

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

September 20, 2010  
Room 152-S—Statehouse

#### Members Present

Senator Vicki Schmidt, Chairperson  
Representative Carl Holmes, Vice-chairperson  
Senator Karin Brownlee  
Senator Janis Lee  
Senator Ralph Ostmeyer  
Senator Chris Steineger  
Representative Steve Huebert  
Representative Shirley Palmer  
Representative Joe Patton  
Representative Jan Pauls  
Representative Ed Trimmer

#### Member Absent

Representative John Faber

#### Staff Present

Corey Carnahan, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Sharon Wenger, Kansas Legislative Research Department  
Nobuko Folmsbee, Office of the Revisor of Statutes  
Ken Wilke, Office of the Revisor of Statutes  
Judy Glasgow, Committee Assistant

#### Conferees

Chris Tymeson, Kansas Department of Wildlife and Parks  
David Barfield, Division of Water Resources, Department of Agriculture  
Sharon Falk, Groundwater Management District No. 5  
Sarah Byrne, Department of Revenue  
Linda Stumbaugh, Department of Revenue  
Vera Van Bruggen, Department on Aging

Steven Shields, Meadowlark Hills Retirement  
Joe Ewert, Kansas Association of Homes and Services for the Aging  
C.W. Klebe, Office of the Attorney General  
Dave Halferty, Kansas Department on Aging  
Marc Shiff, Kansas Department of Health and Environment  
Mary Murphy, Kansas Department of Health and Environment  
Miles Stotts, Kansas Department of Health and Environment

### **Others Present**

Susan Vogel, Kansas Department of Health and Environment  
Rick Brunetti, Kansas Department of Health and Environment  
Wes Essmiller, Groundwater Management District No. 5  
LeAnn Bell, Kansas Health Policy Authority  
Amy Thornton, Kansas Department of Wildlife and Parks  
Rob Mealy, Kearney and Associates  
Sean Miller, Capitol Strategies  
Dorothy Tenney, Kansas Department of Health and Environment  
Linda Kenney, Kansas Department of Health and Environment  
Shari Albrecht, Kansas Department of Health and Environment

### **Morning Session**

Chairperson Vicki Schmidt called the meeting to order on September 20, 2010, at 9:00 a.m.

The Chairperson recognized Chris Tymeson, Chief Counsel, Kansas Department of Wildlife and Parks (KDWP), to address the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-2-1, amount of fees; KAR 115-2-3, camping, utility, and other fees; KAR 115-2-3a, cabin camping permit fees; KAR 115-7-1, fishing, legal equipment, methods of taking, and other provisions; KAR 115-7-8, revoked; KAR 115-7-9, weigh-in black bass fishing tournaments; KAR 115-18-20, tournament black bass pass, requirements, restrictions, and pass duration; and exempt regulations KAR 115-25-6, turkey, spring season, bag limit, permits, and game tags; and KAR 115-25-14, fishing, creel limit, size limit, possession limit, and open season.

Mr. Tymeson stated he did not believe the Commissioners would approve the combination deer permit fees at its next meeting, as proposed on page 3 of KAR 115-2-1 and, if they do not, the Department would amend the regulation before the public hearing. He stated KAR 115-2-1 was being amended to include a license for resident hunting for ages 16 years through 20, a license for resident fishing for ages 16 through 20, and resident combination hunting and fishing license for ages 16 through 20.

A suggestion was made by a Committee member to state that it was a one-time license, good for up to five years, otherwise it looks like the fee exceeds the statutory allowance. Mr. Tymeson stated the agency would go back and look at this, but he was not sure the Department of Administration would approve the change. A Committee member requested that the agency check its brochure and website concerning the rental of cabins to be sure it is stated that there are no linens furnished with the cabins. Mr. Tymeson stated that he would check on this.

Chairperson Schmidt asked for action on the Committee's minutes from the August 16, 2010, meeting. *Senator Ostmeyer moved that the minutes be approved as presented; Representative Pauls seconded the motion; and the motion carried.*

David Barfield, Chief Engineer, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 5-3-23, maximum reasonable annual quantity approvable for irrigation use for an application for change in place of use and a request to reduce a water right, exceptions; and KAR 5-25-5, water flowmeter requirements.

Committee members had questions concerning the wording of KAR 5-3-23. There was concern whether this would impose a penalty on those members who had ceased the use of end guns from center-pivot irrigation systems. Staff questioned when this rule and regulation was submitted to the Secretary of Agriculture for review. Mr. Barfield stated he did not have that information, but would get it for the Committee. In response to a question, Mr. Barfield stated there is a temporary regulation in place identical to this one and was approved on August 16, 2010. A Committee member questioned the agency's policy on notifying customers about noncompliance. Groundwater Management District No. 5 provided written testimony (Attachment 1).

Chairperson Schmidt recognized Sarah Byrne to speak to the proposed rule and regulations noticed for hearing by the Department of Revenue, Division of Alcoholic Beverage Control. KAR 14-11-11, revoked; and KAR 14-11-22, special order shipping, license requirements.

Ms. Byrne stated KAR 14-11-22 had been through the Committee, but at the public hearing, the industry requested changes and the agency agreed to those in the regulation. The rule and regulation was changed by adding items (8) and (9) on page 2 and again are ready for public hearing.

The Committee asked that the economic statement be revised to show the approximate amount of revenue that would be generated by this new fee and renewal. Ms. Byrne stated this would be done.

Ms. Byrne stated KAR 14-11-27 was withdrawn by the agency, but it was independently published as having passed. The Department is not publishing it on its website as a current rule and regulation as staff are in the process of revoking it. The Committee stated the Department should go ahead and publish it on its website with a disclaimer that it is not being enforced and is in the process of being revoked.

Linda Stumbaugh was recognized by the Chairperson to address the rule and regulation noticed for hearing by the Kansas Department of Revenue. KAR 92-24-23, bond.

The Committee had no questions concerning this rule and regulation.

Chairperson Schmidt welcomed Vera Van Bruggen to speak to the proposed rules and regulations noticed for hearing by the Department on Aging. KAR 26-39-100, definitions; KAR 26-39-101, licensure of adult care homes; KAR 26-39-105, adoptions by reference; KAR 26-40-301, nursing facility physical environment, construction and site requirements; KAR 26-40-302, nursing facility physical environment, applicants for initial licensure and new construction; KAR 26-40-303, nursing facility physical environment, existing nursing facilities; KAR 26-40-304, nursing facility physical environment, details and finishes; KAR 26-40-305, nursing facility physical environment, mechanical, electrical and plumbing systems; and KAR 28-39-162; KAR 28-39-162a; KAR 28-39-162b; and KAR 28-39-162c, revoked.

The Committee had concerns in KAR 26-39-100 about the use of the terms "alteration" and "remodeling." Ms. Van Bruggen stated the definition of "alteration" was pulled from another source, but would be looked at again. Several questions were raised about KAR 26-39-105 and whether it would apply to all adult care homes, as stated in the first paragraph. Ms. Van Bruggen stated this was not the intent and another rule and regulation covered existing facilities. A concern was raised about KAR 26-40-302 changing the percent of private rooms from 5 percent to 50 percent or more and what effect this would have on the number of available rooms being built and the costs associated with the change. The Committee stated this should not be regulated by the State of Kansas, but should be a decision made by industry based on demand. The Committee expressed concern regarding KAR 26-40-305, page 2(c)(3) regulating the temperatures. It was suggested some flexibility be given to the temperature parameter. This could be included in individual care plans. Ms. Van Bruggen stated the agency would look at these. Committee members requested that the Department review the Economic Impact Statement and a report be given to the Committee showing how the requirement of 50 percent or more private rooms being constructed under these new regulations would affect the availability of space and the cost of living in the future.

Chairperson Schmidt recognized Steve Shields, Meadowlark Hills Retirement, who spoke in opposition to the proposed rules and regulations. He stated the subject regulations would be bad for rural Kansas. Mr. Shields stated good nursing facilities can be provided by working within the regulatory environment. The proposed regulations would require providing 50 percent or more private rooms at the time of construction, increasing the cost, and reducing the number of occupants. These have to be affordable to be occupied. It is necessary to work up to this figure, rather than require it at the beginning. Some of the remodeling projects currently in the planning stage will not be feasible under these regulations.

