions for the 2010 emissions year and the years following, the change to the late fee in paragraph (e), and the change to the minimum overpayment amount qualifying for refund or credit to be greater than or equal to the fee equivalent of one ton of emissions (old paragraph (g) – new paragraph (f)). In addition, changes to the rule are made to coordinate with amendments proposed for K.A.R. 28-19-517, “Class I Operating Permits; Annual Emissions Inventory,” with respect to reporting requirements.

Fees

K.A.R. 28-19-202 is the primary implementing regulation for the emissions fee program established at K.S.A. 65-3024. This regulation was initially effective November 22, 1993, and established an annual emissions fee of \$18.00 per ton of emissions. The presumptive fee in the federal CAA was \$25.00 per ton of emissions, to be adjusted annually for inflation; however, states were provided the opportunity to demonstrate that they could adequately implement their programs with a lesser fee. Over the 17-year period since the implementation of this fee program, the Bureau of Air, within KDHE, has maintained the fees at levels substantially below those presumed by the USEPA to be the minimum. This regulation was last amended on January 30, 2004, to increase the emissions fee from \$20 per ton to \$25 per ton for calendar year 2003 and subsequent years. The proposed amendment would increase the emissions fee to \$37 per ton, the first

increase in seven years. For comparison, the USEPA Part 70 presumptive fee is \$43.83 for September 2009 through August 2010.

The Bureau reviews the projected revenues from the fee fund and proposes appropriate adjustments to meet program requirements. Periodically, adjustments are needed and implemented, including some decreases. This process is clouded with uncertainty, particularly when it comes to predictions related to the economy, the weather, and the subsequent effects of both on business practices and performance. A downturn in the economy leads to reduced consumer demand and reduced production for many businesses, resulting in fewer emissions. Mild winter and summer weather lead to less consumer demand for natural gas and electrical production, resulting in reduced emissions from these industries. Business practices also change with increasing air emissions regulations, which not only may result in reduced emissions from particular sources but also in a decrease in fines paid.

Currently, a fee increase is needed to offset the combined effects of the loss of State General Fund revenues from the Bureau's budget, the reduction over time in the amount of air pollutant emissions upon which fees are paid, and the addition of the mercury deposition monitoring program. The implementation of the mercury deposition monitoring network, established by K.S.A. 75-5673 on April 26, 2007, committed air quality fee funds of approximately \$228,000 for year one and \$140,000 each year after for mercury monitoring. Projections of program needs for the period after fiscal year 2010 indicate that resources adequate to effectively implement the program will not be available without the proposed increase in fee levels. The tables in section 3(d) of the Economic Impact Statement, pages 6 through 8 below, provide the projection of the effects of these changes.

Additionally, the reduction in emissions levels since the air quality program was implemented, while a measure of the successful impact of the Kansas Air Quality program in meeting its goals of protecting human health and the environment, also means that there are fewer tons of air pollutants emitted upon which fees are paid. The slowed economy and the depletion of the Hugoton natural gas fields add to the decline. Although emissions and revenues may decline, there remains an abundance of air quality work (i.e., permitting, compliance and enforcement, monitoring, planning, implementing new programs – such as for mercury, lead, ozone, NO₂, and air monitoring in schools). Permitting activity, in particular, continues to expand with revisions of existing federal regulations and the addition of new ones (e.g., NESHAP/MACT, NSPS, NSR and PSD). The proposed increase in fees will aid in offsetting the effect of declining revenues and in maintaining the Kansas Air Quality program.

This proposed amendment will, when effective, increase the annual emissions fee to \$37.00 per ton of pollutant emissions from the current \$25.00 for the 2010 emissions year and for each emissions year thereafter. In addition, the removal of the thresholds allows accountability of all class I sources for any and

all air emissions of regulated pollutants. The same work is done by the Bureau of Air for all class I Title V permits, and removal of the thresholds for payable emissions will ensure that fees are fairly assessed for all emitting class I sources. These amendments are consistent with the requirements in Title V of the CAA and in K.S.A. 65-3024 that the air emissions fees be periodically increased or decreased, as appropriate, to cover the costs of the program. The late fee will change to \$20 per day or 0.10% of annual emissions fee per day, whichever is greater, taking into account inflation since the fee was originally established 17 years ago. For practicality, the minimum overpayment amount qualifying for refund or credit will change from five dollars to the fee equivalent of one emissions ton. The Bureau believes that the proposed fees remain competitive with those of other states and should not weigh against business development in Kansas. The table below compares annual emissions fees for surrounding states.

