Kansas Administrative Regulations

Department of Health and Environment

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

28-19-300. Construction permits and approvals; applicability.

(a) Each person who proposes to construct or modify a stationary source or emission unit shall obtain a construction permit before beginning actual construction or modification if at least one of the following conditions is met:

(1) The potential-to-emit of the proposed stationary source or emission unit, or the increase in the potential-to-emit resulting from the modification, equals or exceeds any of the following:

(A) Either 25 tons of particulate matter per year or 15 tons of PM10 per year, except for any agricultural-related activity, in which case the emission level shall be 100 tons of particulate matter per year, including PM10;

(B) 40 tons of sulfur dioxide or sulfur trioxide, or a combination of these, per year;

(C) 100 tons of carbon monoxide per year;

(D) 40 tons of volatile organic compounds per year;

(E) 40 tons of oxides of nitrogen per year;

(F) 0.6 tons of lead or lead compounds per year; or

(G) 10 tons of directly emitted PM2.5 per year. For the purposes of this paragraph, "PM2.5" shall mean particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

(2) For the purposes of this paragraph, the definitions in 40 C.F.R. part 63 adopted by reference in K.A.R. 28-19-750 shall apply. The construction or modification project is located at a stationary source and involves any of the following:

(A) The construction of any new major source of hazardous air pollutants;

(B) the reconstruction of any existing major source of hazardous air pollutants;

(C) the modification of any existing area source of hazardous air pollutants such that the source becomes a major source; or

(D) any activity specified in 40 C.F.R. 63.5(b)(3).

(3) The source is requesting a federally enforceable operational restriction or permit condition pursuant to K.A.R. 28-19-302(b).

(4) The emission unit or stationary source is an incinerator used to dispose of refuse by burning or pyrolysis or used for the processing of salvageable materials, except incinerators installed on residential premises that contain fewer than six dwelling units and are used to burn waste materials associated with normal habitation of those dwelling units.

(5) The emission unit or stationary source is required to apply for a construction approval pursuant to paragraph (b)(2), and the secretary determines that air emissions from the emission unit or stationary source require that the permit issuance procedures be implemented.

(b) Each person who proposes to construct or modify a stationary source or emission unit who is not required to obtain a construction permit pursuant to subsection (a) shall, before beginning actual construction or modification of the stationary source or emission unit, obtain an approval from the department to begin actual construction or modification if at least one of the following conditions is met:

(1) The potential-to-emit of the proposed stationary source or emission unit, or the increase in the potential-to-emit resulting from the modification, equals or exceeds one or more of the following:

(A) Either five pounds of particulate matter per hour or two pounds of PM10 per hour, except for any agricultural-related activity, in which case the emission level shall be five pounds of particulate matter per hour, including PM10;

(B) two pounds of sulfur dioxide or sulfur trioxide, or a combination of these, per hour;

(C) 50 pounds of carbon monoxide per 24-hour period;

(D) 50 pounds of volatile organic compounds per 24-hour period, except when the stationary source or emission unit is located in an area designated as a nonattainment area in 40 C.F.R. 81.317 as in effect on July 1, 1989, in which case approval shall be required if the emission level exceeds either 15 pounds per 24-hour period or three pounds per hour;

(E) 50 pounds of oxides of nitrogen calculated as nitrogen dioxide per 24-hour period; or

(F) 0.1 pounds of lead or lead compounds per hour.

(2) The secretary determines that any other air contaminant emissions from the emission unit or stationary source could cause or contribute to air pollution within the state because of the specific chemical or physical nature of the emissions or because of the quantity discharged.

(3) The construction or modification project is located at a stationary source for which a standard has been promulgated under 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720, and the project involves the construction of any new source or the modification or reconstruction of any existing source subject to the standard. For the purposes of this paragraph, the definitions in 40 C.F.R. part 60 adopted by reference in K.A.R. 28-19-720 shall apply. A construction approval shall not be required for construction, reconstruction, or modification projects subject to the standards of performance for new residential wood heaters, 40 C.F.R. part 60, subpart AAA.

(4) The construction or modification project is located at a stationary source for which a standard has been promulgated under 40 C.F.R. part 61, as adopted by reference in K.A.R. 28-19-735, and the project involves the construction of any new source or the modification of any existing source subject to the standard. For the purposes of this paragraph, the definitions in 40 C.F.R. part 61 adopted by reference in K.A.R. 28-19-735 shall apply. A construction approval shall not be required for construction or modification projects subject to 40 C.F.R. 61.145.

(5) The construction or modification project is located at a stationary source for which a relevant standard has been promulgated under 40 C.F.R. part 63, as adopted by reference in K.A.R. 28-19-750, and the project involves the construction of any new source or the reconstruction of any existing source subject to the relevant standard. For the purposes of this paragraph, the definitions in 40 C.F.R. part 63 adopted by reference in K.A.R. 28-19-750 shall apply. A construction approval shall not be required solely if the project is subject to any of the following:

(A) 40 C.F.R. part 63, subpart M;

(B) 40 C.F.R. part 63, subpart CCCCCC; or

(C) 40 C.F.R. part 63, subpart ZZZZ, if the project is located at an area source.

(6) The source is seeking an approval with operational restrictions pursuant to K.A.R. 28-19-302(c).

(c) For the purpose of this regulation, neither of the following shall be considered a modification:

(1) Routine maintenance or parts replacement; or

(2) an increase or decrease in operating hours or production rates if both of the following conditions are met:

(A) Production rate increases do not exceed the originally approved design capacity of the stationary source or emission unit; and

(B) the increased potential-to-emit resulting from the change in operating hours or production rates does not exceed any emission or operating limitations imposed as a condition to any permit issued under this article of the department's regulations. (Authorized by K.S.A. 2016 Supp. 65-3005; implementing K.S.A. 2016 Supp. 65-3008; effective Jan. 23, 1995; amended Nov. 18, 2016.)

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