The Chairperson recognized Joe Ewert, Kansas Association of Homes and Services for the Aging, who spoke in opposition to the proposed rules and regulations (Attachment 2). Mr. Ewert stated that complying with proposed KAR 26-39-302 within an existing facility would be overly burdensome, if not impossible, due to physical constraints.

Written testimony was provided by Shawn Sullivan, Kansas Masonic Home (Attachment 3); Tom Williams, Asbury Park (Attachment 4); Gretchen Wagner, Parkside Homes (Attachment 5); Thomas M. Church, Catholic Care Center (Attachment 6); James Frazier, Lakeview Village, (Attachment 7); and David Beck, Brewster Place (Attachment 8).

The Committee suggested the Department and industry, especially from the rural areas, meet prior to the public hearing in order to work through some of the concerns that had been expressed.

Chairperson Schmidt welcomed C.W. Klebe, Office of the Attorney General (AG), who addressed the proposed rules and regulations noticed for hearing by the AG. KAR 16-11-1, definitions; KAR 16-11-2, instructor certification standards; KAR 16-11-3, handgun safety and training course, instructors; KAR 16-11-4, handgun safety and training course; KAR 16-11-5, application procedure; KAR 16-11-6, revoked; KAR 16-11-7, signs; and KAR 16-11-8, restraining order, effect of procedure.

Mr. Klebe stated the proposed changes to these rules and regulations are the result of SB 306 passed by the 2010 Legislature.

Committee members asked several questions concerning "intimate partner" and "cohabitate," and how they would be interpreted. Mr. Klebe stated the terms were different under state and federal definitions, and the agency would look into these terms to clarify. A Committee member questioned how an entrance is defined and where signs would be placed when there may be four

or more doors together. Mr. Klebe stated the agency was evaluating public comments before making any changes to this definition.

Chairperson Schmidt recognized David Halferty, Kansas Department on Aging, to address the proposed rule and regulation noticed for hearing by the Kansas Health Policy Authority. KAR 129-10-31, responsibilities of, assessment of, and disbursements for the nursing facility quality care assessment program.

Mr. Halferty explained the rule and regulation was the result of legislation passed in 2010. The Committee requested that the Economic Impact Statement reflect, by category, the amount of revenue generated by each fee group and how many facilities are in each group.

The Chairperson recessed the meeting at 12:30 p.m.

### **Afternoon Session**

Vice-chairperson Holmes reconvened the meeting at 1:45 p.m.

Kenneth Wilke, Office of the Revisor of Statutes, distributed a copy of correspondence he received from Brett Berry, Kansas Department of Agriculture, to all Committee members concerning a question raised during the morning hearing on KAR 5-3-23 and KAR 5-25-5 (Attachment 9).

The Vice-chairperson welcomed Marc Shiff, Kansas Department of Health and Environment (KDHE), to speak to the proposed rules and regulations noticed for hearing by KDHE, Children and Youth with Special Health Care Needs Program. KAR 28-4-503, timing of specimen collections; KAR 28-4-505, unsatisfactory specimens; KAR 28-4-514, MSUD and PKU, financial assistance availability for certain related expenses; KAR 28-4-520, definitions; and KAR 28-4-521, reporting abnormal conditions and congenital anomalies.

Mr. Shiff stated the changes in KAR 28-4-504 and KAR 28-4-505 are based on recommendations from the Centers for Disease Control and Prevention (CDC).

Regarding KAR 28-4-504, Committee members raised concerns about taking specimens before a very sick infant is 24 hours old, noting the receiving hospital will be required to take additional specimens. A Committee member asked if this was medically safe for the sick infant. Mr. Shiff stated this was recommended by CDC and the agency also had consulted with area physicians. Staff noted the changes in the proposed rules and regulations are the result of amendments made in May 2007 and were required to be adopted no later than July 1, 2008. Mr. Shiff stated the process began in 2009 and apologized for being late. A Committee member asked what had prompted the change in KAR 28-4-514. Mr. Shiff stated the Department was seeing an increased number of persons applying to the program due to economic need, rising unemployment, and lack of insurance. The agency needed to change the financial guidelines in order to have funds available to accommodate those most in need. Mr. Shiff stated the agency overspent by \$44,000 in FY 2010. The Committee noted the economic impact statement needed to be changed to reflect the number of families that will be affected by the proposed regulation changes. A Committee member asked that the Economic Impact Statement reflect the savings of \$44,000 to the agency, which will result in a neutral budget deficit balance. Staff stated in KAR 28-4-520, the document specified subsection (d) should be adopted by date certain. The Committee noted items (d)(1) through (4) should be alphabetized, rather than listed by code numbers.

Vice-chairperson Holmes recognized Mary Murphy, KDHE, to speak to the proposed rule and regulation noticed for hearing by KDHE, Child Care Licensing and Registration Program. KAR 28-4-92, license fees.

Ms. Murphy stated this rule and regulation is a result of Senate Sub. for HB 2356, which was passed by the 2010 Legislature. The results of this bill include an increase in inspection responsibilities for approximately 2,600 additional day care homes.

A Committee member had questions about the increase in fees and how the increased revenue would be spent. Ms. Murphy stated this money would be provided to counties to help with their increased costs in implementing and enforcing this regulation. A Committee member suggested it might be helpful to members of the Legislature and the Committees responsible for regulating these day care facilities to receive this fiscal information and report. The Committee commented positively on the completeness of the Economic Impact Statement that was included.

Miles Stotts, Bureau of Air, KDHE, was welcomed by the Vice-chairperson to speak to the proposed rule and regulation noticed for hearing by KDHE (Attachment 10). KAR 28-19-325, compressed air energy storage.

Mr. Stotts stated this rule and regulation was authorized by 2009 Senate Sub. for HB 2369. Staff had a question concerning the Economic Impact Statement. Mr. Stotts stated he would review the references in part I.(1)(a) since that section referred to pollutant emissions.

Mr. Stotts continued to address the proposed rules and regulations noticed for hearing by KDHE Bureau of Air (Attachments 11 and 12). KAR 28-19-200a, general provisions, definitions to implement the federal greenhouse gas tailoring rule; and KAR 28-19-350, prevention of significant deterioration (PSD) of air quality.

Mr. Stotts stated these rules and regulations will align the Kansas air quality regulations with the revised federal regulations. He gave the Committee members an estimate of costs for implementing programs under KAR 28-19-350.

Regarding KAR 28-19-200a, staff questioned the new definition of "major source" and asked if there were any other definitions of "major source" listed outside these regulations. Staff noted that the wording appeared to indicate that prior definitions would not apply. Mr. Stotts stated the agency would take another look at this. Staff noted the adoption by reference needs a date certain.

The Vice-chairperson adjourned the meeting at 4:10 p.m.

Prepared by Judy Glasgow  
Edited by Corey Carnahan

Approved by the Committee on:

November 8, 2010

(Date)

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
COMMITTEE GUEST LIST

DATE: Sept 20, 2010

| NAME                    | REPRESENTING                |
|-------------------------|-----------------------------|
| ✓ Steve Shields         | Meadowlark                  |
| ✓ Sharon Falk           | GM D #5                     |
| ✓ WES ESSMILLER         | GM D #5                     |
| ✓ LeAnn Bell            | KHPA                        |
| ✓ Chris Tymew           | KDWP                        |
| ✓ Amy Thornton Thornton | KDWP                        |
| ✓ Joe Buxel             | KAUSA                       |
| ✓ Steve Shields         | Meadowlark Hills Retirement |
| ✓ Rob Menly             | KENNEDY & ASSOC.            |
| ✓ Sean Micca            | CAPITOL STRATEGIES          |
| Michael Wales           | ILLAD                       |
| Dorothy Tenney          | KDHE                        |
| mary murphy             | KDHE                        |
| Susan Vogel             | KDHE                        |
| Marc Shill              | KDHE                        |
| Linda Kenney            | "                           |
| Miles Scott's           | "                           |
| Rick Brunetti           | "                           |
| Shari Albrecht          | "                           |

## **Big Bend GMD #5's Rattlesnake Creek**

### **Agricultural Water Enhancement Program(AWEP)Highlights**

- Developed in conjunction with the U. S. Fish and Wildlife Service, Kansas Department of Agriculture, and Water Protection Association of Central Kansas
- Works hand in hand with the Rattlesnake Creek management plan by removing end guns to promote water savings and improve stream flow into Quivira National Wildlife Refuge
- In the first year, ninety-one applications were received and sixty-eight were approved, for a total of 643 acres, this equates to a total savings of approximately 772 acre feet of water or approximately 252,000,000 gallons.
- This project removes the most inefficient portion of a center pivot irrigation system
- Will bring in \$2,860,000 in Federal funding and \$616,000 in District funding to the local area
- Shows that local irrigators are proactive in trying to become sustainable users of water



