

STATE OF KANSAS

Department of Health and Environment

Notice of Hearing on Proposed New and Amended to Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Bureau of Air and Radiation, will conduct a public hearing on Thursday, April 5, 2007, at 1:30 p.m., in Room 530 of the Curtis State Office Building, 5th Floor, Topeka, Kansas, to consider the adoption of proposed air quality regulations **K.A.R. 28-19-720 (New Source Performance Standards and Mercury)**, **K.A.R. 28-19-728 and 28-19-728a through 28-19-728f (Mercury)**, **K.A.R. 28-19-735 (National Emission Standards for Hazardous Air Pollutants)**, and **K.A.R. 28-19-750 (Maximum Achievable Control Technology)**. KDHE will also consider the adoption of a Mercury Emissions Control Implementation Plan at this hearing, in order to satisfy the requirements of § 111 of the Federal Clean Air Act.

The primary purpose of the proposed amendments to K.A.R. 28-19-720, 28-19-735 & 28-19-750 is to incorporate by reference changes made to the respective federal standards since the last update of the state regulations in 2003. Amendments to these regulations will align them with the requirements of Federal regulations for standards of performance for new sources of air pollution emissions and Federal regulations for hazardous air pollutants. These regulations adopt the respective Federal standards for stationary sources of air pollutant emissions as state-enforceable requirements. Kansas' adoption of these regulations does not create any new requirements; however, as facilities are already subject to the federal rules.

In addition to the updates, some of the amendments to K.A.R. 28-19-720 and the proposed new regulations K.A.R. 28-19-728 and 28-19-728a through 28-19-728f incorporate federal regulations which were promulgated as the Clean Air Mercury Rule (CAMR) by publication in the Federal Register between July 1, 2003, and June 31, 2005. In addition, amendments published in the Federal Register on August 30, 2005, and June 9, 2006, are adopted by reference to complete the CAMR set of

requirements. The purpose of adopting the August 30, 2005, and June 9, 2006, amendments is to include the federal Clean Air Mercury Rule (CAMR), which was issued on May 18, 2005. Because the May 18, 2005, rule did not take effect until July 18, 2005, the language in the regulation was changed from “in effect” to “as revised” to accurately reflect its status.

Except for K.A.R. 28-19-728d, K.A.R. 28-19-728 and 28-19-728a through 28-19-728f adopt trading provisions of the model Clean Air Mercury Rule as published by EPA in the Federal Register on May 18, 2005, and subsequent Federal Register notices listed above. K.A.R. 28-19-728d contains a Kansas-specific provision to distribute the mercury trading allowances which were allocated to Kansas in the Clean Air Mercury Rule. The New Source Performance Standards for subject mercury sources are contained in the proposed K.A.R. 28-19-720.

Section 111 of the CAA, as amended in 1990, directs the EPA to establish new source performance standards (NSPS) and emission guidelines for new and existing sources, respectively. Section 111 of the CAA requires states that want to have the primary authority to regulate these sources to adopt the EPA NSPS and, under section 111(d), to submit a plan to implement and enforce the emission guidelines to the EPA for review and approval. To be approvable, state emission guideline plans must be at least as protective of the public health and the environment as are the EPA emission guidelines. The Federal regulations for mercury sources were finalized on May 18, 2005. The proposed implementation Plan describes how the department will implement the CAMR through the proposed air quality regulations, K.A.R. 28-19-720, 28-19-728 and 28-19-728a through 28-19-728f.

The cost of compliance for facilities is not increased by the proposed regulations because these rules are already in force, or soon will be, at the federal level. There are no additional costs which would result from these proposed amendments and new regulations beyond those resulting from the initial federal rule adoption and promulgation. At the time EPA’s rules become effective, the facilities regulated therein are subject to the costs associated with meeting the respective federal standards, whether or not the state acts to adopt the particular standards. The only effect of the state regulations

that adopt these standards is to shift the responsibility and the authority for the administration of these standards from the EPA to the state.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulatory action. All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing to Miles Stotts, Kansas Department of Health and Environment, Bureau of Air and Radiation, 1000 SW Jackson, Suite 310, Topeka, Kansas 66612, or by fax to (785) 296-7455, or by e-mail to mstotts@kdhe.state.ks.us.

All interested parties will be given a reasonable opportunity to present their views orally on the proposed regulatory action during the hearings. In order to give all parties an opportunity to present their views, it may be necessary to require each participant to limit any oral presentation to 5 minutes.

The proposed regulations can be accessed on the KDHE website at <http://www.kdhe.state.ks.us>. Copies of the proposed new regulation and amendments and the economic impact and environmental benefit statements may be obtained from the Kansas Department of Health and Environment, Bureau of Air and Radiation, by calling Linda Vandevord at (785) 296-6423 or Ivandevo@kdhe.state.ks.us. Questions pertaining to these proposed amendments should be directed to Miles Stotts.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed amendments and the economic impact and environmental benefit statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Miles Stotts.

Roderick L. Bremby

Secretary of Health and Environment