

STATE OF KANSAS

Department of Health and Environment

Notice of Public Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Environmental Remediation, will conduct a public hearing at 9 a.m. Wednesday, April 6, 2016, in the Flint Hills Conference Room, third floor, of the Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed new risk management program regulations K.A.R. 28-74-1, 28-74-2, 28-74-3, 28-74-4. A summary of the proposed regulations and the estimated economic impact follows.

Summary of Regulations:

K.A.R. 28-74-1. Definitions. The proposed regulation defines and clarifies additional terms that were not defined in K.S.A. 2015 Supp. 65-34,176. The terms defined by this regulation include: “acceptance,” “department,” and “environmental contamination.”

K.A.R. 28-74-2. Application. The proposed regulation describes the application requirements to participate in the Risk Management Program. Each person electing to enroll a site in the program shall submit an application on a form provided by KDHE. Additionally, the application must be accompanied by the following: a site location map, a parcel and owner identification map, documented proof that the applicant provided written notification to all property owners and occupants to which the risk management plan applies, and a draft risk management plan.

K.A.R. 28-74-3. Risk Management Plan. The proposed regulation describes the requirements for an appropriate risk management plan. A risk management plan shall demonstrate that the extent of environmental contamination has been determined, remedial actions have been completed as necessary, contaminant concentration trends are stable or declining and are not

dependent on the continued operation and maintenance of an active remedial system, and all current complete exposure pathways have been addressed. The proposed regulation further requires that a risk management plan include a description of planned monitoring, inspection, or maintenance activities and the frequency for which these activities will be performed, a process for completing routine verification of and on-going notice to property owners and occupants to which the risk management plan applies, and a process for evaluating the effectiveness of the risk management plan.

K.A.R. 28-74-4. Risk Management Plan Agreement. The proposed regulation describes the requirements of a risk management plan agreement. The risk management plan agreement will clearly define the requirements and responsibilities that apply to the participant as well as KDHE and will establish the funding obligation required by K.S.A. 2015 Supp. 65-34,176. The risk management plan agreement becomes effective upon the secretary's signature and may be transferred to another person upon approval by the secretary.

Economic Impact:

Cost to agency: There are no costs to KDHE to implement these new proposed regulations. KDHE will utilize existing positions and major office equipment to implement and administer the Risk Management Program.

Costs to governmental agencies, private citizens, businesses, and the public: There will be no additional cost burdens placed on governmental agencies, private citizens, businesses, or the public due to the enactment of these regulations. The Risk Management Program Act (K.S.A. 2015 Supp.65-34,176) and these regulations are entirely voluntary, meaning that persons intentionally elect to participate in the Risk Management Program. Government agencies, private citizens and businesses who are subject to these 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. 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.

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 regulations. All interested parties may submit written comments prior to 5 p.m. on the day of the hearing to Maggie Weiser, Kansas Department of Health and Environment, Bureau of Environmental Remediation, 1000 S.W. Jackson, Suite 410, Topeka, 66612, by e-mail to mweiser@kdheks.gov, or by fax to (785) 296-7030. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulations as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Copies of the proposed regulations and the corresponding regulatory impact statement may be obtained from the KDHE Bureau of Environmental Remediation at <http://www.kdheks.gov/remedial/euc/index.html> or by contacting Maggie Weiser by e-mail mweiser@kdheks.gov, phone (785) 291-3807 or fax (785) 296-7030.

Questions pertaining to the proposed regulations should be directed to Maggie Weiser at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the regulatory impact statement 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 Maggie Weiser.

Susan Mosier, M.D.

Secretary of Health and Environment

28-74-1. Definitions. For purposes of this article, each of the following terms shall have the meaning specified in this regulation: (a) "Acceptance" means that an application for the risk management program has been approved by the secretary and a risk management plan agreement has been signed by the secretary.

(b) "Department" means Kansas department of health and environment.

(c) "Environmental contamination" has the meaning specified in K.A.R. 28-73-1.

(Authorized by and implementing K.S.A. 2015 Supp. 65-34,176; effective

P-_____.)

28-74-2. Application. (a) Each prospective participant shall submit a completed application to the secretary on a form provided by the department. Each application shall include the following information:

(1) A map identifying the location of the site and the area within the site to which the risk management plan applies;

(2) a map identifying all parcels within the site to which the risk management plan applies, including ownership of each parcel;

(3) documentation that the applicant provided written notification to all property owners and occupants within the site to which the risk management plan applies and proof that those property owners and occupants received the notification; and

(4) a draft risk management plan for review and consideration for approval.