2-1

**TABLE 4: Description of Federal and Non-Federal resources and collaborative efforts to implement the project**

| Description   | 2010              |                   | 2011              |                   | 2012              |                   | 2013              |                   | 2014         |                   | Total        |                   |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------|-------------------|--------------|-------------------|
|   | NRCS<br>EQIP      | Big Bend<br>GMD#5 | NRCS<br>EQIP      | Big Bend<br>GMD#5 | NRCS<br>EQIP      | Big Bend<br>GMD#5 | NRCS<br>EQIP      | Big Bend<br>GMD#5 | NRCS<br>EQIP | Big Bend<br>GMD#5 | NRCS<br>EQIP | Big Bend<br>GMD#5 |
| Project Outreach<br>to Producers                      |                   | \$ 5,100          |                   | \$ 5,100          |                   | \$ 5,100          |                   | \$ 5,100          |              |                   | \$ 0         | \$ 20,400         |
| Subbasin<br>Hydrogeologic<br>Conditions<br>Monitoring |                   | \$ 34,800         |                   | \$ 34,800         |                   | \$ 34,800         |                   | \$ 34,800         |              | \$ 34,800         | \$ 0         | \$ 174,000        |
| Subbasin Water<br>Right Monitoring                    |                   | \$ 39,600         |                   | \$ 59,400         |                   | \$ 49,500         |                   | \$ 49,500         |              | \$ 0              | \$ 0         | \$ 198,000        |
| Conservation<br>Practice Payments                     | \$ 572,844        |                   | \$ 859,266        |                   | \$ 716,055        |                   | \$ 716,055        |                   | \$ 0         |                   | \$ 2,864,219 | \$ 0              |
| Supplemental<br>Payment                               |                   | \$ 49,500         |                   | \$ 74,250         |                   | \$ 61,875         |                   | \$ 14,375         |              | \$ 0              | \$ 0         | \$ 200,000        |
| Status<br>Reporting                                   |                   |                   |                   |                   |                   |                   |                   |                   |              | \$ 24,000         | \$ 0         | \$ 24,000         |
| <b>Totals</b>   | <b>\$ 572,844</b> | <b>\$ 129,000</b> | <b>\$ 859,266</b> | <b>\$ 173,550</b> | <b>\$ 716,055</b> | <b>\$ 151,275</b> | <b>\$ 716,055</b> | <b>\$ 103,775</b> | <b>\$ 0</b>  | <b>\$ 58,800</b>  |              |                   |

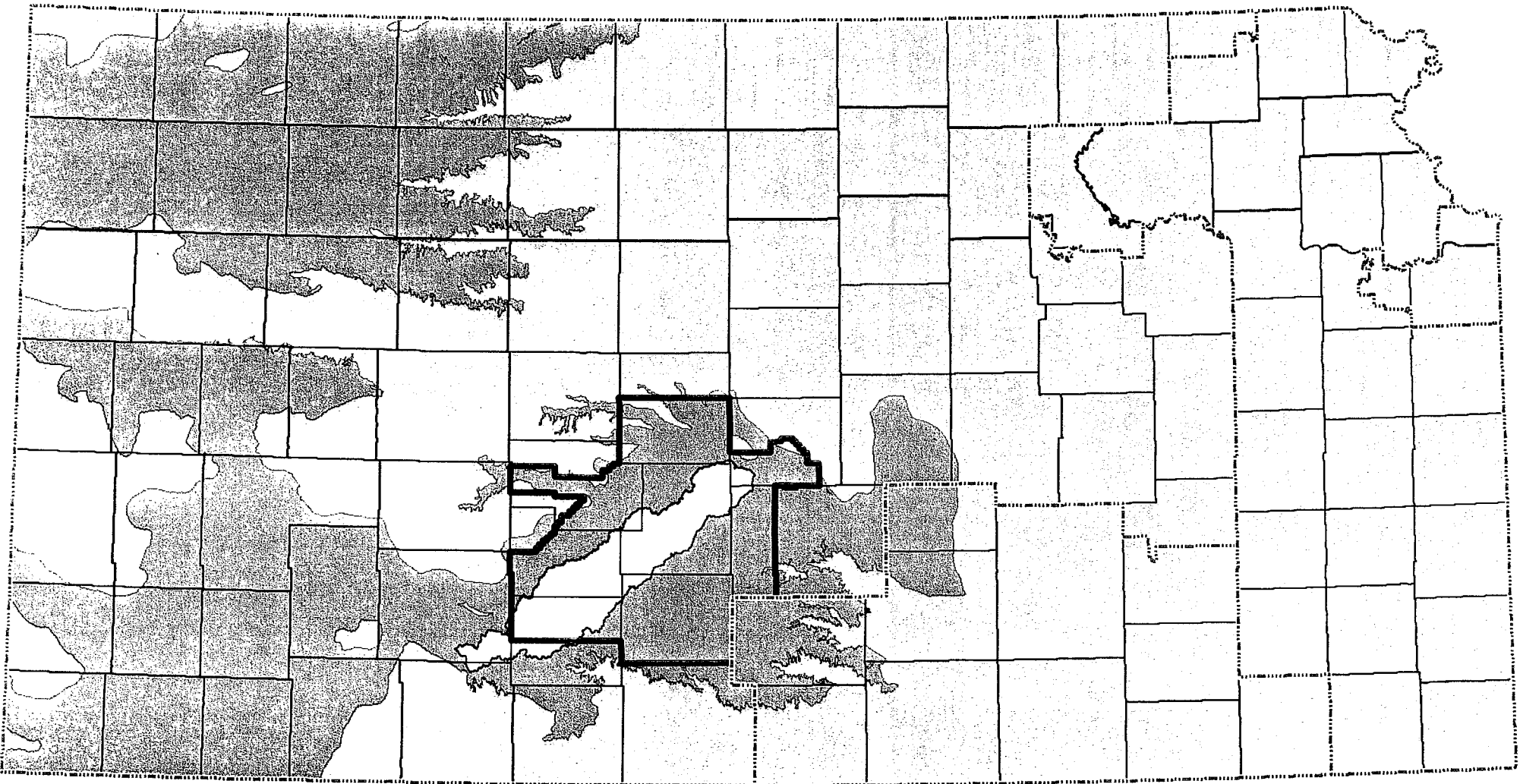
**NRCS - EQIP \$ 2,864,219**

**Big Bend GMD#5 \$ 616,400**






**Total Project Resources : \$ 3,480,619**

# THE GEOGRAPHIC LOCATION OF THE PROJECT AREA

1-3



## Legend

-  Big Bend GMD#5
-  Congressional District
-  County Boundary
-  Rattlesnake Creek Subbasin
-  High Plains / Ogallala Aquifer



Coordinate System: NAD 1983 UTM Zone 14N  
Projection: Transverse Mercator

Created: April 21, 2010  
By: Orrin Feril, GIS Specialist

GMD#5 exercises great care in creating data presentations but, offers no guarantee of accuracy or completeness of the data.

FIGURE 1



To: Chairperson Vicki Schmidt, and Members,  
Administrative Rules and Regulations Committee  
From: Joe Ewert, Government Affairs Director, Kansas Association of Homes and Services for the Aging  
Date: September 14, 2010  
Re: Proposed Physical Environment Regulations for Adult Care Homes

Thank you, Chairperson Schmidt, and Members of the Committee for reviewing the physical environment regulations on adult care homes being proposed by the Kansas Department on Aging. I am Joe Ewert Government Affairs Director of the Kansas Association of Homes and Services for the Aging. KAHSA represents 160 not-for-profit aging service providers throughout the state. Our members provide nursing home care, assisted living services, hospital-based long term care, supportive housing and a variety of community-based services to over 20,000 Kansans each day.

We appreciate the action the Kansas Department on Aging has taken to review the regulations governing design, construction, and maintenance of nursing homes in Kansas. We strongly support efforts to ensure the health, safety, and well-being of individuals residing in Kansas nursing homes. Over the last 12 years, KAHSA members have taken great strides in a movement to convert facilities designed on institutional models of care to more person centered, homelike environments. The scope of these projects vary from small incremental changes, to major renovations, to construction of new facilities few of us would recognize as nursing homes, however they all share the common goal of improving the lives of those needing 24 hour skilled nursing care.