State	\$/Ton	Class I Minimum Threshold for Fee
Kansas (Current)	\$25.00	100 tons Criteria Pollutants & 10/25 tons Single/Combined HAP
Kansas (Proposed)	\$37.00	None
Nebraska	\$62.00	None
Missouri	\$40.00	None
Iowa	\$52.00	None
Oklahoma	\$33.53	None
Arkansas	\$22.07 Permitted vs Actual Tons	None
Texas	\$33.74	None for Criteria Pollutants & 10/25 tons Single/Combined HAP
<i>EPA Part 70 Presumptive</i>	<i>\$43.83</i>	

Reporting Date Change

On December 5, 2008, the USEPA modified its requirements for collecting and reporting air emissions data. The rule that changed these requirements is called the Air Emissions Reporting Requirements (AERR). The most important change in the rule, as it affects Kansas, is that the date by which the emissions inventory data must be reported to the USEPA is being reduced from 17 months to 12 months from the end of the emissions calendar year. (e.g., 2010 emissions year inventory will be due to the USEPA by December 31, 2011.) It will not be feasible to meet this deadline by reprioritizing the work or with streamlined electronic reporting alone. For this reason, the deadline for the Class I Emissions Inventory Fees and Forms due to the Bureau must be moved up 2 months, from June 1 to April 1.

Before deciding on this date, neighboring states were consulted and surveyed for current deadlines and the expected changes to deadlines. All those surveyed reported either a March 31 or April 1 deadline.

This Regulatory Impact Statement, consisting of an Environmental Benefit Statement and Economic Impact Statement, is submitted in support of the proposed amendments.

I. Environmental Benefit Statement

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

a) Need

These amendments are proposed for the purpose of increasing the annual air emissions fee rate, removing the thresholds for emissions fee calculations for class I sources, and changing the emissions inventory reporting date to continue to meet program requirements.

The purpose of the fee changes is to ensure that the fees are consistent with the actual program cost requirements as presently projected. The fee-related provisions of K.S.A. 65-3024 specifically direct the department to “periodically increase or decrease such fees consistent with the need to cover direct and indirect costs of administering the program.” Prior fee reductions accomplished the stated purpose of reducing excess funds received by the program. The loss of State General Fund revenues from the Bureau’s budget, the addition of the mercury deposition monitoring program, and the reduction over time in the amount of air pollutant emissions upon which fees are paid result in projected deficiencies in fiscal year 2012 and beyond. To meet the projected requirements for the program, the proposed increase will be necessary. The proposed fee increase is consistent with the purposes and limitations of the program.

The purpose of the reporting date change from June 1 to April 1 is to ensure compliance with the Air Emissions Reporting Requirements (AERR), which changes the emissions inventory reporting deadline from 17 months from the end of the calendar year to 12 months.

b) Environmental benefit

The proposed changes to K.A.R. 28-19-202 result in fee changes, and the proposed change to K.A.R. 28-19-517 results in a reporting date change. There are no direct environmental benefits anticipated to accrue due to the proposed changes, except to the extent that the cost increase induces actions to reduce emissions.

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 reporting date change impose any new or alter any existing emissions limitations or standards that will have a direct bearing on public health or the environment.

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

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

II. Economic Impact Statement

1) Are the 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 specific emissions fee level is not federally-prescribed, provided that the state demonstrates 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 fee is below the fee level that the USEPA presumes to be adequate. (The USEPA Part 70 presumptive fee is \$43.83 for September 2009 through August 2010.) The proposed amendments for fee increase and for reporting date change 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, the public or those subject to the regulation. The amendment will result in an increase in operating costs for all parties subject to the regulation compared to the existing fees. The fee increase from \$25.00 per ton to \$37.00 per ton and the increase in payable emissions with the removal of thresholds potentially will result in a revenue increase of approximately \$1,750,000 to \$1,800,000 for emissions year 2010 (seen in 2011 financial results)

for the approximately 300 air sources subject to this regulation, based on estimated total emissions ranging between 125,000 and 131,000 tons from these sources. (The total emissions estimate is based on: 1) the assumption that emissions tons decline by about 9-13% from 2008 to 2011 and then level off; and 2) the assumption that fees will be paid on an additional 10,260 tons from about 130 class I sources below thresholds, for which no emissions fees were assessed in 2007 but now will be added in with removal of the class I threshold for fees.)

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

c) Costs that 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.

