

KANSAS AGRICULTURAL REMEDIATION BOARD
Notice of Hearing on Proposed
Amendments to Administrative Regulations

The Kansas Agricultural Remediation Board will conduct a public hearing at 9:00 a.m., Monday, May 16, 2016, in the conference room of the Tom R. Tunnell Building, 816 SW Tyler, Topeka, Kansas, to consider the adoption of a proposed amended regulation.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed regulations. All interested parties may submit written comments prior to the hearing to: Board Chairman, 816 SW Tyler, Topeka, Kansas 66612, or by e-mail to randy@kansasag.org. During the hearing, all interested parties will be given a reasonable opportunity to present their views on the adoption of the proposed regulations. Copies of the regulations and the economic impact statement may be obtained by contacting Randy Stookey at 785.234.0461. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes. The regulations are proposed for adoption on a permanent basis.

Summary of the Proposed Regulations:

K.A.R 125-1-6. This regulation sets forth the list of corrective action costs that are eligible for reimbursement from the Kansas agricultural remediation fund. The proposed amendment removes the following from the list of eligible corrective action costs: contractor charges for meals, lodging, travel, mileage and other similar expenses.

K.A.R 125-1-7. This regulation sets forth a list of expenses for corrective action costs that are specifically excluded from reimbursement eligibility from the Kansas agricultural remediation fund. The proposed amendment expands the list of ineligible corrective action costs to include all “expense charges for meals, lodging, travel, mileage or other personal expenses.”

Economic Impact upon the Kansas Agricultural Remediation Board:

The proposed change to the regulation will save the Kansas agricultural remediation fund due to avoiding unnecessary increases in administrative costs that may occur without the amendment.

Economic Impact upon other governmental agencies, private business or individuals:

These proposed changes will have no fiscal impact upon other governmental agencies. The proposed changes will have a positive impact on applicants to the fund that would not have otherwise received reimbursement for costs associated with ag-chemical environmental remediation efforts, as limited funds are paid out to a greater number of applicants. The proposed change may have a negative impact on any applicant who would have been able to receive reimbursement for travel and lodging expenses from the fund, but will not be able to do so following this change.

Individuals with a disability may request accommodation in order to participate in the public hearing. Such requests should be made at least five working days before the hearing by contacting Randy Stookey at 785.234.0461.

Larry Shivers, Chairman
Kansas Agricultural Remediation Board

K.A.R. 125-1-6. Eligible corrective action costs. An eligible person may be reimbursed by the board for any of the following corrective action costs if the board deems the cost necessary and reasonable:

(a) Costs for equipment owned by the eligible person and used during a corrective action for excavating, trucking, land spreading and other similar activities, if all of the following apply:

(1) The equipment is reasonably sized and designed to perform the corrective action;

(2) the hours or units of equipment use are reasonable and necessary for the task performed; and

(3) the equipment costs do not exceed reasonable rental costs for equivalent equipment, including any operator costs;

(b) any oversight costs that the eligible person has paid to the Kansas department of health and environment;

~~(c) contractor charges for meals, lodging, travel, mileage, and other expenses not to exceed the amounts allowed by K.S.A. 75-3223 and amendments thereto;~~

~~(d)~~ costs for the land spreading of agricultural chemicals as approved by the Kansas department of agriculture, which shall be reimbursed at the custom rate as determined by the local farm service administration office, but not to exceed \$.50 per cubic yard per acre;

~~(e)~~ (d) normal employee wages, salaries, expenses, or fringe benefit allocations for time that the eligible party's employees actually spend on a corrective action;

~~(f)~~ (e) the cost of qualified professional services needed for the effective planning and implementation of corrective action, including engineering, hydrogeologic, field technician,

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hazardous waste disposal, and general contractor services;

~~(g)~~ (f) costs related to the investigation and source identification, including collecting and analyzing soil samples and groundwater. These costs may include costs for soil boring, installation of monitoring wells, sample collection, sample analysis, and related activities;

~~(h)~~ (g) costs to excavate contaminated soils and other contaminated media, including backfilling and grading to restore the contours or drainage characteristics of land altered by the corrective action. This subsection shall not authorize the reimbursement of costs incurred for the removal of buildings or other fixtures, except paving materials that are necessarily removed in the course of excavation;

~~(i)~~ (h) costs to collect, handle, transport, treat, and dispose of contaminated soils, groundwater, and other contaminated materials;

~~(j)~~ (i) costs associated with an emergency response that was necessary to abate acute risks to human health, safety, and the environment;

~~(k)~~ (j) costs to plant or till land on which the eligible person land spreads soils or water when the tilling or planting is required by the Kansas department of agriculture or the Kansas department of health and environment;

~~(l)~~ (k) costs associated with a corrective action that is required by the Kansas department of health and environment; or

~~(m)~~ (l) any other costs that the board deems necessary or reasonable. (Authorized by and

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implementing K.S.A. 2000 ~~Supp.~~ 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan.
4, 2002; amended P-_____.)