**Our Concern:**

We have serious concerns that the proposed physical environment regulations, as written, will be counterproductive, and may have a chilling effect on improvements to existing nursing homes in the state.

- The additional elements and square foot requirements set forth in proposed **KAR 26-39-302 "Applicants for initial license and new construction"** would also apply to existing facilities seeking to make any improvements beyond basic cosmetic changes.
- In many cases, complying with proposed KAR 26-39-302 within an existing facility would be overly burdensome, if not impossible due to physical constraints of the original footprint and design.
- Proposed KAR 26-39-302 does not give providers a clear path toward regulatory compliance and will require the Department on Aging to make multiple exceptions if they intend to continue to allow existing facilities to make improvements to their physical environment.

**Our Recommendation**

Remodel and renovation projects within existing nursing facilities should not be governed by the same requirements set forth for the construction of new facilities. **We ask you to strongly urge KDOA to change the proposed regulations so that all remodel or renovation projects within existing facilities would be governed by proposed KAR 26-39-303 "Existing Nursing Facilities."** We have submitted potential language to make this and other changes to the Department on Aging. Thank you for your time. We would be happy to answer questions or provide additional information on this issue.

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Joint Committee on Admin  
Rules and Regulations  
September 20, 2010  
Attachment 2



**TO:** Chairperson Vicki Schmidt, and Members,  
Administrative Rules and Regulations Committee  
**FROM:** Shawn Sullivan, Executive Director, Kansas Masonic Home  
**DATE:** September 17, 2010  
**SUBJECT:** Proposed Physical Environment Regulations for Adult Care Homes Office

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Thank you, Chairperson Schmidt, and Members of the Committee for reviewing the physical environment regulations on adult care homes being proposed by the Kansas Department on Aging. I am the Executive Director of Kansas Masonic Home. Kansas Masonic Home is a continuing care retirement community in Wichita that strives to provide an active and vibrant community for 240 elders.

Over the past year, our community has fully developed and articulated a \$22-\$24 million dollar renovation project to transform our 17-acre campus. The project includes a redesign of 72,000 square feet of accommodation space and detailed floor plans, construction cost estimates and financial modeling has been developed. Within the last two weeks, we have hired project partners including an architect, contractor, investment banking firm, organizational transformation consultant, and development coordinator. The scope of the project includes the following:

- Conversion of a 120 institutional nursing home to 88 elders living in four households (22 in each household).
- Conversion of our 60 apartment traditional assisted living facility to three households for 65 residents (21-22 residents in each household). Two of the three assisted living households will be memory care houses.
- Conversion of our 64 apartment independent living facility to 52 apartments of assisted living apartments.

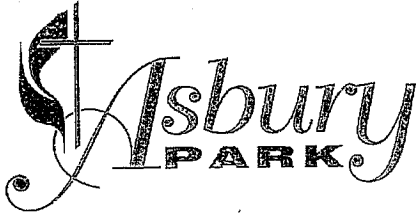
Over the next 4-6 months, our project team will turn these design footprints into full schematics and drawings. We anticipate starting construction in late spring of 2011. Kansas Masonic Home would be one of the first communities to fall under the proposed regulations as we would seek KDOA approval for our design in early 2011.

I have some serious concerns about the proposed regulations and how they will impact our project. I understand the intent of the revised regulations. However, the additional elements and square foot requirements set forth in proposed KAR 26-39-302 would be overly burdensome and increase the cost of our project. The key design driver of our project has been to create home for our elders. In fact, our residents and family members were a key part of the design process. Our new households will include the following common area spaces in each house for 22 residents: a foyer, den, private dining room, living room, dining room, front of the house kitchen, and covered patio. The usefulness and function of

the new spaces in each household will blow away the old institutional space found in our current environment. I am concerned that all of this new space will still not be enough to meet the requirement of the new regulations and I would have to add other distinct spaces that would not be needed. These revised regulations will be counterproductive for Kansas Masonic Home to create the true sense of home our elders need and deserve.

Steve Shields and Meadowlark Household Services has been an integral part of our project development and articulation. They are serving as the development coordinators for our \$22-\$24 million dollar project. I understand that he will be presenting testimony to your committee. Steve would be able to provide more specifics or answer questions on how these proposed revisions would impact the cost and ultimately the feasibility of our transformational project.

I urge you to ask KDOA to change the proposed regulations so that all remodel or renovation projects within existing communities would be governed by proposed KAR 26-39-303 "Existing Nursing Facilities". Thank you for your consideration of this matter.



The Honorable Vicki Schmidt and Members of the Administrative Rules and Regulations Committee

Re: Physical Environment Regulations for Adult Care Homes

My name is Tom Williams and I am the CEO of Asbury Park, a continuing care retirement community located in Newton Kansas. We are currently serving 97 residents in skilled beds (40 of which are in Green House homes), 34 assisted living residents and renting 67 cottages with singles and couples alike. We are also providing services in the greater community through a licensed home care program for all ages. Through a partnership with an area organization we support a preschool and toddler program on our campus. We are a not-for-profit United Methodist affiliated organization that has been in operation since 1962.

Over the past several years, we have had the unique opportunity to construct 4 new buildings that provide 24 hours skilled nursing care to frail elders in a homelike environment. These homes care for 10 elders in 10 private bedrooms sharing common areas as you find in your own home (living room, kitchen, dining room and den. A little more than fifty percent (50%) of our elders are on Medicaid this includes those who are cared for in our Green House homes. We are caring for 57 residents in our main building which was opened in 1973.

We plan to construct two additional Greenhouses in future years, however, after reviewing the regulations proposed in 26-40-302 "New Construction," it becomes clear that our new, cutting edge greenhouses would not meet the new requirements. The additional "consultation room" areas and other increases in square footage requirements would pose a significant increase in cost and reduction in efficiency in our design. Also at this time we are sharing a nurse 24/7 between 2 green house homes for 20 elders. If requirements force us to place a nurse for each building the operations of this would cause a significant rate increase and reconsider allowing Medicaid eligible residents to live in these nice home environments.

While the requirements in proposed 26-40-302 would be difficult to achieve in new construction, they would make a remodel in our older building infeasible if forced to comply with the requirements of the redefined "resident unit." This could create a false choice between undergoing a remodel we could not afford, and leaving our older building as it stands today. Many nursing homes I know of throughout the state of Kansas were built in the 1970s and need remodeling. Please do not make this a challenging decision.

We believe it would be appropriate and helpful for all remodel and renovation projects to existing buildings be subject to the requirements of proposed 26-40-303 "Existing Facilities." We ask the Committee to urge the Kansas Department on Aging to revisit the requirements and scope of 26-40-302 "New Construction." Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Williams', is written over a horizontal line.

Tom Williams, CEO

Joint Committee on Administrative  
Rules and Regulations  
September 20, 2010  
Attachment 4

Voice: 316-283-4770  
Fax: 316-283-4799

Asbury Park is a Ministry of the United Methodist Church  
[www.asbury-park.org](http://www.asbury-park.org)

200 Southwest 14th Street  
Newton, KS 67114

# PARKSIDE HOMES

FOR SENIOR LIVING



**TO:** Chairperson Vicki Schmidt, and Members, Administrative Rules and Regulations Committee  
**FROM:** Gretchen Wagner, Administrator of Parkside Homes  
**DATE:** September 17, 2010  
**SUBJECT:** Proposed Physical Environment Regulations for Adult Care Homes

I am writing this letter in efforts to respectfully share some of my concerns regarding the proposed Physical Environment Regulations that are being rewritten by KDOA. While the regulations include revisions to improve the care environment, there are also several items that I believe may hinder improvement, especially in existing buildings.

I am the Administrator of Parkside Homes, Inc., which is part of a CCRC that serves residents from several surrounding counties in rural Kansas. Our nursing facility provides services for up to 79 residents. In 1962, the first section of our home was built as independent living. Upon residents' requests and need for nursing care, in 1974 part of Parkside Homes became licensed as an Intermediate Care Facility. At that time, 18 private rooms were added to the central unit. The home continued to grow, and in 1988 two new wings were added making Parkside Homes a 60 bed licensed nursing facility.

