

# Risk Management Program



## Regulatory Impact Statement

## **REGULATORY IMPACT STATEMENT**

Pursuant to KSA 2015 Supp. 77-416, and amendments thereto

### **Proposed New Regulations K.A.R. 28-74-1 through K.A.R. 28-74-4 October 13, 2015**

#### **I. Summary of Proposed Regulation, Including Its Purpose.**

K.A.R. 28-74-1 through 28-74-4 are proposed new regulations to be adopted in response to K.S.A 65-34,176 et seq., otherwise known as the Risk Management Program Act (henceforth called the "Act").

The purpose of the Act is to provide a voluntary mechanism to assist existing state programs to address residual environmental contamination in a cost effective manner that is protective of human health and the environment.

The purpose of the regulations is to implement the Act and describe the procedures for a person to voluntarily establish appropriate measures for the long-term care and management of low-risk sites that are not able to meet requirements for unrestricted site closure or no further action following appropriate assessment and/or remedial activities. The Act and these regulations are entirely voluntary, meaning that public and private persons intentionally elect to participate in the Risk Management Program. Persons who elect to participate will be subjected to the Act and these regulations. A Risk Management Plan Agreement obligates the participant to implement a Risk Management Plan to ensure the protectiveness of a remedy selected for a contaminated site and continues until the participant demonstrates to the department's satisfaction that the original risk to human health or the environment, which created the need for the Risk Management Plan, is no longer present.

A regulation development committee consisting of various stakeholders was established to assist KDHE in the development of the regulations for the Risk Management Program. The committee members included representatives from the following: Burlington Northern and Santa Fe Railway Company, Kansas Agricultural Remediation Board/Kansas Retailers Association, Koch Industries, Kennedy-Jenks Consultants, Burns and McDonnell Engineering Company, GSI Engineering, Mid-Kansas Cooperative, CHS (formerly National Cooperative Refining Association), the City of Lawrence, and the City of Wichita.

#### **II. Reason or Reasons the Proposed Regulation is Required Including Whether or Not the Regulation Is Mandated by Federal Law.**

These regulations are required by the statute K.S.A. 65-34,176. The proposed regulations are not mandated by federal law.

#### **III. Description of Economic Impact.**

##### **a) Anticipated Economic Impact Upon the Kansas Department of Health and Environment**



KDHE will utilize existing positions and major office equipment to implement and administer the program. Anticipated expenses include limited field and office supplies and associated travel expenditures.

The funding source for the program is based on a one-time payment for each Risk Management Plan established, to be paid by the participant. The payment requirements for the site to which a Risk Management Plan is applied will be based on the estimated direct and indirect costs that will be incurred by the department in implementing and administering the Risk Management Program and for developing and maintaining a Risk Management Plan tracking system.

	<u>FY 2016</u>	<u>FY 2017</u>
Kansas Department of Health and Environment		
Salaries and Wages for 1 FTE	72,000	72,000
Other (supplies, equipment, travel)	500	3,000
Contract Services (laboratory and project management)	1,000	5,000
<b>Total</b>	<b>73,500</b>	<b>80,000</b>

The above costs are estimates only. Actual costs and revenues generated will be based on the number of applicants.

**b) Anticipated Economic Impact on other governmental agencies, private citizens, businesses, or person subject to the regulations.**

KDHE does not anticipate a negative economic impact on other governmental agencies, private citizens or businesses. All persons may see a positive economic impact. Properties previously designated as an “active” site will be given a conditionally closed status to signify that any remaining risk posed from contaminated media is very low thus reducing the long-term care requirements to effectively manage these types of sites. Additionally, the one-time payment required for entering into the Risk Management Program will be significantly less than the cost associated with performing more comprehensive long-term management of sites following remedy implementation.

Persons who are subject to the Act and the regulations have voluntarily elected to participate in the program and would have a pre-existing responsibility for the long-term care and management of contaminated properties. Further, documenting and tracking properties affected by a Risk Management Plan will help protect all persons interested in acquiring or redeveloping a property by making sure the interested person is aware of the low-risk environmental conditions remaining on the property as well as any potential restrictions on property use prior to acquisition.

**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.**

While additional costs would not accrue if the proposed regulations are not adopted, the regulations provide a cost savings for persons currently enrolled in cleanup programs. In addition, the proposed regulations would offer a reliable mechanism to move sites from active

status to closed with conditions status for the long-term care and management of sites posing low-risk to human health and the environment.

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

No other methods were considered by KDHE as they would not achieve the purposes of the statute.

**e) Consultation with the League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.**

The department does not anticipate the proposed regulations will have any fiscal impact on these organizations unless members of these organizations elect to participate in voluntary the program.

#### **IV. Environmental Benefit Statement**

These regulations provide a mechanism for the department and participants to manage residual risk from environmental contamination. There are many impacted properties across Kansas where remediation has occurred but on-going monitoring and management is required to ensure the effectiveness of the implemented remedy. The remaining risk from impacted properties can be appropriately monitored and managed through the use of a risk management plan at these properties. The Risk Management Program regulations protect the public by providing a means to ensure that a remedy selected for a contaminated site is protective of the actual current and future land use. In the event of incompatible usage or an increase in risk posed by residual environmental contamination, the Risk Management Program can require the participant implements appropriate measures to mitigate any unacceptable risks.

The *Risk-Based Standards for Kansas (RSK) Manual* is a state guidance document developed by the agency which describes the process for establishing chemical-specific and site-specific cleanup goals for soil and ground water that are protective of human health and the environment. The standards were calculated and are based on existing state regulation K.A.R. 28-71-11. In addition, the procedures and methodologies contained in the RSK Manual are consistent with federal guidance and directives. The agency believes that proper employment of the RSK Manual will result in risk-based remediation that is consistent with the federally promulgated standards, state regulations, and is protective of human health and the environment.

The RSK Manual contains cleanup goals for soil and groundwater for both unrestricted use "residential" and non-residential scenarios. Cleanup goals for compounds not included in the RSK Manual are established based on the federal guidelines. The RSK Manual and appropriate current and future land use scenarios are utilized to determine property-specific clean-up goals. A Risk Management Plan would be applied to property when environmental contamination, which exceeds department standards for unrestricted use but is determined to be low-risk, remains on the property following the appropriate assessment and /or remedial activities.