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K.A.R. 125-1-7. Eligible corrective action costs; exclusions. Eligible corrective action costs shall not include the following:

- (a) Costs that are not eligible for reimbursement as specified in the board's regulations;
- (b) indirect costs charged by a contractor, unless those costs are allocated in the contract according to a reasonable cost allocation formula that the contractor uses for other similar contracts;
- (c) an eligible person's indirect costs;
- (d) the cost for the time that the eligible person or any officer of the eligible person spends planning or implementing a corrective action. Reimbursement of normal employee wages, salaries, expenses, or fringe benefit allocation for time that any employee, other than officers, spends implementing a corrective action may be allowed by the board;
- (e) costs to construct, repair, replace, improve, relocate, or demolish any building or fixture, unless the cost is required or approved by the secretary of health and environment and is a part of a corrective action;
- (f) loss or decrease of property values;
- (g) loss or decrease of revenue or income;
- (h) attorney fees or other legal costs;
- (i) costs for relocating residents or business operations;
- (j) costs of aesthetic or other improvements that are not essential to a corrective action, except for restorative grading and filling costs;
- (k) costs that are reimbursed from another source. If after being reimbursed by the board for any cost, an eligible person is reimbursed for the same cost from another source, the eligible

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person shall promptly notify the board and repay to the board any duplicative reimbursement;

(l) the cost of replacing the released agricultural chemicals;

(m) liability claims or judgments;

(n) costs incurred by any federal, state, or local governmental entity;

(o) costs for a contractor's services that exceed the contractor's bid price for those services, except for those costs that have increased due to services approved or required by the secretary of health and environment;

(p) costs not supported by a cancelled check or other conclusive proof of payment by the eligible person who is applying for reimbursement of those costs;

(q) costs to investigate or repair environmental contamination involving substances that are not agricultural chemicals. If a corrective action involving agricultural chemicals is combined with the investigation or repair of environmental contamination involving substances that are not agricultural chemicals, a portion of the combined project costs may be reimbursed by the board based on the information submitted to the board. If, for any combined project, an eligible person also submits a reimbursement claim to another governmental agency, the cost allocation shall reflect that submission so that this can be taken into account by the board when determining eligibility of the costs;

(r) costs to analyze environmental substances that are not agricultural chemicals, except that costs for the analysis of environmental parameters may be reimbursed by the board if that analysis is needed for the design or implementation of a corrective action;

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(s) costs to analyze environmental samples for agricultural chemicals that are not reasonably suspected of having been released at the discharge site;

(t) costs to prepare an application for reimbursement, to contest a decision by the board, or to consult with the board or administrator regarding the application;

(u) expense charges for meals, lodging, travel, mileage, or other personal expenses incurred by the eligible person or officer of the eligible person;

(v) supplementary charges for expedited services, including expedited laboratory analysis, mail service, and parcel delivery service, unless required by the secretary of health and environment;

(w) contractor charges that are not based on services provided by the contractor and are not documented;

(x) interest expenses or other financing costs;

(y) costs for the rental or use of land on which the eligible person land spreads soil, water, or other material as approved by the secretary of agriculture or the secretary of health and environment;

(z) costs for subcontractor service charges or markups;

(aa) costs for environmental audits, assessments, evaluations, or appraisals, unless ordered or requested by the secretary of health and environment;

(bb) any civil or criminal penalty assessed by a federal, state, county, or other

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governmental entity; and

(cc) any cost of a corrective action that causes the total amount of reimbursement for the site to exceed \$200,000. The maximum amount of reimbursement to any one site shall not exceed \$200,000, regardless of the period of time within which the reimbursement was received. However, if the property has been sold or leased and both the buyer and the seller, or both the lessee and the lessor, are responsible for remediation of an agricultural or specialty chemical released at the site, then the total amount of reimbursement for the costs of the corrective actions at the site shall not exceed \$400,000, regardless of the period of time within which the reimbursement was received. (Authorized by K.S.A. 2-3710; implementing K.S.A. ~~2013~~ 2015 Supp. 2-3708 and K.S.A. 2-3710; effective, T-125-9-5-01, Sept. 5, 2001; effective Jan. 4, 2002; amended Jan. 23, 2015; amended P-_____.)