Parkside maintains a commitment to improved quality of life for the residents of this community. In 2006, Parkside was pleased to open two Park Homes that provide nursing care for twelve residents in each home. These homes offer the warmth of home-style décor combined with the benefit of smaller settings to provide care in a comfortable setting that is different from the "wings" in the traditional style nursing home.

This year we made some cosmetic changes to the traditional portion of the nursing facility to improve the physical environment of the residents in those areas. We did not engage in full renovations for several reasons including the following:

- Our long-term plan is to replace the current wings with Park Homes to enable care in the most home-like setting possible.
- The recent economic decline delayed our plans to build additional Park Homes.
- The regulatory requirements would make completion of an update cost prohibitive due to the degree of physical changes that would be necessary.

Our desire is to provide the best living environment possible in the current building while actively planning and preparing to build new Park Homes that fully support person-directed, home style care. We believe this includes a responsibility to financial feasibility. While some minor remodeling projects could improve quality of life for residents until additional Park Homes are built, major remodeling would take funds away that could be used for building projects.

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**PARKSIDE HOMES**  
FOR SENIOR LIVING

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We are concerned about what would be defined as a "remodel", and thus falling under 26-40-302. Because of the structure of the traditional nursing home portion of our campus, meeting these proposed regulations would add a tremendous amount to the cost. Parkside is committed to providing person-directed care, and partners with KDOA in supporting this goal throughout the state. However, the additional cost associated with meeting the proposed regulations in existing buildings may have an adverse effect by discouraging limited remodels and delaying new construction due to affordability.

Thank you for your consideration of this information as you work to establish regulations that provide the base guidelines for providing quality care in a pleasing environment.

*Grutchen L. Wagner, ACHA*

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5-2





"TO KNOW, TO LOVE, TO SERVE"

September 10, 2010

The Honorable Vicki Schmidt and Members of the Administrative Rules and Regulation Committee:

Re: Physical Environment Regulations for Adult Care Homes

During the past several years it has been my privilege to assist in the design and conversion of two of the three nursing units at the Catholic Care Center, a 178 bed nursing facility in BelAire, Kansas, into a more resident friendly and home like environment. Each sixty bed unit has been redesigned into two neighborhoods, containing its own separate dining and activity space. These conversions have cost approximately \$2 million each.

We are currently working on plans for the conversion of the last sixty bed unit, each conversion being made as our operational finances would permit. If we are required to abide by the proposed 26-40-302 regulations it would require us to gut the entire unit and start over. We cannot afford to do this and would have to refrain from improving the residents' lifestyle experience. Please consider allowing these alterations, improvements and additions to be subject to the current 26-40-303 regulations, so that significant remodels of existing facilities might take place in reference to the regulations under which they were constructed.

We desire to improve the resident's end of life environment and would request that your review enable this desire rather than disable it. Thank you for your deliberations on this matter.

Sincerely yours,

Thomas M. Church  
President/CEO

Joint Committee on Administrative  
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September 20, 2010  
Attachment 6



September 14, 2010

Senator Vicki Schmidt, Chairperson  
Administrative Rules and Regulations Committee  
5906 SW 43<sup>rd</sup> Court  
Topeka, KS 66610-1632

RE: New Adult Care Home Physical Environment Regulations

Dear Chairperson Schmidt,

I am writing to express our concern about the Physical Environment Regulations that are being rewritten by KDOA. Although the regulations are being revised to improve the care environment, we believe several items in the proposed regulations may have the opposite of the intended effect.

I am the CEO of Lakeview Village, an 800-resident Continuing Care Retirement Community located in Lenexa, Kansas. As Kansas's largest CCRC, in addition to independent living homes and apartments, our campus also includes a 120-bed skilled nursing facility constructed in 1965 and a 52-bed short-term rehabilitation facility recently opened in June 2010. We have worked closely with state officials over the last two years in the re-design and construction of our newest facility, with particular emphasis placed on person-centered care and treatment. Our 120-bed unit, however, is located on the bottom two floors of a five-story complex and we have redecorated spaces such as dining, bathing spas and resident rooms without reconfiguration. This current facility includes only 8 private rooms of the 120. As we plan for the future, we desire to look at remodeling to enhance person-centered care in a way that is also financially feasible.

Two innovations included in our recently opened rehabilitation unit include paperless medical records, with charting done on computers located in every room, and double-locked narcotic drawers located in every room. We have found that this approach, due to proximity and security, decreases medication dispensing errors, increases timely charting and allows staff to more quickly dispense PRN medication, such as pain medication. The proposed regulations for new construction require that controlled substances not be stored in resident rooms. This is but one example of how the proposed regulations for new construction can actually have a detrimental impact on resident care and charting.

Regarding our current 120-bed unit, we are concerned about what would be defined as a "remodel" thus falling under 26-40-302. Because of its current location on the bottom two floors of a high rise, meeting the proposed regulations would add tremendously to the cost. Even if constructed new, KDOA

9100 Park St. • Lenexa, KS 66215  
913•888•1900

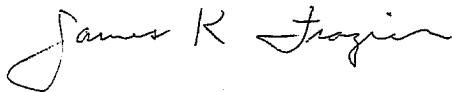
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has estimated a cost premium of over 40% to meet the new requirements. We fully support a philosophy of person-centered care and integrate it into our programs and physical spaces wherever possible. However, the overall cost of remodeling or new construction under the proposed regulations may actually have the opposite of the intended effect by discouraging limited remodeling as communities can afford it.

Finally, we have an overall concern that the amount and scope of new or remodeled construction will be dampened without a coincident increase in the capital component of Medicaid reimbursement. Without such assistance, new regulations effectively become "unfunded" mandates and restrict improvements that improve overall resident care.

As these recommended changes are considered, we appreciate your attention to these issues.

Sincerely,



James K. Frazier  
President & CEO

cc: Joe Ewert, KAHSA  
Robbie Clausen, CFO  
Mary Schworer, COO  
Jan Pearson, NHA  
Pam Hermon, DON

From: David Beck <davidb@Brewsterplace.org>  
Subject: **Administrative Rules and Regulations Committee**  
Date: September 16, 2010 3:57:51 PM CDT  
To: vlschmidt@cox.net  
1 Attachment, 5.0 KB

Dear Senator Schmidt,

I understand you chair the committee that will be reviewing the Nursing Facility physical environment regulations proposed by KDOA and I want to share my perspective on them. Although the new addition we have started will not be affected because our plans have already been approved under the current regulations, I'm concerned about the effect the proposed regulations would have on our future upgrades. And for older facilities trying to move toward more person-centered care, the new regulations could effectively make it impossible for them to upgrade or significantly remodel their facilities due to the expense of complying with the new requirements since the regulation for new construction also applies to any improvement project other than minor cosmetic upgrades (flooring, paint, trim) within an existing building. KDOA has stated they will only subject the "element altered or affected" by a project within an existing home to the new construction regulation. So, if you just added a kitchen, the kitchen only would have to meet the new guidelines. However, they have not been able to provide a sufficient answer as to when an alteration of one "element" affects another element, or when it affects the entire nursing unit which could drastically increase the requirements KDOA could require a home to comply with. For example: A home removes 4 resident rooms to build a resident kitchen and add a personal laundry room. They then create an addition to add back the resident rooms. This would fundamentally alter the function and usability of the resident unit, and KDOA could require you to expand the addition to add a den, an exam room, etc. If this is a much older home with 7 foot wide hallways, smaller rooms etc. the requirements could very literally be impossible to meet. The regulation is not clear, and neither is the agency.

I hope your committee will consider urging KDOA to alter the scope of the regulations so that any remodel or renovation project within an existing facility would be governed by proposed KAR 26-39-303, which reflects the requirements most existing homes were designed to meet, and leave the requirements for new construction in a regulation governing brand new construction only.

Thanks for listening.

*David M. Beck*, President & CEO



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## Ken Wilke

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**From:** Berry, Brett [Brett.Berry@KDA.KS.GOV]  
**Sent:** Monday, September 20, 2010 11:20 AM  
**To:** Ken Wilke  
**Cc:** Barfield, David; Letourneau, Lane; 'wessmiller@gmd5.org'  
**Subject:** Approvals of the Kansas secretary of agriculture of proposed changes to K.A.R. 5-3-23 and 5-25-5

Mr. Wilke,

This email provides an answer to your question posed to the chief engineer during this morning's committee meeting in regard to the date the proposed changes to K.A.R. 5-3-23 and 5-25-5 were submitted to the Kansas secretary of agriculture for approval. The proposed change to KAR 5-3-23 was submitted to the secretary for approval on 7-29-10 and was subsequently approved. The proposed change to KAR 5-25-5 was submitted to the secretary for approval on 7-16-10 and was subsequently approved.

