Kansas Administrative Regulations

Department of Health and Environment

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

28-19-513. Class I operating permits; permit amendment, modification or reopening and changes not requiring a permit action.

(a) The provisions of this subsection shall apply to administrative permit amendments.

(1) An "administrative permit amendment" is a permit revision that:

(A) corrects typographical errors;

(B) identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(C) requires more frequent monitoring or reporting by the permittee;

(D) allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department; or

(E) incorporates into the class I operating permit the requirements from a preconstruction review permit authorized under K.A.R. 28-19-300 *et seq.*, construction permits and approvals, provided that the preconstruction review procedural requirements are substantially equivalent to the requirements applicable to a permit modification, and compliance requirements substantially equivalent to those contained in K.A.R. 28-19-512.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV, acid deposition control, of the federal clean air act.

(3) Any other revision to a permit shall be considered a permit modification or reopening.

(4) An administrative permit amendment may be made by the department without providing notice to the public or affected states provided that it designates any such permit amendment as having been made pursuant to this subsection (a).

(5) The emissions unit or stationary source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(6) The department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in K.A.R. 28-19-513(b) for administrative permit amendments made pursuant to paragraph (a)(1)(E) of this regulation which meet the relevant requirements pertaining to permit requirements, permit amendment, modification, reopening or change, or review by the USEPA and affected states for significant permit modifications.

(b) (1) Any revision to a permit that is not accomplished as an administrative permit amendment or reopening shall be considered a permit modification.

(A) A permit modification may be either minor or significant.

(B) A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV, acid deposition control, of the federal clean air act.

(2) A permit modification may be issued only if all of the following conditions have been met:

(A) Except for modifications qualifying for minor permit modification procedures, compliance with the requirements for public participation pursuant to K.A.R. 28-19-515(a);

(B) compliance with the requirements for affected state participation pursuant to K.A.R. 28-19-515(b);

(C) the permit, as modified, provides for compliance with all applicable requirements and the requirements of the Kansas air quality regulations; and

(D) compliance with the requirements for USEPA participation pursuant to K.A.R. 28-19-515(c) and K.S.A. 1993 Supp. 65-3008b(7)(g).

(c) The provisions of this subsection shall apply to minor permit modifications.

(1) Minor permit modification procedures shall only be used for those permit modifications that:

(A) do not violate any applicable requirement;

(B) do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(C) do not require or change a case-by-case determination of an emission limitation or other standard, a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(D) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions shall include:

(i) a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I, air pollution prevention and control, of the federal clean air act; and

(ii) an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5), early reductions, of the federal clean air act;

(E) are not modifications under any provision of title I, air pollution prevention and control, of the federal clean air act; and

(F) are not required to be processed as a significant modification.

(2) Minor permit modification procedures may also be used for permit modifications involving the use of economic incentives, marketable permits, pollution prevention incentives, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the state implementation plan.

(3) An application requesting the use of minor permit modification procedures shall meet the requirements of K.A.R. 28-19-511 and shall include the following:

(A) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) the suggested draft permit for the emissions unit or stationary source;

(C) certification by a responsible official, consistent with K.A.R. 28-19-511(d), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) completed forms for the department to use to notify the administrator of the USEPA and any affected states.

(4) The emissions unit or stationary source may make the change proposed in its minor permit modification application immediately after it files such application with the department. After the emissions unit or stationary source makes that change, and until the department takes any action in regard to the minor permit modification application, the emissions unit or stationary source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the emissions unit or stationary source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the emissions unit or stationary source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. This subsection shall also apply to modifications eligible for group processing.

(5) The permit shield provisions of K.A.R. 28-19-512(b) shall not extend to minor permit modifications.

(6) The procedure outlined in paragraph (c)(3) of this regulation may be modified by the department to process groups of an emission unit's or stationary source's applications for certain modifications eligible for minor permit modification processing. Group processing of modifications shall only be used for those permit modifications that meet the criteria for minor permit modification procedures and that are collectively below whichever of the following amounts is the least:

(A) 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested;

(B) 20 percent of the applicable definition of major source in 40 CFR §70.2, as in effect July 1, 1993; or

(C) 5 tons per year.

