Kansas Administrative Regulations

Department of Health and Environment

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

28-19-200. General provisions; definitions.

All terms and abbreviations used in the Kansas air quality regulations shall have the following meanings, unless otherwise defined in an individual regulation or unless the context clearly requires otherwise.

(a) "Affected facility" or "facility" means any building, structure, machine, equipment, device, or installation, or combination thereof, to which an emissions limitation or standard applies.

(b) "Affected source" means a stationary source that includes one or more affected units subject to emission reduction requirements or limitations under title IV of the federal clean air act, 42 U.S.C. § 7401 et seq., "acid deposition control."

(c) "Affected state" means any state:

(1) that is contiguous with Kansas and whose air quality may be affected by emissions from a stationary source or proposed stationary source in Kansas; or

(2) that is within 50 miles of a permitted stationary source located in Kansas.

(d) "Agricultural-related activity."

(1) "Agricultural-related activity" means processes used in the production of any of the following:

(A) popcorn that is packaged but not popped;

(B) ornamental floriculture and nursery products;

(C) shortening, table oils, and margarine;

(D) prepared feeds and feed ingredients for animals and fowl;

(E) molasses that is mixed or blended;

(F) cotton ginnings; and

(G) flour and other grain mill products.

(2) "Agricultural-related activity" also means sunflower oil reclaiming, seed cleaning, and operations related to alfalfa dehydrators, sun-cured alfalfa plants, soybean oil mills, and grain elevators.

(e) "Applicable requirement," for purposes of class I operating permits, means any of the following:

(1) the standards or other requirements that are part of the approved state implementation plan or part of any applicable federally promulgated implementation plan;

(2) any term or condition of a construction permit issued pursuant to:

(A) K.A.R. 28-19-16 through 16m, and amendments thereto, nonattainment area requirements;

(B) K.A.R. 28-19-17 through 17q, and amendments thereto, prevention of significant deterioration requirements;

(C) part C of title I of the federal clean air act by the USEPA; or

(D) K.A.R. 28-19-300, or its predecessor, K.A.R. 28-19-14;

(3) any standard or other requirement promulgated under 42 U.S.C. § 7411 of the federal clean air act, "standards of performance for new stationary sources," including 42 U.S.C. § 7411(d);

(4) any standard or other requirement promulgated under 42 U.S.C. § 7412 of the federal clean air act, "hazardous air pollutants," including any requirement concerning accident prevention under 42 U.S.C. § 7412(r)(7);

(5) any standard or other requirement of the acid rain program under title IV of the federal clean air act, "acid deposition control," or regulations promulgated thereunder;

(6) any requirement established pursuant to 42 U.S.C. § 7661c(b) of the federal clean air act, "permit requirements and conditions, monitoring and analysis," or 7414(a)(3) of the federal clean air act, regarding inspections, monitoring and entry, enhanced monitoring, and compliance certification;

(7) any standard or other requirement governing solid waste incineration under 42 U.S.C. § 7429 of the federal clean air act, "solid waste combustion";

(8) any standard or other requirement for consumer and commercial products under 42 U.S.C. § 7511b of the federal clean air act, "federal ozone measures," subsection (e) "control of emissions from certain sources";

(9) any standard or other requirement for tank vessels under 42 U.S.C. § 7511b(f) of the federal clean air act, "federal ozone measures," subsection (f) "tank vessel standards";

(10) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the federal clean air act, "stratospheric ozone protection," unless the USEPA has determined that such requirements need not be contained in a class I operating permit; and

(11) any national ambient air quality standard or increment or visibility requirement under part C, "prevention of significant deterioration of air quality," of title I of the federal clean air act, but only as it would apply to temporary sources permitted pursuant to requirements adopted to enable the department to administer a program developed to implement the provisions of 42 U.S.C. § 7661c, "permit requirements and conditions," subsection (e), "temporary sources," of the federal clean air act.

(f) "Application" or "application form" means the application form and all supporting documentation, unless the context clearly indicates otherwise.

(g) "Area source" means a stationary source of hazardous air pollutants that is not a major source.

(h) "ASTM" means the American society for testing and materials.

(i) "Begin actual construction" means the initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. These activities include, but shall not be limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(j) "Building, structure, facility, or installation" means all of the air pollutant emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Air pollutant emitting activities shall be considered as

part of the same industrial grouping if they have the same two-digit code as described in the "standard industrial classification manual 1987," as published by the U.S. governing printing office, as adopted at K.A.R. 28-19-301(f)(2).

(k) "Calendar quarter" means January through March, April through June, July through September, or October through December of any calendar year.

