



**Regulations implementing the Risk Management Program Act (K.S.A. 65-34,176)  
K.A.R 28-74-1 through 28-74-7**

**Joint Committee on Administrative Rules and Regulations**

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Madame Chair, Members of the Committee-

My name is Chris Carey, Remedial Section Chief for the Kansas Department of Health and Environment. Thank you for the opportunity this morning to present KDHE's proposed regulations for implementing the Risk Management Program Act (K.S.A. 65-34,176).

### **Background and Regulatory Impact**

The Risk Management Program Act, enacted by the legislature in 2015, establishes a voluntary program to help facilitate more efficient and effective management of certain lower-risk sites in Kansas that do not pose an immediate threat to human health or the environment, but still have residual contamination present at levels making the sites unsuitable for unrestricted use. Participation in the program is entirely voluntary. Anyone who elects to participate will be subject to the requirements of the Act and these regulations.

Instead of undergoing costly long-term remediation efforts that will provide little benefit to human health or the environment, the risk management program will focus its efforts on managing potential risks that could result from the residual contamination after all reasonable source remediation has been performed. This will result in significant cost savings for the regulated community, with limited impact to KDHE's budget, and no adverse impact to public health or the environment.

Under the program, participants are responsible for developing a Risk Management Plan that establishes the set of activities required to evaluate potential current and future threats to human health or the environment. The Risk Management Plan is reviewed and approved by KDHE before it is incorporated into a Risk Management Plan Agreement, which obligates the participant to perform the activities described in the Risk Management Plan until the participant demonstrates that contamination at the site no longer poses a threat to human health or the environment.

KDHE worked with a team of internal and external stakeholders in development of these regulations. Through this process, KDHE was able to address several potential concerns as these regulations were developed.

The Act authorizes the Secretary of KDHE to make rules and regulations to implement the provisions of the Act, specifically including establishing application procedures and specifying components of Risk Management Plans and Agreements.

### KAR 28-74-1 – Definitions

KAR 28-74-1 establishes definitions for several key terms used in the statutes and regulations. These include acceptance, department, and environmental contamination.

### KAR 28-74-2 – Application

KAR 28-74-2 describes application procedures, authorized by K.S.A. 65-34,176(b)(2), and requirements for participants seeking to enter the Program. The regulation specifies the components of the application, which will include maps, documentation of correspondence with affected property owners, and a draft Risk Management Plan. If an applicant fails to provide the necessary information, KDHE will provide written notification to the applicant of the deficiencies and will provide opportunities for the applicant to submit the necessary information. If the applicant fails to respond to KDHE within 60 days, the application will be void.

### KAR 28-74-3 – Risk Management Plan

KAR 28-74-3 describes the contents of the Risk Management Plan (Plan), authorized by K.S.A. 65-34,176(e), to be prepared by the applicant. The Plan will demonstrate that the site does not pose a significant risk to human health or the environment by:

- 1) showing where the contamination is, and where it could go;
- 2) showing that the source of the contamination has been addressed;
- 3) discussing who is affected or may be affected by the contamination in the future, and
- 4) demonstrating that any impacted receptors have been mitigated (for example, a treatment system has been installed on an impacted drinking water well).

The Plan will also describe the future activities that are necessary to ensure continued protection of human health and the environment in the future and a process for redefining the area to which the Plan applies.

KDHE will review each Plan and provide notice to the applicant whether the Plan is approved, or describe any deficiencies in the Plan. Applicants may resubmit the Plan to address any deficiencies, or if the deficiencies are not addressed, the application will be void. By submitting the application, applicants agree to pay KDHE's costs incurred in the review of the application package.

### KAR 28-74-4 – Risk Management Plan Agreement

KAR 28-74-4 describes the components of a Risk Management Plan Agreement (Agreement), authorized by K.S.A. 65-34,176(d)(2), and how the obligations of an Agreement can be transferred to another party. Agreements will be required for each site in the program and will:

- 1) incorporate the Risk Management Plan,
- 2) identify the area to which the Risk Management Plan applies,
- 3) ensure that KDHE has access to the necessary properties to oversee the Plan, and
- 4) specify the amount of the one-time payment to reimburse KDHE for its costs incurred in relation to the plan.

The Agreement will also reference the enforcement provisions authorized in the Act. The agreement becomes effective with the signature of the Secretary.

In some cases, risk management plans will be implemented at sites where environmental use controls are established. A long term care agreement, as required under the Environmental Use Control Act, can take the place of a Risk Management Plan Agreement if the Long Term Care Agreement meets the requirements of these regulations.

As I indicated at the beginning of this presentation, the Risk Management Program is intended to address lower-risk sites that do not pose a significant threat to human health or the environment. The Risk Management Plan Agreement does not release any party of environmental liability associated with a contaminated site if site conditions change or new information becomes available that suggests additional actions are warranted.

### Closing

The Risk Management Program is a voluntary program intended to facilitate more cost-effective and protective remedial strategies for lower risk sites over the long term. KDHE will utilize existing resources to implement the program and long-term funding will be covered by the one-time payments received from the participants. The proposed regulations were put out for public comment on January 14, 2016. So far, KDHE has not received any comments regarding the regulations. Public comment closes on April 6, 2016.

Thank you for allowing me to discuss these proposed regulations. I am happy to take any questions.