The secretary's signatures approving the proposed changes to the regulations are not dated, but likely his approvals occurred on the respective dates that they were submitted to him. The secretary's approvals, in any case, did occur prior to the submission of the proposed changes to the Department of Administration, which necessarily occurred before August 3, 2010, the date upon which the Department of Administration approved both of the proposed regulations. Let me know if additional questions exist.

Brett W. Berry  
Staff Attorney  
Kansas Department of Agriculture  
Legal Section - 4th Floor  
109 SW 9th Street  
Topeka, KS 66612  
(785) 296-4623  
[brett.berry@kda.state.ks.gov](mailto:brett.berry@kda.state.ks.gov)

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**Testimony to Joint Committee on Administrative Rules and Regulations**

**September 20, 2010**

**Miles Stotts, Bureau of Air, Kansas Department of Health and Environment**

**K.A.R. 28-19-325: Compressed Air Energy Storage**

Good afternoon, Madame Chair and committee members. I am Miles Stotts with the Bureau of Air at KDHE. The proposed regulations we are discussing today address Compressed Air Energy Storage facilities.

The Compressed Air Energy Storage Act (CAES Act) was enacted by the 2009 Kansas Legislature at K.S.A. 66-1272 through 66-1279. Specifically, K.S.A. 66-1275 requires KDHE to create rules and regulations establishing requirements, procedures and standards for the monitoring of air emissions from compressed air energy storage (CAES) wells and storage facilities within 18 months after the effective date of the CAES Act.

Pursuant to the Compressed Air Energy Storage Act, KDHE is proposing a new CAES regulation that encompasses the following:

- Applicability of existing air permitting regulations to a CAES facility;
- Requirement to conduct a site emissions characterization, including a determination of volatile organic compounds and hazardous air pollutants that may be in the storage formation that may be emitted as a result of CAES operations;
- Annual emissions testing and reporting requirements; and
- Quarterly leak detection inspections.

The proposed regulation covers only the air emissions coming from compressed air energy storage wells and storage facilities to ensure that the wells and facilities comply with the Kansas Air Quality Act. So far, one comment email has been received from the Kansas Association of Counties, concerning the renewal process for Title V permits at the county level.

There are currently no existing CAES facilities in Kansas; one is built and operating in Germany, another is located in Hutsdorf, Alabama. The estimated initial compliance costs incurred by the owner or operator of a CAES facility may vary between \$28,400 and \$118,400, with annual compliance costs varying from \$0 up to \$40,496 when leak detection and emissions

testing is required. Any costs to state or other governmental agencies will be minimal and will be absorbed by existing resources. Since there are currently no existing CAES facilities in Kansas, it is unknown if emissions controls will be necessary, as there is no prior experience with CAES emissions from which to draw information. Accordingly, there is no estimate of emissions control costs at this time.

The department has worked very closely in development of these regulations with the Kansas Corporation Commission to ensure a common understanding of how a proposed CAES facility would be reviewed under the permitting process and evaluated during operations. A draft agreement to outline implementation of both their and our proposed regulations is under review.

The department has provided copies of these proposed amendments and the Regulatory Impact Statement to the League of Kansas Municipalities, the Kansas Association of Counties, and the Kansas Association of School Boards. We also provided a copy of these rules to the US EPA. The public hearing on these regulations is set for October 26, 2010. That concludes my testimony. Thank you, Madame. Chairwoman.

10-2

**Testimony to Joint Committee on Administrative Rules and Regulations**

**September 20, 2010**

**Miles Stotts, Bureau of Air, Kansas Department of Health and Environment**

**Proposed New K.A.R. 28-19-200a**

**And**

**Proposed Revision to K.A.R. 28-19-350**

Good afternoon, Madame Chair and committee members. I am Miles Stotts with the Bureau of Air at KDHE. The proposed regulations we are discussing today only address the US EPA's Tailoring Rule for Greenhouses Gases. The Bureau is proposing changes to the Kansas air quality regulations by creating one new regulation and amending one regulation. The proposed new regulation, K.A.R. 28-19-200a, and the proposed amendment to K.A.R. 28-19-350 will align the Kansas Air Quality Regulations with the revised federal regulations for the Title V and Prevention of Significant Deterioration (PSD) programs to implement the federal greenhouse gas Tailoring Rule. KDHE is proposing these regulatory actions to expedite the permitting and potential construction of facilities in Kansas.

There were three EPA actions leading to the proposal of the Tailoring Rule in response to the U.S. Supreme Court decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007). The EPA Administrator published findings on December 15, 2009, that six GHGs found in the atmosphere endanger public health and welfare and their emission from motor vehicles cause or contribute to greenhouse gas pollution. On April 2, 2010, EPA published the final rule expressing its interpretation of a 2008 guidance document determining whether a pollutant is "subject to regulation" and thereby covered by the federal PSD permit program. The agency established that Clean Air Act (CAA) permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect". On May 7, 2010, EPA and the federal Department of Transportation jointly published the final light duty vehicle rule making 2012 model year vehicles subject to greenhouse gas regulation beginning January 2, 2011. These three actions led to the publication of the final Tailoring Rule on June 3, 2010, amending Title V and PSD regulations.

The federal rule "tailors" the existing CAA emissions thresholds of 100 and 250 tons per year (tpy) for criteria pollutants (particulate matter, sulfur dioxide, nitrogen dioxide, etc.). While these thresholds are appropriate for criteria pollutants, they are not feasible for GHGs because GHGs are emitted in much higher amounts. Without the Tailoring Rule, the lower emissions thresholds would take



effect automatically for GHGs on January 2, 2011. PSD and Title V requirements at these thresholds would lead to dramatic increases in the number of required permits nationwide.

Under the Tailoring Rule, EPA will phase in the permitting requirements for GHGs in two initial steps.

Step 1. (January 2, 2011 to June 30, 2011)

Sources currently subject to the PSD permitting program would be subject to permitting requirements for their GHG emissions of 75,000 tpy or more of total GHG. These sources would need to determine the Best Available Control Technology (BACT) for their GHG emissions.

Currently, permit applications for Sunflower Electric (Holcomb) and Abengoa Bioenergy (Hugoton) could potentially be impacted by this rule if their permits are issued after January 2, 2011.

Only Title V sources currently subject to the PSD program would be subject to title V requirements for GHG.

Step 2. (July 1, 2011 to June 30, 2013)

New construction projects that emit GHGs of at least 100,000 tpy would be subject to PSD permitting requirements. Modifications at existing facilities would be covered at 75,000 tpy. Based on PSD permits issued from January 1, 2009 to present, an estimated 3 sources could be subject to these requirements.

Title V operating permit requirements will apply to new and existing sources having GHG emissions of 100,000 tpy or more. Based on a 2007 voluntary GHG emissions inventory, there are approximately 30 existing title V sources in Kansas that would be affected by the 100,000 tpy title V threshold.

There are 12 ethanol plants in Kansas that currently are not regulated under the title V program could trigger the 100,000 tpy threshold and be subject to the rule. In addition, there are 23 active sub-title D and 2-6 closed sub-title D municipal solid waste landfills in Kansas which could potentially be subject to this rule. These estimates exclude all exempt small arid landfills.

On September 2, 2010, EPA published two new proposed rules: one proposing to find that 13 states have EPA-approved state implementation plans (SIPs) that are substantially inadequate to meet CAA requirements because they do not apply PSD requirements to GHG-emitting stationary sources and one proposing a federal implementation plan (FIP) to apply in any state unable to revise its SIP in time to meet the targeted tailoring rule implementation date of January 2, 2011. These proposed regulations were prepared because EPA has identified Kansas as one of the 13 states with a substantially inadequate State Implementation Plan. KDHE proposes these changes to retain primary responsibility for issuing Title V and PSD permits subject to emission limits and other control measures and to avoid or minimize a construction ban from January 2, 2011, until such time as EPA would approve a SIP revision for Kansas.

**K.A.R. 28-19-200a: Definitions to Implement the Federal Greenhouse Gas Tailoring Rule**

The Bureau is proposing new regulation K.A.R. 28-19-200a to add definitions needed to implement the federal GHG Tailoring Rule for Title V operating permits. Specifically, this new regulation will update the Tailoring Rule's amended definition of "major source" and add the new definition "subject to regulation" to align KDHE's Title V permitting definitions with the federal regulations. K.A.R. 28-19-200(kk) was last amended in 1997.