(b) If an application is determined to be incomplete by the secretary, written notification shall be provided to the applicant, identifying the documentation, data, or other information that is needed to complete the application. The applicant may then submit the required information or withdraw the application. The application shall be considered void if a complete response has not been received from the applicant within 60 calendar days from the date of the written request for additional information from the department. (Authorized by and implementing K.S.A. 2015 Supp. 65-34,176; effective P- _____.)

28-74-3. Risk management plan. (a) Each risk management plan shall include the following:

- (1) Demonstration that all of the following conditions have been met:
 - (A) The extent of the environmental contamination has been determined;
 - (B) the source reduction has been completed, if necessary;
 - (C) the contaminant concentration trends are not dependent on the continued operation and maintenance of active remediation systems;
 - (D) the associated groundwater contaminant plume is stable or shrinking, if applicable;
 - (E) imminent future exposure is not likely; and
 - (F) all current complete exposure pathways have been addressed;
- (2) any site-specific requirements for monitoring, inspection, or maintenance;
- (3) a process for completing routine verification of and notices to property owners and occupants;
- (4) a description of the specific terms and conditions that shall be in effect for the duration of the risk management plan; and
- (5) a process for redefining the area within the site to which the risk management plan applies.

(b) Upon review of each draft risk management plan, a notification shall be issued to the applicant, either approving the draft risk management plan or noting deficiencies in the draft risk management plan and describing the modifications necessary to address the deficiencies. The applicant may then submit a revised draft risk management plan for the secretary's approval.

(c) If the secretary and the applicant are unable to agree on an appropriate risk management plan, notification that the application is void shall be provided by the department to the applicant. An invoice for the costs incurred by the department to process the application package and review the draft risk management plan shall be included in the notification.

(d) Each risk management plan shall be implemented upon the effective date of the risk management plan agreement. (Authorized by and implementing K.S.A. 2015 Supp. 65-34,176; effective P-_____.)

28-74-4. Risk management plan agreement. (a) Pursuant to K.S.A. 2015 Supp. 65-34,176 and amendments thereto, a risk management plan agreement shall be required for each site.

(b) Upon approval of a risk management plan, a risk management plan agreement shall be issued by the secretary and shall include the following information:

(1) A description of site conditions and specification of any monitoring, inspection, or maintenance requirements proposed by the participant and approved by the secretary;

(2) a description of the area within the site to which the risk management plan applies;

(3) authorization for agents of the department to have access to the site as necessary to monitor and inspect all risk management plan activities, as required by the act;

(4) identification of the one-time payment to reimburse the department for all direct and indirect costs incurred by the department in implementing and administering the risk management plan required by K.S.A. 2015 Supp. 65-34,176, and amendments thereto;

(5) a description of the specific terms and conditions that shall be applied as part of the risk management plan for the area within the site to which the risk management plan applies; and

(6) a description of the enforcement provisions authorized by K.S.A. 2015 Supp. 65-34,176, and amendments thereto.

(c) The risk management plan agreement shall be effective with the signature of the secretary.

(d) Any participant may request a transfer of the obligations specified in the risk management plan agreement to another person. The following requirements for each transfer shall be met:

(1) Each participant requesting a transfer shall provide written notice to the department indicating that both the participant and the transferee agree to the transfer.

(2) A review of site conditions and consideration of the transferee's capacity to implement the risk management plan shall be factors in the secretary's determination of approving the transfer.

(3) The automatic transfer of risk management plan agreement obligations shall be prohibited. The participant and the transferee shall comply with the risk management plan agreement until an amendment conveying the responsibilities from the participant to the transferee has been executed.

(e) A long-term care agreement as required by K.S.A. 65-1,226, and amendments thereto, may replace a risk management plan agreement for a site where environmental use controls are established in conjunction with a risk management plan if the long-term care agreement meets the requirements of the risk management plan.

(f) If site conditions change or new information that could warrant additional action becomes available, a risk management plan agreement shall not absolve any party of environmental liability associated with the site under state and federal law. (Authorized by and implementing K.S.A. 2015 Supp. 65-34,176; effective P-_____.)

Kansas Department of Health and Environment
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 Regulations Including Purpose.

K.A.R. 28-74-1 through 28-74-4 are proposed new regulations to be adopted in response to K.S.A. 2015 Supp. 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 Regulations Are Required Including Whether or Not the Regulations Are Mandated by Federal Law.

These regulations are required by K.S.A. 2015 Supp. 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 administrating 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
<u>Total</u>	<u>73,500</u>	<u>80,000</u>

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 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.