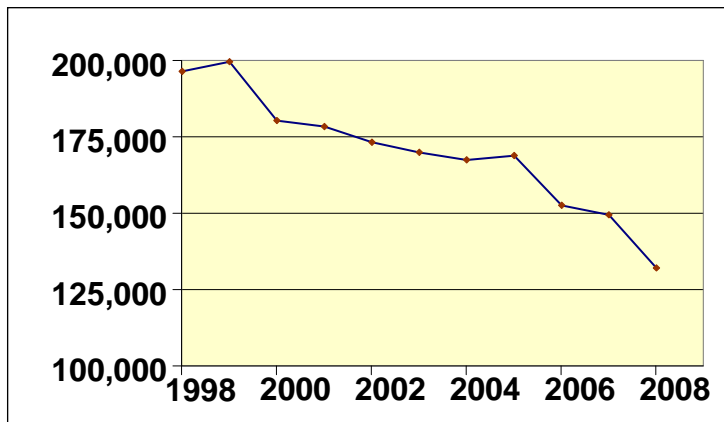
If the fee increase amendments are not adopted, the agency will not receive adequate fee revenues into the air quality fee fund. Because federal approval of the operating permit program is in part conditioned on the adequacy of the emissions fee for the purpose of supporting the functions of the state agency that implements the permit program, the principal risk would be that the USEPA would opt to disapprove the state program and to operate the permit program instead. Estimates of emissions fees under USEPA-operated or USEPA contractor-operated programs run from \$45 per ton and up. No other parties or entities would bear any costs as a result of not implementing the regulations, except to the extent that the additional costs to the regulated community would be passed through to customers.

If the reporting date change is not adopted, KDHE may risk non-compliance with the USEPA's Air Emissions Reporting Requirements. KDHE's authority to fully implement the Clear Air Act programs, partially funded through grants from the USEPA, is maintained by ensuring that all state program elements are current and consistent with the terms of the federal requirements that KDHE implements.

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

Costs and cost reductions were estimated utilizing current budget estimates, emissions inventory and fee data, and estimates of future annual fee revenues and program requirements. These results were compared to the projected revenues if the current emissions fee were to be continued.

The chart below illustrates the decline in emissions (tons) over the last ten years. As emissions decline, revenues decline.



The following tables provide projections for the air quality fee fund. All projections include an assumption that there will be a decline in emissions between 2008 and 2011, leveling out possibly as low as 110,000-115,000 tons per year. Table 1 demonstrates the potential *deficit* if fee changes are not enacted. Table 2 demonstrates the effect of *only* changing the emissions fee per ton with the thresholds remaining in place. Table 3 provides the projection for the proposed fee structure changes, including the increased emissions fee per ton and the removal of the threshold for class I sources. Given these assumptions, it is evident that a fee structure change is necessary to maintain the Kansas air quality program.

Table 1. Status quo scenario: Fee fund projection if no changes to emissions fees; \$25/ton.

SFY	Total Revenue	Expend.	Ending Balance	Carryover
2010	\$3,950,000	\$4,733,009	\$4,744,732	\$794,732
2011	\$3,450,000	\$4,733,009	\$3,461,723	\$11,723
2012	\$3,325,000	\$4,851,334	\$1,935,388	(\$1,389,612)
2013	\$3,325,000	\$4,972,618	\$287,771	(\$3,037,229)
2014	\$3,325,000	\$5,096,933	(\$1,484,162)	(\$4,809,162)

Table 2. Fund increase only scenario: Fee fund projection with emissions fee change (\$37/ton).

SFY	Total Revenue	Expend.	Ending Balance	Carryover
2010	\$3,950,000	\$4,733,009	\$4,744,732	\$794,732
2011	\$4,890,000	\$4,733,009	\$4,901,723	\$11,723
2012	\$4,705,000	\$4,851,334	\$4,755,388	\$50,388
2013	\$4,705,000	\$4,972,618	\$4,487,771	(\$217,229)
2014	\$4,705,000	\$5,096,933	\$4,095,838	(\$609,162)

Table 3. Proposed scenario: Fee fund projection with proposed fee changes: \$37/ton and no Class I thresholds.

SFY	Total Revenue	Expend.	Ending Balance	Carryover
2010	\$3,950,000	\$4,733,009	\$4,744,732	\$794,732
2011	\$5,269,620	\$4,733,009	\$5,281,343	\$11,723
2012	\$5,084,620	\$4,851,334	\$5,514,628	\$430,008
2013	\$5,084,620	\$4,972,618	\$5,626,631	\$542,011
2014	\$5,084,620	\$5,096,933	\$5,614,318	\$529,698

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.

There are no less intrusive or less costly methods available for consideration by KDHE to achieve the purposes of the proposed amendments.

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

The department has provided copies of this Regulatory Impact Statement to each of these organizations concurrently with this submittal.