Kansas Administrative Regulations

Department of Health and Environment

Article 19.—Ambient Air Quality Standards and Air Pollution Control—General Regulations.

28-19-11. Enforcement discretion due to startup, shutdown, malfunctions, or scheduled maintenance.

(a) An emission source having emissions that are in excess of the applicable emission limitation and standard and result from startup, shutdown, malfunctions, or scheduled maintenance of control or processing equipment and appurtenances may be exempt from enforcement action at the secretary's discretion if both of the following conditions are met:

(1) The person responsible for the operation of the emission source notifies the department of the occurrence and nature of the excess emissions resulting from startup, shutdown, malfunctions, or scheduled maintenance, in writing, within 10 days of discovery of the excess emissions.

(2) Reasonable action is taken regarding the occurrence specified in paragraph (a)(1) to initiate and complete any necessary repairs and place the equipment back in operation as quickly as possible.

(b) Emissions that are in excess of the applicable emission source emission limitation and standard and result from startup, shutdown, or malfunctions shall be evaluated by the secretary for potential enforcement action based on the frequency and severity of the excess emissions.

(c) Emissions that are in excess of the applicable emission source emission limitation and standard and result from scheduled maintenance of control or processing equipment and appurtenances shall be evaluated by the secretary for potential enforcement action based on the following:

(1) The severity of the excess emissions;

(2) any prior approval for scheduled maintenance by the secretary; and

(3) demonstration that the scheduled maintenance cannot be accomplished by maximum reasonable effort, including off-shift labor where required, during periods of shutdown of any related control or processing equipment.

(d) Any exemption granted under this regulation may be rescinded if the secretary obtains additional information and deems enforcement action necessary based upon this information.

(e) Lack of enforcement for excess emissions under this regulation shall not preclude the taking of enforcement action by USEPA or through private citizen lawsuits. (Authorized by K.S.A. 2016 Supp. 65-3005; implementing K.S.A. 65-3006 and K.S.A. 65-3010; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-74-7, Jan. 1, 1974; amended May 1, 1975; amended Nov. 14, 2016.)

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