(l) "Capture efficiency" (CE) means the amount of an air contaminant emitted from an emissions unit and directed to an air emissions control device (ce), divided by the total emissions of the air contaminant from the emissions unit (te), and expressed as a two-decimal number between 0.00 and 1.00. (CE = ce/te)

(m) "Class I or class II substance" means a substance subject to a standard promulgated under or established by title VI of the federal clean air act, "stratospheric ozone protection," 42 U.S.C. § 7401 et seq.

(n) "Class I, II or III area" means a classification assigned to any area of the state under the provisions of 42 U.S.C. § 7472 and § 7474 of the federal clean air act.

(o) "Commercial or medical waste incinerator" means any incinerator used to dispose of waste from any commercial operation or used to dispose of any medical services waste as defined at K.A.R. 28-29-27.

(p) "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit.

(q) "Control device" means any equipment, device, or other article that is designed, installed, or both, for the purpose of reducing or preventing the discharge of contaminant emissions to the air.

(r) "Control device efficiency (CDE)" means the amount of an air contaminant directed to an air emissions control device or devices (ce) minus the emissions of the air contaminant emitted from the air emissions control device or devices, or otherwise released into the atmosphere (re), divided by the amount of the air contaminant directed to the air emissions control device or devices (ce), expressed as a two-decimal number between 0.00 and 1.00. (CDE = (ce − re)/ce)

(s) "De minimis emissions" means air emissions of hazardous air pollutants for which no applicable requirements exist.

(t) "Department" means the Kansas department of health and environment or an authorized representative of the department.

(u) "Direct heating equipment" means any device in which fuel is burned in direct contact with, and for the purpose of heating, air that comes in direct contact with the material being processed.

(v) "Director" means the secretary of health and environment or a designated representative of the secretary.

(w) "Emission limitation and standard" means a requirement established pursuant to the Kansas air quality regulations.

(x) "Emission source" means any machine, equipment, device, or other article or operation that directly or indirectly releases contaminants into the outdoor atmosphere.

(y) "Emission unit" means any part or activity of a stationary source that emits or would have the potential-to-emit any regulated pollutant or any pollutant listed under 42 U.S.C. § 7412(b) of the federal clean air act.

(z) "Existing" means that a processing machine, equipment, device, or other article, or any combination of the above, or any indirect heating equipment or incinerator is completed, under construction, or under purchase contract on the effective date of any applicable regulation.

(aa) "Existing facility" means a facility that is completed, under construction, or under purchase contract at the time an emission limitation or standard becomes applicable to such facilities.

(bb) "Facility" or "affected facility" means any building, structure, machine, equipment, device, or installation, or combination thereof, to which an emissions limitation or standard applies.

(cc) "Federal clean air act" means 42 U.S.C. § 7401 et seq., as in effect on January 15, 1996.

(dd) "Federally designated fugitive emissions source" means any of the following:

(1) coal cleaning plants, with thermal dryers;

(2) kraft pulp mills;

(3) portland cement plants;

(4) primary zinc smelters;

(5) iron and steel mills;

(6) primary aluminum ore reduction plants;

(7) primary copper smelters;

(8) municipal incinerators capable of charging more than 250 tons of refuse per day;

(9) hydrofluoric, sulfuric, or nitric acid plants;

(10) petroleum refineries;

(11) lime plants;

(12) phosphate rock processing plants;

(13) coke oven batteries;

(14) sulfur recovery plants;

(15) carbon black plants that use a furnace process;

(16) primary lead smelters;

(17) fuel conversion plants;

(18) sintering plants;

(19) secondary metal production plants;

(20) chemical process plants;

(21) fossil-fuel boilers, or a combination thereof, totaling more than 250 million British thermal units per hour heat input;

(22) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) taconite ore processing plants;

(24) glass fiber processing plants;

(25) charcoal production plants;

(26) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(27) any other stationary source categories regulated by a standard promulgated as of August 7, 1980, under 42 U.S.C. § 7411, "new source performance standards," or 42 U.S.C. § 7412, "hazardous air pollutants," of the federal clean air act, but only with respect to those air pollutants that have been regulated for that category.

(ee) "Federally enforceable" means:

(1) all limitations and conditions that are enforceable by the administrator of the U.S. environmental protection agency;

(2) requirements of regulations included in the federally approved state implementation plan; and

(3) any permit requirements established pursuant to these requirements.

(ff) "Fugitive emissions" means those emissions that directly result from operation of an emissions unit or stationary source but that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(gg) "Hazardous air pollutant" shall have the meaning as defined in K.A.R. 28-19-201(a).