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KANSAS AGRICULTURAL REMEDIATION BOARD (KARB)
Economic Impact Statement
Proposed Regulation Amendments: K.A.R. 125-1-6 and K.A.R. 125-1-7

I. Summary of Proposed Regulation Amendments, Including the Purpose.

K.A.R 125-1-6. Eligible corrective action costs. This board regulation sets forth the list of corrective action costs that are eligible for reimbursement from the Kansas agricultural remediation fund. The proposed amendment removes the following from the list of eligible corrective action costs: contractor charges for meals, lodging, travel, mileage and other similar expenses.

K.A.R 125-1-7. Eligible corrective action costs, exclusions. This board regulation sets forth a list of expenses for corrective action costs that are specifically excluded from reimbursement eligibility from the Kansas agricultural remediation fund. The proposed amendment expands the list of ineligible corrective action costs to include all “expense charges for meals, lodging, travel, mileage or other personal expenses.”

Pursuant to K.S.A. 2-3710, the KARB Board is required to adopt rules and regulations concerning the terms and conditions of any reimbursement from the fund. KARB regulation K.A.R 125-1-6 currently allows reimbursement of a contractor’s “meals, lodging, travel, mileage, and other expenses not to exceed the amounts allowed by K.S.A. 75-3223.” K.S.A. 75-3223 grants the Secretary of Administration the authority to adopt regulations setting the limits for such expenses incurred by state employees while traveling in their official capacity. The Secretary of Administration recently amended the department’s regulations which set rates for subsistence, lodging, and travel expenses. These amended regulations follow a much more complex system of pre-authorization and reimbursement that would be unnecessarily cumbersome for the limited purposes of the KARB Board. In order for the Board to satisfy the purpose of the remediation program of reimbursing eligible parties for expenses related to agricultural chemical environmental remediation, the Board proposes these amendments to K.A.R. 125-1-6 and 125-1-7.

II. Reasons the Proposed Regulations Are Required, Including Whether Or Not the Regulations Are Mandated By Federal Law.

These proposed changes are not required to reflect changes in Kansas statute and are not mandated by federal law. The Board maintains authority under the agricultural and specialty chemical remediation act to make the proposed changes.

III. Anticipated Economic Impact Upon the Kansas Agricultural Remediation Board.

These proposed changes will save the Kansas agricultural remediation fund due to avoiding any unnecessary increase in administrative costs that would likely occur without the change to the regulation.

IV. Anticipated Financial Impact Upon Other Governmental Agencies, Private Business, Small businesses, Individuals, Or Consumers Of the Products OR Services Of the Regulation.

These proposed changes will have no fiscal impact upon other governmental agencies.

The proposed changes may have a negative impact on any applicant who would have been able to receive reimbursement for travel and lodging expenses from the fund, but will not be able to do so following this change.

These proposed changes will have a positive impact on applicants to the fund that would have otherwise received delayed reimbursement for costs associated with ag-chemical environmental remediation efforts, as the limited amount of money in the fund will now be paid out to a greater number of applicants. This will provide additional applicants with the necessary funds to continue their environmental remediation efforts, furthering the purpose of the agricultural and specialty chemical remediation act. Small business applicants will especially benefit from the increased ability to receive reimbursement for their ag-chemical environmental remediation costs.

V. Less Costly or Intrusive Methods That Were Considered, But Rejected, And the Reason For Rejection.

There are no costs associated with the proposed changes, and the proposed changes will likely allow for decreased administrative time in conducting reviews of applications to the fund.

VI. Environmental Impact

The proposed changes will provide more funding to a greater number of ag-chemical environmental remediation sites. The additional reimbursements will provide more applicants with the necessary funds to continue their environmental remediation efforts, furthering the purpose of the agricultural and specialty chemical remediation act to ensure clean soil and water in Kansas.

VII. Economic Impact On Cities, Counties, Or School Districts

Cities, counties, and school districts neither pay into the agricultural remediation fund, nor are eligible to receive money from the agricultural remediation fund either directly or indirectly. Therefore, the proposed changes to the regulation will have no economic effect or impact on cities, counties, or school districts and will not decrease their revenues or increase their expenditures or fiscal liability.