Kansas Administrative Regulations

Department of Health and Environment

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

28-19-350. Prevention of significant deterioration (PSD) of air quality.

(a) PSD requirements. The requirements of this regulation shall apply to the construction of major stationary sources and major modifications of stationary sources as defined in 40 C.F.R. 52.21 in areas of the state designated as attainment areas or unclassified areas for any pollutant under the procedures prescribed by section 107(d) of the federal clean air act, 42 U.S.C. 7407(d).

(b) Adoption by reference; exceptions.

(1) 40 C.F.R. 52.21, as revised on July 1, 2011 and as amended by 76 fed. reg. 43507 (2011) and 77 fed. reg. 65118-65119 (2012), is adopted by reference, except as specified in paragraph (b)(2).

(2) The following provisions of the federal regulation adopted in paragraph (b)(1) are excluded from adoption:

(A) Plan disapproval, 52.21(a)(1);

(B) stack heights, 52.21(h);

(C) air quality analysis, 52.21(m)(1)(v);

(D) visibility monitoring, 52.21(o)(3);

(E) public participation, 52.21(q);

(F) environmental impact statements, 52.21(s);

(G) disputed permits or redesignations, 52.21(t);

(H) delegation of authority, 52.21(u); and

(I) permit rescission, 52.21(w).

(c) Provisions adopted by reference; term usage. When used in any provision adopted from 40 C.F.R. 52.21, each reference to "administrator" shall mean the "secretary of health and environment or an authorized representative of the secretary," except for the following:

(1) In subsections 52.21(b)(3)(iii)(a) and 52.21(b)(48)(ii), "administrator" shall mean both the "secretary of health and environment" and the "administrator of USEPA."

(2) In subsections 52.21(b)(17), 52.21(b)(37)(i), 52.21(b)(43), 52.21(b)(48)(ii)(c), 52.21(b)(50)(i), 52.21(b)(51), 52.21(g), 52.21(i)(6-8), 52.21(l)(2), and 52.21(m)(1)(vii-viii), "administrator" shall mean only the "administrator of USEPA."

(d) Internal references.

The following portions of 40 C.F.R. part 51 are hereby adopted by reference:

(1) Subpart I, as revised on July 1, 2011 and as amended by 76 fed. reg. 43507 (2011) and 77 fed. reg. 65118 (2012);

(2) appendix S, as revised on July 1, 2011 and as amended by 77 fed. reg. 65118 (2012); and

(3) appendix W, as revised on July 1, 2011.

(e) Definitions. For the purposes of this regulation, the following definitions shall apply:

(1) "Act" shall mean the federal clean air act, 42 U.S.C. 7401 et seq.

(2) "Class I, II or III area" shall mean a classification assigned to any area of the state under the provisions of sections 162 and 164 of the act, 42 U.S.C. 7472 and 7474, and amendments thereto.

(3) "State" shall mean the state of Kansas, unless the context clearly indicates otherwise.

(f) Ambient air ceiling protection. In relation to ambient air ceilings, the following requirements shall apply:

(1) Except as stated in paragraph (f)(2) of this regulation, a permit shall not be issued for any new major stationary source or major modification as defined in 40 C.F.R. 52.21(b) if the source or modification will be located in an attainment area or an unclassifiable area for any national ambient air quality standard and if the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major source or major modification shall be considered to cause or contribute to a violation of a national ambient air quality standard if the air quality impact of the source or modification would exceed the following levels at any locality that does not or would not meet the applicable national standard:

	Averaging Time				
Pollutant	**Annual**	**24 hrs.**	**8 hrs.**	**3 hrs.**	**1 hr.**
Sulphur dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$	---- --	25 $\mu g/m^3$	---- --
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$	------	------	------
$PM_{2.5}$	0.3 $\mu g/m^3$	1.2 $\mu g/m^3$	------	------	------
Nitrogen dioxide	1.0 $\mu g/m^3$	------	------	------	------
Carbon monoxide	------	------	0.5 mg/m^3	------	2 mg/m^3

(2) A permit may be granted for a major stationary source or major modification as identified in paragraph (f)(1) of this regulation if the impact of the major stationary source's or major modification's emissions upon air quality is reduced by a sufficient amount to compensate for any adverse impact at the location where the major source or modification would otherwise cause or contribute to a violation of any national ambient air quality standard. Subsection (f) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area that has been identified as not meeting either the national primary or secondary ambient air quality standard for that particular pollutant.

(g) Stack height requirements. K.A.R. 28-19-18 through K.A.R. 28-19-18f, regarding stack height requirements, shall apply to the sources subject to this regulation.

(h) Application required. Each application for a PSD permit shall be submitted by the owner or operator on the forms provided or approved by the department. K.A.R. 28-19-300 through K.A.R. 28-19-304, regarding construction permit and approval requirements, shall apply to the sources subject to this regulation.

(i) Impact on federal class I areas; notification required. If the emissions from any proposed major stationary source or majormodification subject to this regulation will affect any air quality-related values in any federal class I area, a copy of the permit application for the source or modification shall be transmitted by the secretary or an authorized representative of the secretary to the administrator of USEPA through the appropriate regional office. The administrator, through the appropriate regional office, shall also be notified of every action taken concerning the application.

(j) Permit suspension or revocation. Any permit issued under this regulation may be suspended or revoked by the secretary upon a finding that the owner or operator has failed to comply with any requirement specified in the permit or with any other statutory or regulatory requirement. This subsection shall not be interpreted to preclude any other remedy provided by law to the secretary.

(k) Public participation requirements. In addition to the requirements of K.A.R. 28-19-204, the following public participation requirements shall be met before issuance of the permit:

(1) The public notice shall include the following:

(A) A statement specifying the portion of the applicable maximum allowable increment that is expected to be consumed by the source or modification; and

(B) a statement that the federal land manager of any adversely impacted federal class I area has the opportunity to provide the secretary with a demonstration that the emissions from the proposed source or modification will have an adverse impact on air quality-related values in the federal class I area.

(2) A copy of the public notice shall be mailed to the following:

(A) The applicant;

(B) the administrator of USEPA through the appropriate regional office;

(C) any state or local air pollution control agency having jurisdiction in the air quality control region in which the new or modified installation will be located;

(D) the chief executives of the city and county where the source will be located;

(E) any comprehensive regional land use planning agency having jurisdiction where the source will be located; and

(F) any state, federal land manager, or Indian governing body whose lands will be affected by emissions from the new construction or modification.

(3) In addition to those materials required to be available for public review at the appropriate district office or local agency, a summary analysis and discussion of those materials as they relate to establishing compliance with the requirements of this regulation shall be made available for public review.

(4) Copies of all comments received and the written determination of the secretary shall be made available for public inspection at the appropriate district office or local agency.

(Authorized by K.S.A. 2011 Supp. 65-3005; implementing K.S.A. 2011 Supp. 65-3005 and K.S.A. 65-3008; effective Nov. 22, 2002; amended June 30, 2006; amended Oct. 23, 2009; amended Nov. 29, 2010; amended Dec. 28, 2012.)

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