(hh) "Incinerator" means any device or structure used for the destruction or volume reduction of garbage, rubbish, or other liquid or solid waste materials, by combustion, for the purpose of disposal or salvage.

(ii) "Indirect heating equipment" means any device in which fuel is burned to produce heat, which heat is transferred through a heat-conducting materials barrier or by a heat storage medium to a material that is to be heated so that the material being heated is not contacted by, and adds no substance to, the products of combustion.

(jj) "Kansas air quality regulations" means those regulations at article 28-19 of the Kansas administrative regulations, as adopted by the secretary pursuant to K.S.A. 65-3001 et seq., and amendments thereto.

(kk) "Major source" means any stationary source, or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person, or persons who are under common control, belonging to a single major industrial grouping and that are described in paragraphs (1), (2), (3) or (4) of this subsection. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant-emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group with the same two-digit code as described in the "standard industrial classification manual, 1987."

(1) For pollutants other than radionuclides, major source shall include any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the secretary may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(2) For radionuclides, major source shall have the meaning specified by the secretary by regulation.

(3) Major source shall include a major stationary source of air pollutants, as defined in 42 U.S.C. § 7602 of the federal clean air act, that directly emits or has the potential-to-emit 100 tons per year or more of any air pollutant, including any major source of fugitive emissions of any such pollutant from a federally designated fugitive emissions source. The fugitive emissions of a stationary source shall not be considered in determining whether or not it is a major stationary source, unless the source is a federally designated fugitive emissions source.

(4) Major source shall include a major stationary source as defined in part D of title I of the federal clean air act.

(ll) "Modified open burning operation" means an open burning operation in which the contaminants emitted to the ambient air as a result of combustion are reduced, controlled, or both, through positive regulation of fuel-to-air ratios, air screens, or other control techniques. Combustion devices used solely for the purpose of disposing of flammable gases shall not be considered to be modified open burning operations.

(mm) "Municipal solid waste landfill" or "MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of wastes regulated pursuant to subtitle D of the resource conservation and recovery act (RCRA), 42 U.S.C. § 6901, et seq., such as commercial solid waste, nonhazardous sludge, conditionally exempt small

quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

(nn) "National ambient air quality standard," "national primary ambient air quality standard" and "national secondary ambient air quality standard" mean those standards promulgated at 40 CFR Part 50, revised as of July 1, 1995, which are adopted by reference.

(oo) "Official observer."

(1) "Official observer" means a designated representative of the department who has been certified by the department as being trained, and qualified on the basis of actual testing, to determine the degree of opacity of visible plumes by direct visual observation. The testing procedure shall be established and published by the department. Each certified individual shall be required to be re-tested at least once every six months to maintain certification.

(2) The term "official observer" shall also include a representative of the USEPA that has been properly certified pursuant to 40 CFR Part 60, appendix A, method 9.

(pp) "Opacity" means the degree to which a contaminant emission obscures an official observer's view of transmitted light passing through that contaminant. Zero percent opacity is perfect transparency and 100 percent opacity is impenetrable to light.

(qq) "Open burning operation" means the burning of any materials in which contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney from an enclosed chamber. A chamber shall be considered enclosed when only those apertures, ducts, stacks, flues or chimneys that are required to supply combustion air and to permit the escape of exhaust gases are open during the combustion process.

(rr) "Organic material" means a chemical compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

(ss) "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility, emissions unit, or stationary source subject to any

standard or requirement of the Kansas air quality act, K.S.A. 65-3001 et seq., or any rule and regulation promulgated thereunder.

(tt) "Particulate matter" means any airborne finely divided solid or liquid material, except uncombined water, including PM10.

(uu) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, or any legal successor, representative, agent, or agency of the foregoing.

(vv) "PM10" or "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as measured by a reference method based on appendix J of 40 CFR, Part 50 and designated in accordance with 40 CFR § 53.8, or by an equivalent method designated by the administrator of the U.S. environmental protection agency on or before the effective date of this regulation in accordance with 40 CFR § 53.8, revised as of July 1, 1995. Appendix J of 40 CFR, Part 50 and 40 CFR § 53.8, revised as of July 1, 1995 are adopted by reference.

(ww) "Portable source" means an emissions unit or stationary source that, due to the design of the emissions unit or stationary source, is capable of being moved from one location to another and that, except for storage purposes, remains at one location no longer than 180 days during any 365-day period, unless otherwise approved in writing by the department. A mobile source shall not be considered a portable source.

