



September 2, 2020

Kansas Dept. of Health and Environment  
Division of Environment, Bureau of Air  
Air Monitoring and Planning Section  
1000 SW Jackson, Suite 310  
Topeka, Kansas 66612-1366  
Submitted via email to [kdhe.boaregsipcomments@ks.gov](mailto:kdhe.boaregsipcomments@ks.gov)

**Re: Notice of Public Hearing on Proposed Administrative Regulation, Revocation of K.A.R. 28-19-719.**

Mr. Douglas Watson,

The Kansas Department of Health and Environment (KDHE) has released a notice of public hearing on its proposal to revoke existing agency regulation K.A.R. 28-19-719. This regulation limits the Reid Vapor Pressure (RVP) of ethanol-blended motor vehicle fuel sold in the Kansas City area during the summer months.

These comments are submitted by Renew Kansas Biofuels Association (Renew Kansas), a voluntary trade association with membership encompassing the biofuel processing, storage, and transportation industry in Kansas. Renew Kansas' mission is to protect and promote the biofuels industry, and demonstrate the positive impacts of biofuels on the Kansas and national economy. Renew Kansas supports the public policy and economic benefits that flow to every American from use of biofuels.

Members of Renew Kansas have a direct interest in the marketing and distribution of ethanol to consumers, and therefore have a clear interest in the proposed regulatory change. We comment today to express our strong support for this KDHE proposal.

### **How Did We Get Here?**

In 1971, the Kansas City area was determined by the U.S. Environmental Protection Agency (EPA) to be a non-attainment area for ozone under the federal Clean Air Act. As a result of this finding, both Kansas and Missouri entered into EPA-approved State Implementation Plans (SIP) to assist Kansas City in attaining compliance with the national ambient air quality standard (NAAQS) for ozone.

The Clean Air Act requires states to develop and maintain a state implementation plan that provides the state's air pollution control strategy for meeting NAAQS requirements. Both Kansas and Missouri continue to operate under a SIP today for Kansas City. The compliance area in Kansas includes Johnson and Wyandotte Counties, and is referred to as the Kansas City ozone maintenance area (KCMA.)

According to the EPA, ozone is a gas often found in urban smog that can be unhealthy for certain individuals, especially persons with pre-existing lung conditions. Ozone at the ground level is formed

by a chemical reaction between volatile organic compounds (VOCs) and oxides of nitrogen, in the presence of sunlight.

Sources of VOCs include emissions from gasoline and motor vehicles. Regulatory controls in the Kansas SIP were intended to reduce ambient ozone levels by limiting emissions from gasoline stations, vehicles, and other sources. One of the controls limits the RVP of motor vehicle fuel sold in the KCMA during the summer. This limitation is also set forth in K.A.R. 28-19-719.

In addition, K.A.R. 28-19-719 limits the volatility of motor vehicle fuel by limiting the percent of ethanol blended into gasoline, during the summer, in Kansas City. This limitation prohibits the sale of ethanol blended fuel to no more than 10 percent (E10) during the summer.

While the regulation does not limit the sale of higher blends of ethanol fuel sold outside of the summer months, in practice, the rule has served as a year-round prohibition against the sale of higher ethanol-blended fuel as retailers have chosen not to invest in necessary infrastructure upgrades if they are unable to sell the fuel during the summer driving season.

In June of 2005, EPA formally re-designated the Kansas City area as being in “attainment” for national ozone standards. In addition, the area is attaining the 2015 ozone standard. KDHE has now concluded that ozone forming compounds will continue to decrease in the KCMA even without this regulation. This is due, in large part, to the introduction federal motor vehicle standards which required implementation of environmental control technologies in newer motor vehicles. These advancements have resulted in significant reductions, over time, in the amount of VOCs being released.

In considering whether to amend this regulation, models were run in both Kansas and Missouri to demonstrate the possible effects of the change. These models, and KDHE’s Technical Support Document (TSC), indicate that removing the summertime RVP limitation would not interfere with the attainment, maintenance, or reasonable further progress of NAAQS in the Kansas City area.

### **Why this Change is Necessary**

The federal Clean Air Act limits the RVP of gasoline fuel to 9.0 psi during the summer. However, for blends of vehicle fuel containing up to 10 percent ethanol, a one-pound waiver of the RVP is allowed (RVP of up to 10.0 psi). In 2019, EPA interpreted the RVP of E15 fuel (15 percent ethanol) to be substantially similar to that of E10, and extended the one-pound RVP waiver to E15. However, the restriction in K.A.R. 28-19-719 still prohibits Kansas City retailers from selling E15 during the summer.

E15 is a clean, safe, and low-cost vehicle fuel with slightly lower evaporative emissions than E10. EPA first approved the use of E15 in vehicles in 2011. It is approved for use in more than 90 percent of the cars on the road today (all vehicles made in model year 2001 and after). In fact, both Travelers Motor Club, and Association Motor Club Marketing - reporting more than 20 million members nationwide – have endorsed E15 as a safe and affordable fuel.

E15 typically costs 3 to 10 cents per gallon less than E10 and gasoline. Allowing the sale of E15 year-round in Kansas City will provide consumers in that high-volume area more options to purchase a high quality fuel at a lower price. In fact, KDHE estimates that allowing consumers the opportunity to purchase E15 fuel in the Kansas City area could save them over \$13 million annually.

Fuel retailers continue to invest in infrastructure across the United States to make E15 available to their customers. Because of this investment, E15 is now available at over 1,500 retail locations in 30 states.

Higher blends of ethanol fuel are also safer for consumers as they displace petroleum-based aromatics in gasoline, reducing the level of harmful toxic emissions. According to the Renewable Fuels Association, in 2018, ethanol-blended gasoline also helped reduce greenhouse gas emissions from mobile sources by 55 million metric tons - the equivalent of removing 12 million cars from the road for an entire year.

Ethanol fuel has played a crucial role in creating jobs and saving consumers money. Renewable fuels purchased by consumers across the country are produced with American-grown corn, sorghum, soybeans, and other biomass resources. Ethanol and biofuel processing facilities employ thousands of American workers in rural areas, strengthening rural economies.

It is estimated that, in 2018, the U.S. ethanol industry supported 71,000 direct jobs, 294,000 indirect jobs, and generated \$46 billion to the U.S. gross domestic product. In Kansas alone, our 11 ethanol plants produce more than 550 million gallons of ethanol annually, purchase more than 195 million bushels of Kansas grown corn and grain sorghum, and employ an average of 45 people (with an average salary of over \$59,000).

E15 fuel could be made available to consumers in Kansas City by simply revoking this unnecessary regulation. Allowing the sale of higher blends of ethanol fuel in the Kansas City area will directly benefit fuel retailers, consumers, and the Kansas ethanol industry. In addition, the increased demand for ethanol in the area will indirectly benefit Kansas farmers by increasing the demand and local prices for corn and sorghum. This rule change presents a solid win for Kansas.

### **Summary**

Renew Kansas appreciates the technical work performed by KDHE staff in reviewing this regulatory change, which demonstrates that this current legacy regulation can be safely revoked without negatively affecting air quality in the Kansas City area. This rule change would directly benefit Kansas consumers and multiple industries, and indirectly benefit Kansas farmers and the agricultural economy. For these reasons, we urge KDHE to use its regulatory authority to finalize the proposed revocation of this regulation.

Thank you for considering these comments.

Randy Stookey, J.D., IOM  
Senior Vice President and General Counsel  
Renew Kansas Biofuels Association  
816 SW Tyler, Topeka, Kansas 66612  
[Randy@Kansasag.org](mailto:Randy@Kansasag.org)

