Kansas Administrative Regulations

Department of Health and Environment

Article 19.—Ambient Air Quality Standards and Air Pollution Control—Operating Permits.

28-19-512. Class I operating permits; permit content.

(a) The owner or operator of a stationary source which is authorized to operate pursuant to a class I operating permit shall assure that the stationary source operates in compliance with the terms and conditions of the class I operating permit, which shall include, but are not limited to:

(1) emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(2) all applicable requirements for all relevant emissions units for a major source;

(3) all applicable requirements applicable to emissions units that cause a non-major source to require a class I operating permit;

(4) a description of fugitive emissions in the same manner as stack emissions, regardless of whether the source is a federally designated fugitive emissions source;

(5) specification and reference to the origin of and authority for each term or condition, identifying any difference in form as compared to the applicable requirement upon which the term or condition is based;

(6) where an applicable requirement of any other title of the federal clean air act is more stringent than an applicable requirement of regulations promulgated under title IV, acid deposition control, of the federal clean air act, both provisions;

(7) where a permit contains an emission limitation which is authorized by the state implementation plan and is an alternative to an emission limitation contained in the state implementation plan, provisions to ensure that any resulting emissions limitation has been demonstrated to be quantifiable, enforceable, and based on replicable procedures;

(8) specification of a fixed term of the class I operating permit determined pursuant to K.A.R. 28-19-514;

(9) emissions monitoring and related recordkeeping and reporting requirements, including;

(A) all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods adopted to comply with the requirements of section 504(b), permit requirements and conditions, or section 114(a)(3), enhanced monitoring and compliance certifications, of the federal clean air act;

(B) periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(8) of this regulation where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, which may consist of recordkeeping designed to serve as monitoring. The monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and

(C) as necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods;

(10) applicable recordkeeping requirements and required monitoring information, including:

(A) the date, place as defined in the permit, and time of sampling or measurements of required monitoring information;

(B) the date or dates analyses were performed;

(C) the company or entity that performed the analyses;

(D) the analytical techniques or methods used;

(E) the results of such analyses;

(F) the operating conditions as existing at the time of sampling or measurement; and

(G) the retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance

records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit;

(11) applicable reporting requirements, including:

(A) submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements shall be clearly identified in such reports. All required reports shall be certified by a responsible official consistent with K.A.R. 28-19-511(e); and

(B) as specified in the permit, prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken;

(12) conditions prohibiting emissions exceeding any allowances that the emissions unit or stationary source lawfully holds under title IV, acid deposition control, of the federal clean air act or the regulations promulgated thereunder.

(A) A permit revision shall not be required for increases in emissions that are authorized by allowances acquired pursuant to title IV, acid deposition control, of the federal clean air act, provided that such increases do not require a permit revision under any other applicable requirement.

(B) A limit shall not be placed on the number of allowances held by the emissions unit or stationary source. The emissions unit or stationary source shall not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(C) Any allowance shall be accounted for according to the procedures established in regulations promulgated under title IV, acid deposition control, of the federal clean air act;

(13) a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit;

(14) provisions stating that:

(A) the permittee must comply with all conditions of the permit. Any permit noncompliance shall constitute a violation of the Kansas air quality act and shall be grounds for enforcement action, for permit revocation or amendment, or for denial of a permit renewal application;

(B) it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

(C) the permit may be modified, revoked, reopened and reissued, or terminated for cause. An action for a permit modification or amendment, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition;

(D) the permit shall not convey any property rights of any sort, or any exclusive privilege; and

(E) the permittee shall furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for amending or revoking the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by the permit;

(15) a provision to ensure that the owner or operator of a permitted emissions unit or stationary source pays fees to the permitting authority consistent with the fee schedule set out in these regulations;

(16) a provision stating that no permit revision shall be required under any approved economic incentives, pollution prevention incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit;

(17) terms and conditions for reasonably anticipated operating scenarios identified by the owner or operator of the emissions unit or stationary source in its application as approved by the department. The terms and conditions:

(A) shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(B) may extend the permit shield described in paragraph (b) of this regulation to all terms and conditions under each such operating scenario; and

(C) shall ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part;

(18) terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for such trading without a case-by-case approval of each emissions trade. The source shall provide the department and the USEPA with written notice at least seven days in advance of any proposed change within the source stating when the change will occur, the changes in emissions that will result, and how the emissions decreases or increases will comply with the terms and conditions of the permit. The terms and conditions:

(A) shall include all terms required under subsection (a) of this regulation to determine compliance;

(B) may extend the permit shield described in paragraph (b) of this regulation to all terms and conditions that allow such increases and decreases in emissions; and

(C) shall meet all applicable requirements and requirements of the Kansas air quality regulations;

(19) provisions that designate as not being federally enforceable under the federal clean air act any terms and conditions included in the permit that are not required under the federal clean air act or under any of its applicable requirements;

(20) a statement of all federally enforceable permit restrictions;

(21) consistent with other relevant subsections of this regulation, certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by the permit shall contain a certification by a responsible official that meets the requirements of K.A.R. 28-19-511(e);

(22) inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department or an authorized representative to:

(A) enter upon the permittee's premises where the emissions unit or stationary source is located or emissions-related activity is conducted, or where records shall be kept under the conditions of the permit;

(B) have access to and copy, at reasonable times, any records that shall be kept under the conditions of the permit;

(C) inspect at reasonable times any facilities, equipment including monitoring and air pollution control equipment, practices, or operations regulated or required under the permit; and

(D) as authorized by the Kansas air quality act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(23) a schedule of compliance consistent with the requirements of K.A.R. 28-19-511(b)(16)(C);

(24) progress reports consistent with any applicable schedule of compliance established pursuant to K.A.R. 28-19-511(b)(16)(D) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. The progress reports shall contain the following:

(A) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(B) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(25) requirements for compliance certification with the terms and conditions contained in the permit, including:

(A) emission limitations, standards or work practices, and risk management plan implementation; and

(B) a means of monitoring the compliance of the emissions unit or stationary source with its emissions limitations, standards, and work practices in accordance with the relevant provisions of this regulation;

(26) requirements to submit compliance certifications annually or more frequently as specified in the applicable requirement or by the department, which shall include the following:

(A) the identification of each term or condition of the permit that is the basis of the certification;

(B) the compliance status;

(C) whether compliance was continuous or intermittent;

(D) the method or methods used for determining the compliance status of the emissions unit or stationary source, currently and over the reporting period, consistent with relevant provisions of this regulation; and

(E) other facts as the department may require to determine the compliance status of the source;

(27) a requirement that all compliance certifications be submitted to the USEPA as well as to the department;

(28) a requirement for additional monitoring as may be required by the federal clean air act; and

(29) other provisions as the department deems necessary to accomplish the purposes of the Kansas air quality act.

(b) Permit shield.

(1) Except as otherwise provided in the air quality regulations, the department may expressly include in a class I operating permit a permit shield stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(A) the applicable requirements are included and are specifically identified in the permit; or

(B) the department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the emissions unit or stationary source, and the permit includes the determination or a concise summary thereof.

(2) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(3) Nothing in this regulation or in any permit shall alter or affect the following:

(A) the provisions of section 303, emergency orders, of the federal clean air act, including the authority of the administrator of the USEPA under that section or the air pollution emergency provisions of the Kansas air quality regulations, K.A.R. 28-19-55 through 28-19-58;

(B) the liability of an owner or operator of an emissions unit or stationary source for any violation of applicable requirements prior to or at the time of permit issuance;

(C) the applicable requirements of title IV, acid deposition control, of the federal clean air act, consistent with section 408(a) of the federal clean air act; or

(D) the ability of the USEPA to obtain information from a source pursuant to section 114, inspections, monitoring and entry, of the federal clean air act.

(c) Portable sources. A permit for a portable emissions unit or stationary source may authorize similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one change of location during the term of the permit. An affected source shall not be permitted as a portable source. Permits for portable sources shall include the following:

(1) conditions that will assure compliance with all applicable requirements at all authorized locations:

(2) requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) conditions that assure compliance with all other provisions of the Kansas air quality regulations.

(d) Emergencies.

(1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) An emergency shall constitute an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (d)(3) of this regulation are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(A) an emergency occurred and that the permittee can identify the cause or causes of the emergency;

(B) the permitted facility was at the time being properly operated;

(C) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

(D) the permittee submitted notice of the emergency to the department within two working days of the time when emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of paragraph (a)(11)(B) of this regulation. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.

(5) This provision shall be in addition to any emergency or upset provision contained in any applicable requirement. Whenever the provisions of this regulation regarding emergencies conflict with the provisions of K.A.R. 28-19-11, the provisions of this regulation shall control.

(Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3008; effective Jan. 23, 1995; amended Dec. 8, 1995.)

***** Authenticated Kansas Administrative Regulation *****