The applicability of KDHE's Title V permitting regulations (K.A.R. 28-19-500 et seq.) is triggered by the definition of "major source" as defined at K.A.R. 28-19-200(kk). Currently the definition does not rely on the phrase "subject to regulation," therefore we cannot simply depend on an interpretation of the term to implement the Tailoring Rule. Further, the final Tailoring Rule amends the existing definition of "major source" to incorporate the phrase "subject to regulation" to implement the part 1 and 2 thresholds for greenhouse gases (GHGs).

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

The Bureau is proposing to amend K.A.R. 28-19-350 Prevention of Significant Deterioration (PSD). K.A.R. 28-19-350 implements the New Source Review (NSR) program that the USEPA promulgated at 40 CFR Parts 51 and 52 in response to requirements of the federal Clean Air Act, 42 U.S.C. §7401 *et seq.* NSR is a preconstruction permitting program that requires a major stationary source of air pollutants to obtain a permit before it can begin construction or make a major modification if the construction or modification will increase emissions above certain trigger levels. Under Part C of Title I of the Clean Air Act, states have the primary responsibility for developing a state implementation plan and issuing permits subject to the emission limits and other control measures developed in the plan, which is approved by the USEPA.

Kansas implements the New Source Review (NSR) program for major stationary sources in attainment areas under the requirements of 40 C.F.R. §52.21 as adopted by reference in K.A.R. 28-19-350. NSR in attainment areas is commonly called Prevention of Significant Deterioration (PSD). To implement the final Tailoring Rule, KDHE must simply update the adoption by reference of 40 C.F.R. §52.21 and 40 C.F.R. Part 51 Subpart I to include the adoption of the Federal Register publication of the Tailoring Rule and amendments to §52.21. These proposed amendments align K.A.R. 28-19-350 with the revised federal regulations for PSD. They are no more stringent than the federal requirements, as required under House Bill 2369.

Calculating costs for the tailoring rule is difficult because facilities will be required to go through the BACT review process to determine what, if any, control technologies would apply to the proposed GHG emission source. Technologies for landfills are fairly well developed, with cost ranges available. These costs will vary from site to site depending on size. The largest sites are already regulated under the New Source Performance Standard, and all but 1 or 2 in the state have installed a landfill gas collection and control system. However, for the medium-sized facilities that are affected by the rule, here are some average capital and operating costs for a gas collection and flare system.

- One-time Capital Costs: collection and flare system: \$991,000 to \$1.5M, depending on the number of wells
- Annual O&M costs: \$80,000 to \$175,000 depending on the number of wells and the use of the gas (flare, direct use, pipeline quality or electricity)

A second source category for which some cost ranges are available is for electrical generating units. EPA has shared preliminary conclusions that energy efficiency projects would be likely Best Available Control Technology for EGUs. Two common energy efficiency projects at EGUs are installation of neural network systems to achieve improved day to day operations of the boilers and turbine upgrades to achieve improved efficiencies from an existing boiler. Projected costs for purchase and installation of a neural network operating system for a large EGU boiler are approximately \$3,000,000. Projected costs for upgrades of an existing turbine are approximately \$20,000,000 for a large EGU.

The last update to this regulation (28-19-350) occurred in 2009 making its adoption of the federal PSD regulation current up to July 1, 2007. The intent of the proposed regulations only address the US EPA's Tailoring Rule for Greenhouses Gases. For this revision of 28-19-350, KDHE is not proposing to adopt any changes between July 1, 2007 and July 1, 2009. The currently proposed amendment to K.A.R. 28-19-350 updates the adoption of the federal regulations to August 2, 2010, the effective date of the final tailoring rule, which was published in the federal register on June 3, 2010. EPA plans for the tailoring rule to take effect on January 2, 2011, at which time states would be responsible for its implementation. As a result, KDHE proposes to make the proposed adoption by reference effective January 2, 2011. This proposed action is limited to the changes necessary to implement the requirements of the Tailoring Rule.

## **Frequently Asked Questions (FAQ)**

### **PSD and Title V Greenhouse Gas (GHG) Tailoring Rule**

This document is intended to answer common questions the KDHE has received regarding implementation of EPA's GHG Tailoring Rule. It does not address all requirements of the Tailoring Rule. The final authority for requirements is the rule itself - <http://www.epa.gov/NSR/actions.html#may10>.

#### **Applicability**

**1. What are the six greenhouse gases (GHG) covered by the Tailoring Rule?**

The rule defines "greenhouse gases" as the aggregate group of six greenhouse gases – carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

**2. What types of source categories will be affected by the Tailoring Rule?**

KDHE estimates that ethanol plants, large landfills, and carbon-intensive sources such as municipal electricity generators and large boilers may become newly subject to Title V permitting because of their GHG emissions. Affected facilities may also be able to obtain synthetic minor permit limits to reduce their GHG potential to emit so they are not subject to Title V permitting.

These same source categories, plus large sources of industrial GHG emissions (lime, cement, nitric acid, ammonia, iron and steel producers, etc.), may also be subject to Prevention of Significant Deterioration (PSD) permitting for GHGs.

**3. How do I determine if my facility will be subject to Title V or PSD permitting requirements as a result of the Tailoring Rule?**

First, it should be noted that without the Tailoring Rule, thousands of additional facilities in Kansas would become subject to the Title V and PSD permitting programs because the applicability thresholds for GHGs would otherwise be 100 and 250 tons per year based on current federal regulations. However, as a result of the Tailoring Rule, the definition of major stationary source under the Title V and PSD permitting programs will be revised to 100,000 tons per year or more of total GHGs (on a carbon dioxide equivalent (CO<sub>2</sub>e) basis). The PSD Significance Level will be defined as 75,000 tons per year or more of total GHGs (on a CO<sub>2</sub>e basis). The only conclusive method to determine if your facility is affected by this rule is to calculate your GHG potential to emit.

**4. Does KDHE have an estimate of the number of or type of affected livestock facilities in Kansas that will be affected by the Tailoring Rule?**

Yes. Approximately 30 existing Title V sources in Kansas would be affected by the 100,000 tpy Title V threshold. There are some facilities not currently regulated under the Title V operating permits program that will be covered by the Tailoring Rule. These include a dozen ethanol facilities, approximately 23 active and 2-6 closed municipal solid waste landfills and under 10 confined animal feeding operations (CAFOs). For the PSD construction permitting program, only about 3 facilities per year will be affected by the rule.

## Permitting Scenarios and FAQs

Below are a few general permitting scenarios and questions regarding how the Tailoring Rule will be implemented under the Title V and PSD programs. The Tailoring Rule revises the definition of major stationary source under both programs, and as such, will trigger certain permitting requirements. In general, the major source threshold for GHGs under the Title V and PSD programs will be 100,000 tons per year or more CO<sub>2</sub>e, and the PSD significance level will be 75,000 tons per year or more CO<sub>2</sub>e.

### Title V

#### 1. Permitting Scenarios

- a. What are the Title V permitting requirements for a facility that is currently a minor source, but has a potential to emit greater than 100,000 tons per year CO<sub>2</sub>e?**

The facility will become subject to Title V on July 1, 2011. The facility must submit a complete Title V application to KDHE within one year (July 1, 2012); or apply for and receive construction permits with sufficient limits to reduce their potential to emit below 100,000 tons per year CO<sub>2</sub>e by July 1, 2012. Facilities seeking synthetic minor permit limits should contact the Bureau of Air, Permitting Section 1-785-296-1570 to discuss the timeline for permit application and issuance.

Facilities subject to the Title V Operating Permit program are required to submit annual emission inventories and pay annual emissions fees for pollutants other than GHGs per K.A.R. 28-19-202.

- b. What are the Title V permitting requirements for a facility with a potential to emit of more than 100,000 tons per year CO<sub>2</sub>e that has an existing Title V permit?**

If the facility does not make a modification that triggers a PSD review for GHGs during the term of the Title V permit, GHGs do not need to be addressed until the renewal application is submitted. KDHE will create a new application form or modify an existing form to allow for GHGs to be addressed.

If the facility makes a modification that triggers PSD, such as adding new fossil fuel-fired boilers with potential emissions greater than 75,000 tons per year CO<sub>2</sub>e, the Title V permit may need to be revised to include any GHG limits if there are three years or more left in the permit term.