(7) Each application requesting the use of group processing procedures shall meet the requirements of K.A.R. 28-19-511(b) and shall include the following:

(A) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) the suggested draft permit of the emission unit or stationary source;

(C) certification by a responsible official, consistent with K.A.R. 28-19-511(e), that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used;

(D) a list of any other pending applications of that emission unit or stationary source that are awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold;

(E) certification, consistent with the requirements of K.A.R. 28-19-511(e), that the source has notified the USEPA of the proposed modification. The notification shall only be required to contain a brief description of the requested modification; and

(F) completed forms for the department to use to notify the administrator of the USEPA and affected states.

(8) The permit shield shall not apply to modifications eligible for group processing.

(9) An application for a minor permit modification shall be acted upon within 90 days of receipt by the department. An application for group processing of minor permit modifications shall be acted upon within 180 days of receipt by the department.

(d) The provisions of this subsection shall apply to significant permit modifications.

(1) Significant permit modification procedures shall be used for each application requesting any permit modification that does not qualify as a minor permit modification, an administrative amendment or a reopening.

(2) Significant permit modifications shall include, but shall not be limited to, every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions. Nothing herein shall be construed to preclude the permittee from making changes consistent with this article that would render existing permit compliance terms and conditions irrelevant.

(3) Each significant permit modification application shall be subject to the provisions of K.A.R. 28-19-511.

(4) Each significant permit modification shall meet all requirements of the Kansas air quality regulations, including those for applications, public participation, review by affected states, and review by EPA, as they apply to class I operating permit issuance and permit renewal.

(e) The provisions of this subsection shall apply to reopening of a permit.

(1) Each issued permit shall be subject to provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(A) additional applicable requirements under the federal clean air act become applicable to an emissions unit or stationary source with a remaining permit term of 3 or more years. A reopening shall not be required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended;

(B) additional requirements, including excess emissions requirements, become applicable to an affected source under title IV, acid deposition control, of the federal clean air act. Upon approval by the administrator of the USEPA, excess emissions offset plans shall be deemed to be incorporated into the permit;

(C) it is determined by the department that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit;

(D) it is determined by the department that it is necessary to revise or revoke a permit in order to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

(3) Reopenings under this subsection (e) shall not be initiated before a notice of intent to reopen is provided to the owner or operator of the emissions unit or stationary source by the department at least 30 days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency.

(f) (1) A source which is operating pursuant to a class I operating permit may, without making application for a permit amendment or modification, make changes within the facility that:

(A) are not modifications under any provision of title I, air pollution prevention and control, of the federal clean air act;

(B) do not cause emissions in excess of any emissions limit stated in the class I operating permit; and

(C) do not alter conditions of the permit that address requirements for:

(i) monitoring (including test methods);

(ii) record-keeping;

(iii) reporting; or

(iv) compliance certification requirements.

(2) Prior to making a change pursuant to the preceding paragraph, the facility shall provide the department and the USEPA written notification at least seven days in advance of implementing the proposed change.

(A) The stationary source, the department and the USEPA shall attach the notice to their copy of the relevant permit.

(B) For each such change, the written notification required above shall include:

(i) a brief description of the change within the permitted facility;

(ii) the date on which the change will occur;

(iii) any change in emissions;

(iv) and any permit term or condition that is no longer applicable as a result of the change.

(3) The permit shield provisions of K.A.R. 28-19-512(b) shall not apply to any change made under the provisions of subsection (f) of this regulation.

(g)(1) A stationary source which is operating pursuant to a class I operating permit may, without a permit modification, make changes to the stationary source if the changes are either:

(A) not subject to any requirement under any provision of title IV of the federal clean air act, acid deposition control; or

(B) not modifications under any provision of title I of the federal clean air act, air pollution prevention and control.

(2) Each change made at the stationary source without a permit modification pursuant to this subsection shall be subject to the following provisions.

(A) The change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(B) The owner or operator shall provide contemporaneous written notice to the department and the USEPA of the change, except for changes that qualify as insignificant under the provisions of K.A.R. 28-19-511(b)(3). The written notice shall describe the change, including the date of the change, all regulated pollutants emitted, any change in emissions, and any applicable requirement that would apply as a result of the change.

(3) The change shall not qualify for the permit shield under K.A.R. 28-19-512(b).

(4) The owner or operator shall keep a record describing changes made at the stationary source that result in emissions of a regulated pollutant subject to an applicable requirement that are not otherwise regulated under the permit, and the emissions resulting from those changes.

(Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995.)

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