(xx) "Potential contaminant emission rate" means the total weight of a contaminant that is or, in the absence of control equipment, would be emitted from an air contaminant source when that source is operating at its maximum capacity. The potential contaminant emissions rate shall be determined by:

(1) sampling in a flue or duct prior to the inlet of any control device serving the flue or duct;

(2) estimating such emissions by performing a "material balance" calculation that indicates the difference between processing input weight and output weight of materials;

(3) using potential contaminant emission factors as recognized by the department; or

(4) using any other estimating technique mutually agreeable to the department and the person responsible for operation of the source.

(yy) "Potential-to-emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not be considered in determining the potential-to-emit of a stationary source.

(zz) "Premises" means one or more contiguous or adjacent parcels of land and any structures or equipment located on the parcels under one ownership. For the purpose of this definition, a parcel of land that is bordering another parcel divided solely by a public roadway or a railroad right of way shall be considered to be adjacent.

(aaa) "Processing" means any operation related to the handling, storage, treatment, or conversion of input materials to produce a saleable or usable end product.

(bbb) "Regulated pollutant" means:

(1) nitrogen oxides or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated;

(3) any pollutant that is subject to any standard promulgated under 42 U.S.C. § 7411, "standards of performance for new stationary sources," of the federal clean air act;

(4) any class I or II substance subject to a standard promulgated under or established by title VI of the federal clean air act, "stratospheric ozone protection"; or

(5) any pollutant subject to a standard or other requirements promulgated or established under 42 U.S.C. § 7412 of the federal clean air act, "hazardous air pollutants," including 42 U.S.C. § 7412(g), (j), and (r), including the following:

(A) any pollutant subject to requirements under 42 U.S.C. § 7412(j) of the federal clean air act. If the administrator of the USEPA fails to promulgate a standard by the date established pursuant to 42 U.S.C. § 7412(e) of the federal clean air act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to 42 U.S.C. § 7412(e) of the federal clean air act; and

(B) any pollutant for which the requirements of 42 U.S.C. § 7412(g)(2) of the federal clean air act have been met, but only with respect to the individual source subject to 42 U.S.C. § 7412(g)(2) requirement.

(ccc) "Responsible official" means one of the following:

(1) For a corporation, a president, secretary, treasurer or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to permit or other relevant regulatory requirement and if either:

(A) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million, in second quarter, 1980 dollars; or

(B) the delegation of authority to such representative is approved in advance by the department;

(2) for a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(3) for a municipality, or a state, federal, or other public agency, a principal executive officer or ranking elected official. For purposes of this definition, a principal executive officer of a federal agency shall include the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or

(4) for affected sources, the designated representative under title IV of the federal clean air act, "acid deposition control."

(ddd) "Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall include emissions from any off-site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(eee) "Significant" means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

(1) 100 tons per year of carbon monoxide;

(2) 40 tons per year of nitrogen oxides;

(3) 40 tons per year of sulfur dioxide;

(4) 25 tons per year of particulate matter emissions;

(5) 15 tons per year of PM10 emissions;

(6) 40 tons per year of volatile organic compounds for ozone; or

(7) 0.6 tons per year of lead.

(fff) "Smoke" means particulate matter emissions, resulting from incomplete combustion, that consist primarily of carbon, ash, and other material and that form a visible plume in the ambient atmosphere.

(ggg) "Start-up" or "startup" means the setting in operation of a stationary source for any purpose.

(hhh) "State implementation plan" means any documents, including state or locally adopted regulations, submitted by a state to, and approved by, the U.S. environmental protection agency as required by the provisions of 42 U.S.C. § 7410 of the federal clean air act, and any regulations promulgated by the administrator of the U.S. environmental protection agency pursuant to the provisions of that section.

(iii) "Stationary source" or "source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to any emission limitation or standard or that is required to obtain a permit pursuant to the Kansas air quality regulations.

(jjj) "Temporary" means, in relation to the emissions from a source, that the emissions will not occur at a particular location for a period of more than two years, unless a longer time is approved by the secretary or an authorized representative of the secretary.

(kkk) "Total suspended particulate" means particulate matter as measured by the method described in appendix B of 40 CFR Part 50, revised as of July 1, 1995, which is adopted by reference.

(lll) "USEPA" means the United States environmental protection agency, or its successor.

(mmm) "Volatile organic compounds (VOC)" shall have the meaning as defined in K.A.R. 28-19-201(b).

(nnn) "Waste" means garbage, refuse and other discarded materials including, but not limited to solids, semisolids, sludges, liquids and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. The term "waste" shall not include hazardous wastes as defined in K.A.R. 28-31-3.
(Authorized by K.S.A. 1996 Supp. 65-3005; implementing K.S.A. 1996 Supp. 65-3005; effective Oct. 10, 1997.)

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