- c. What are the Title V permitting requirements for a facility that is currently a minor source but has an existing Title V permit for specific emission unit(s) as is required by a New Source Performance Standard (NSPS) or National Emission Standard for Hazardous Air Pollutant (NESHAP)?**

- If the facility's GHG potential to emit is < 100,000 tpy CO<sub>2</sub>e, no action is needed.
- If the facility's GHG potential to emit is ≥ 100,000 tpy CO<sub>2</sub>e, the entire facility will become Title V on July 1, 2011. The facility must submit an application for a significant modification to their Title V permit to include all emission units at the facility.

## Prevention of Significant Deterioration (PSD)

### 1. Permitting Scenarios

- a. **What are the PSD permitting requirements for an existing facility that has a project during Step 1 (January 2, 2011 – June 30, 2011) that requires Best Available Control Technology (BACT) for a pollutant other than GHGs (such as PM<sub>10</sub>)?**
  - If the project also has a net increase of  $\geq 75,000$  tpy CO<sub>2</sub>e, BACT is required for GHG.
  - If the project has a net increase  $< 75,000$  tpy CO<sub>2</sub>e, BACT is not required for GHG.
- b. **What are the PSD permitting requirements for an existing facility that has a project during Step 1 (January 2, 2011 – June 30, 2011) that has a net increase of  $\geq 75,000$  tpy CO<sub>2</sub>e GHG, but does not have an increase for any other pollutant?**
  - PSD permitting does not apply.
- c. **What are the PSD permitting requirements for an existing facility that has an application for a construction permit project during Step 2 (July 1, 2011 – June 30, 2013)?**
  - PSD permitting is triggered for:
    - ✓ A newly constructed source with a PTE of  $\geq 100,000$  tpy CO<sub>2</sub>e (even if it is not major for another pollutant).
    - ✓ A modification at an existing major stationary source if it has a net increase of  $\geq 75,000$  tons per year CO<sub>2</sub>e, even if it doesn't have a net increase of another pollutant.

### 2. What are some examples of Best Available Control Technology (BACT) for GHG?

KDHE will provide its stakeholders with guidance on BACT as it becomes available from EPA. Early this summer EPA plans to release guidance on emphasizing energy efficiency when selecting BACT for criteria pollutants which would likely also minimize GHGs. EPA has also stated that later this summer they will provide a GHG Mitigations Strategies database, RACT/BACT/LAER Clearinghouse enhancements, and GHG technical white papers that will provide information on control techniques and measures for the largest GHG emitting industrial sectors.

### 3. If a facility triggers PSD for GHGs, will it be subject to PSD for all pollutants? If yes, then would the facility be required to perform PSD increment modeling and BACT for criteria pollutants?

Only those pollutants that result in a significant net emissions increase are required to perform a full PSD analysis (i.e. BACT, dispersion modeling analysis, soils & vegetation analysis, visibility analysis, and growth analysis).

### 4. Could a facility be subject to Title V because of their GHG emissions, but not be subject to PSD?

An existing facility could be a major source for Title V and PSD, but would not trigger a PSD/BACT review until the facility makes a modification with a net increase in emissions. For instance, an existing facility with a PTE  $\geq 100,000$  tpy CO<sub>2</sub>e would be a major source for Title V and PSD, but would not trigger a PSD/BACT review until:

- From January 2, 2011 until June 30, 2011, they had a modification with a significant increase of another non-GHG pollutant and a net increase in GHG emissions of  $\geq 75,000$  tpy CO<sub>2</sub>e.
- Beginning July 1, 2011 until June 30, 2013), they were a Step 1 source or had a net increase in GHG emissions of  $\geq 75,000$  tpy CO<sub>2</sub>e.

## General

### 1. How does the KDHE rulemaking compare to the federal Tailoring Rule?

KDHE is proposing a rulemaking to amend the state's Title V and PSD air quality rules for GHG emission regulation such that the state rules match the federal Tailoring Rule.

### 2. Does the rulemaking change the definition of "regulated air pollutant" in the Title V rules?

No. The KDHE rulemaking matches the federal rulemaking, which does not change the definition of "regulated air pollutant" in Part 70. GHGs are now considered pollutants "subject to regulation."

### 3. Are there any legal challenges, rules, or new legislation that could delay implementation of the Tailoring Rule?

Several lawsuits and challenges have been filed to overturn the Endangerment Finding, Light-Duty Vehicle standards, and Tailoring Rule. Several bills introduced in Congress also propose to limit EPA's ability to regulate GHGs.

### 4. What is the formal process and timeline for addressing Title V fees for GHGs?

The KDHE will continue to work with stakeholders to look for appropriate mechanisms to fund Air Quality Program activities. KDHE anticipates discussing and receiving input on this issue during Joint Committee on Administrative Rules & Regulations committee meetings, during the public comment period and at the hearing on the rule itself, as well as one-on-one contacts.

### 5. Will KDHE notify facilities that may be covered by the Tailoring Rule?

KDHE has provided updates regarding the Tailoring Rule via its Environmental Newsletter and will notify the Clean Air Advisory Group via email when the rule is proposed. The KSU Small Business Environmental Assistance Program (SBEAP) will provide outreach activities to industry and commerce to make sure they are aware of the new requirements. Because not all facilities have been required to submit emissions inventories, the KDHE does not have a complete list of potential affected facilities. It is ultimately each owner/operator's responsibility to comply with applicable regulations.

## Questions and Comments

If you have a question that is not addressed in this document, please contact Miles Stotts at [mstotts@kdheks.gov](mailto:mstotts@kdheks.gov) or 785-296-1615.

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## US EPA TAILORING RULE INFORMATION

### Tailoring Rule Logistics

The U.S. Environmental Protection Agency (EPA) published the final tailoring Rule on June 3, 2010. In the final rule, EPA requested that states submit a letter within 60 days regarding whether their state has the authority to implement the federal rule.

### Implementation plans

It is anticipated that EPA will issue a proposal for implementing the Tailoring Rule by the states, which will likely include procedures for both State Implementation Plans and a Federal Implementation Plan in August. KDHE does not have any further details on what will be requested or how the process will occur.

### What is the Tailoring Rule?

The Tailoring Rule will regulate greenhouse gases (GHG) using existing Prevention of Significant Deterioration (PSD) and Title V permitting programs for construction and operation. It falls under the Clean Air Act and "tailors" the requirements to focus construction and operating requirements on the largest emitting facilities.

The Tailoring rule sets thresholds for permitting emissions for six GHGs: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>).

### What does this mean for Kansas?

This federal regulation will take effect January 2, 2011. Since this is a federal regulation and will apply to Kansas facilities regardless of who is the permitting authority, EPA or KDHE, it is prudent to adopt the federal Tailoring Rule by reference. This adoption clearly aligns state authority with the federal requirements and will preserve Kansas' ability to issue permits.

The process to adopt the federal rule into state regulations is currently under way and will follow the rulemaking process for the state. After internal review and approval, a public comment period and hearing will be provided.

Following state adoption, EPA will need to approve Kansas' implementation plan for the rule. It is unknown the length of time this may take.

### How will the Tailoring Rule be implemented?

Step 1: EPA's phased-in approach will start in January 2011, when construction permitting requirements for GHGs will kick in for large facilities that are already seeking air permits for

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other pollutants. Those facilities will be required to include GHGs in their permit applications if they increase these emissions by at least 75,000 tons per year (tpy).

Step 2: In July 2011, construction permitting requirements will expand to cover all new facilities with GHG emissions of at least 100,000 tpy. These permits must demonstrate the use of best available control technologies (BACT) to minimize GHG emission increases when facilities are constructed or significantly modified. Additionally, operating permits will include GHG requirements.

Under the new emissions thresholds for GHGs, KDHE estimates that GHGs will be included in about 60 Title V operating permits and about 3 facilities per year will be subject to construction permitting requirements. EPA estimates approximately 900 additional national permitting actions covering new sources and modifications to existing sources would be subject to review each year. In addition, 550 sources nationally will need to obtain operating permits for the first time because of their GHG emissions.

**Will this impact any permits?**

Sources will be subject to the requirements of the rule beginning January 2, 2011. Construction permits issued prior to that date will not be affected. For those permits issued after that date, the facility will undergo BACT analysis for GHG. This will be overseen by the permitting authority.