

## Testimony to Joint Committee on Administrative Rules and Regulations

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Good afternoon, Madam OR Mr. Chairman and committee members. I am Tom Gross with the Bureau of Air at KDHE. The Bureau is proposing changes to the Kansas air quality regulations by amending four regulations. The details of these proposed amendments are contained in the Regulatory Impact Statements. I will summarize them for you today. The first of these amendments is K.A.R. 28-19-350.

### **K.A.R. 28-19-350: Prevention of Significant Deterioration of Air Quality**

The primary purpose of this change is to bring our preconstruction permitting program for large sources of air pollution in line with the federal requirements to maintain Kansas' authority to administer the federal program in lieu of EPA. K.A.R. 28-19-350 "*Prevention of significant deterioration (PSD) of air quality*" is the air quality construction permitting program for large sources of air pollution. The proposed amendments will:

- implement *revisions* to the 2006 National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter (PM<sub>2.5</sub>),
- incorporate the deferral for CO<sub>2</sub> emissions from bioenergy and other biogenic sources under the PSD Program (the "biomass deferral"), and
- remove language from the state rule which excludes stayed, remanded or vacated provisions. The language is no longer needed, as EPA has amended the federal rule to reflect the current legal status of the specified sections. Removal of this language will help simplify recordkeeping for PSD sources.

The next three sets of rules deal with hazardous air pollutants (HAPS) regulated under Section 112 of the Clean Air Act. These include regulations for smaller, or area, sources of HAPS and larger, or major sources of HAPs. Once these rules are adopted into the Kansas Administrative Regulations, EPA will delegate permitting and compliance authority to Kansas.

### **K.A.R. 28-19-735: National Emissions Standards for Hazardous Air Pollutants**

K.A.R. 28-19-735 adopts by reference and implements the National Emissions Standards for Hazardous Air Pollutants (NESHAP) of 40 C.F.R. Part 61, as state requirements under the Kansas Air Quality Act. The Part 61 regulations establish standards to limit the emissions of certain hazardous air pollutants, which are specifically-defined compounds or elements that cause serious health or adverse environmental effects.

The proposed amendment will adopt by reference the provisions of 40 C.F.R. Part 61, through **July 1, 2010**. The state's authority currently exists for the Part 61 rules promulgated through July 1, 2008. The

used amendment is necessary to maintain the state's authority under existing delegation agreements to ensure Kansas air quality regulations are consistent with federal requirements.

**K.A.R. 28-19-750: Hazardous Air Pollutants; Maximum Achievable Control Technology**

Hazardous Air Pollutants (HAPs) are also regulated by 40 C.F.R. Part 63, which Kansas implements in K.A.R. 28-19-750, Hazardous Air Pollutants; Maximum Achievable Control Technology (MACT).

The state's authority currently exists for the Part 63 rules promulgated through July 1, 2008. The proposed amendments will adopt by reference the provisions of 40 C.F.R. Part 63 through **July 1, 2010** into K.A.R. 28-19-750. The amendments to 40 C.F.R. Part 63 being proposed for adoption by reference contain **49 subpart revisions** within Part 63 that occurred between July 2, 2008 and July 1, 2010. The proposed amendments are necessary to maintain the state's authority under existing delegation agreements and to ensure Kansas air quality regulations are consistent with federal requirements.

Some of the federal rules proposed to be adopted are more significant than others to Kansas sources, but most facilities have already complied or are in the process of doing so. We are better able to identify the larger sources subject to the MACT rules than the smaller area sources. EPA tends to underestimate both the cost to implement and the number of sources subject to their new MACT proposals. A good example of this is the area source rule "Nine Metal Fabrication and Finishing" subjects nine different industries engaged in any one of several activities, including welding, to new regulations.

There are additional federal rules that were finalized after July 1, 2010, whose impacts on Kansas sources are more significant than those of the current proposed adoption by reference package, and we are reviewing how to proceed. The following will be addressed in the next update to our regulations:

- a. Reciprocating Internal Combustion Engines (RICE)
- b. Mercury and Air Toxics Standards (MATS or Utility MACT)
- c. Boiler MACT
- d. Oil and Natural Gas Rule
- e. New Source Performance Standards (NSPS)

Compliance assistance has proven to be a more effective tool than traditional enforcement methods when addressing small businesses. KDHE implements regulations affecting small and medium sized businesses through outreach from our District Office staff and the Kansas Small Business Environmental Assistance Program (SBEAP) at KSU. We have and will continue to reach out to affected sources; trade associations have been particularly effective in facilitating compliance assistance, and SBEAP is actively involved with workshops and technical assistance for small business. Enforcement is pursued only in the most serious cases.

**K.A.R. 28-19-750a: Consolidated Federal Air Rule**

K.A.R. 28-19-750a adopts by reference 40 C.F.R. Part 65, Consolidated Federal Air Rule, which consolidates different requirements applicable to the Synthetic Organic Chemical Manufacturing Industry (SOCMI). This rule emerged from a federal initiative to streamline the compliance process for industry sectors affected by multiple rules. The Consolidated Federal Air Rule is a voluntary option for complying with the SOCMI requirements, but it does not alter the applicability of referencing subparts in 40 C.F.R. Parts 60, 61, and 63.

The proposed amendment will adopt by reference 40 C.F.R. Part 65, Consolidated Federal Air Rule, through July 1, 2010. Currently, the state's authority only exists for the Part 65 rules promulgated through July 1, 2008. The proposed amendment is necessary to maintain the state's authority under existing delegation agreements to administer federal regulations and to ensure Kansas air quality regulations are consistent with federal requirements.

The amendments to 40 C.F.R. Part 65 being proposed for adoption by reference into K.A.R. 28-19-750 contain one subpart revision within Part 65 that occurred between July 2, 2008 and July 1, 2010.

The public hearing on these rules is set for November 1, 2012. That concludes my testimony. Thank you, Mr./Mrs. Chairman.