Kansas Administrative Regulations

Department of Health and Environment

Article 19.—Ambient Air Quality Standards and Air Pollution Control—Nonattainment Area Requirements.

28-19-16a. Definitions.

The following words and terms when used in K.A.R. 28-19-16 through K.A.R. 28-19-16m shall have the meanings as defined in subsections (a) through (s) of this regulation.

(a) "Actual emissions" means, in regard to determining creditable emissions decreases or increases of a pollutant, the average rate, in tons per year, at which a unit actually emitted the pollutant during a two-year period that precedes the particular date of interest and that is representative of normal source operation. This shall apply unless the department allows the use of a different time period upon a determination that it is more representative of normal source operation. These emissions shall be calculated using the unit's actual operating hours, production rates, and type of materials processed, stored, or combusted during the selected time period. Where specific emission limitations have been established for an individual source under the provisions of K.A.R. 28-19-13, K.A.R. 28-19-16b, the Kansas air quality regulations adopting and implementing 40 CFR § 52.21, or any permits issued before May 1, 1983 by the U.S. environmental protection agency under the provisions of federal regulation 40 CFR § 52.21(i), as amended at 52 FR 24634, July 1, 1987, effective on July 31, 1987, then actual emissions may be presumed to be equal to these limitations. For any emissions unit that has not begun normal operations on a date of interest, actual emissions shall mean the potential of the unit to emit on that date.

(b) "Allowable emissions" means the emissions rate of a stationary source calculated by using the following:

(1) the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate, hours of operation, or both; and

(2) limitations imposed by this or any other applicable state, federal, or local governmental air pollution control regulation, including those with a future compliance date.

(c) "Begin actual construction" shall have the meaning as defined in K.A.R. 28-19-200(i).

(d) "Building, structure, facility, or installation" shall have the meaning as defined in K.A.R. 28-19-200(j).

(e) "Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary state, local, and federal approvals or permits, and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(f) "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in actual emissions.

(g) "Contemporaneous emission increase or decrease" as used in K.A.R. 28-19-16a, paragraph (s) (2) means emission changes from the source that have occurred since December 21, 1976 or since the most recent permit was issued under the provisions of K.A.R. 28-19-16b, whichever date is the most recent.

(h) "Creditable emission decrease" means the amount by which the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions. No emission decrease shall be creditable if the secretary has previously given credit for it in a permit issued under the provisions of this regulation that is presently in effect or if the decrease has been previously credited by the secretary as a result of actions initiated under the provisions of other state, federal, or local governmental air pollution control regulations. Credit shall be allowed only for decreases in emissions that have approximately the same qualitative significance for

public health and welfare as do those emissions that increase as a result of a particular change.

(i) "Creditable emission increase" means the amount by which a new level of actual emissions exceeds the old level of actual emissions.

(j) "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any pollutant subject to the provisions of this regulation.

(k) "Federally enforceable" shall have the meaning as defined in K.A.R. 28-19-200(ee).

(l) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(m) "Fugitive emissions" shall have the meaning as defined in K.A.R. 28-19-200(ff).

(n) "Implementation plan" means any documents, including state or locally adopted regulations, submitted by a state to the U.S. environmental protection agency as required by the provisions of 42 U.S.C. §7410 and any regulations promulgated by the administrator of the U.S. environmental protection agency pursuant to the provisions of that section. For the purpose of this regulation, a state plan is approved when the administrator has published the approval or conditional approval of the applicable provisions of the plan in the federal register.

(o) "Lowest achievable emission rate" means, for any source, the more stringent emission standard established by the secretary based on either of the following:

(1) the most stringent emissions limitation that is contained in the approved implementation plan of any state for that class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that these limitations are not achievable, or

(2) the most stringent emissions limitation that is achieved in practice by that class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the secretary establish a lower emission rate for a proposed new or modified stationary source that is less stringent than the amount allowable under an applicable new source standard of performance promulgated by the U.S. environmental protection agency under the provisions of 42 U.S.C. §7411.

(p) "Major modification" means any modification of a major stationary source that would result in a significant net emissions increase of any pollutant subject to the provisions of this regulation.

(q) "Modification" means any physical change in, or change in the method of operation of, a stationary source that would result in an emissions increase of any pollutant subject to the provisions of this regulation. Each net emission increase that is considered significant for volatile organic compounds shall be considered significant for ozone. A physical change or change in the method of operation shall not include:

(1) routine maintenance, repair, and replacement;

(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the federal energy supply and environmental coordination act of 1974, or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the federal power act;

(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal clean air act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a stationary source that:

(A) the source was capable of accommodating before December 21, 1976, unless the secretary determines that this change would be prohibited under any federally enforceable permit condition that was established after December 21, 1976 according to 40 CFR 52.21, as amended at 52 FR 24634, July 1, 1987, effective on July 31, 1987; or

(B) the source is approved to use under any permit issued under the provisions of this regulation;

(6) an increase in the hours of operation or in the production rate, unless the secretary determines that this change is prohibited under any federally enforceable permit condition that was established after December 21, 1976 according to 40 CFR 52.21, as amended at 52 FR 24634, July 1, 1987, effective on July 31, 1987; or

(7) any change in ownership at a stationary source.

(r) "Major stationary source" means any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to the

provisions of this regulation, or any physical change that would occur at a stationary source not qualifying as a major stationary source under the previous definition, if the change would create a major stationary source by itself. A major stationary source that is considered major for volatile organic compounds shall also be considered major for ozone.

(s) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change, and are otherwise creditable.

(Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3005, K.S.A. 1996 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended Oct. 16, 1989; amended Oct. 10, 1997.)

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