

**K.A.R. 28-19-16 NEW SOURCE PERMIT REQUIREMENTS FOR DESIGNATED NONATTAINMENT AREAS**

The provisions of K.A.R. 28-19-16 through K.A.R. 28-19-16m shall apply to the construction, reconstruction, or major modification of major stationary sources of air pollution emissions located within any area that has been identified as not meeting a national ambient air quality standard for the pollutant for which the source is major, under the procedures prescribed by section 107(d) of the federal clean air act (42 U.S.C. 7407(d)). (Authorized by and implementing K.S.A. 65-3005, 1984 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 May 1, 1986.)

**K.A.R. 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 40 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.

**K.A.R. 28-19-16b PERMIT REQUIRED**

(a) A major stationary source shall not begin actual construction, reconstruction, or major modification unless the owner or operator of the source has been issued a permit approving this activity. The permit shall be signed by the secretary or an authorized representative of the secretary and shall specify the emission rate limitations allowable for the source and any special conditions to be imposed on its operation to insure regulatory compliance. Special operating conditions may include, but need not be limited to, specified period of

operation, restrictions on the amount and types of material to be combusted, stored or processed, control equipment operating and maintenance requirements, emissions monitoring requirements, and restrictions on other source operations.

(b) Application for a permit shall be submitted on forms provided by the secretary or his or her designated representative. The application shall include, in addition to that information required by K.A.R. 28-19-8(a), the information that is required by the secretary to determine the net emissions increase that will occur at the time that the permitted activity is completed. All proposed actions reported under the provisions of K.A.R. 28-19-8 shall be reviewed by the secretary to determine the possible applicability of this regulation to the proposed action and advise the source owner or operator of any need to submit a permit application. The secretary or a designated representative shall advise the applicant of each deficiency in the application or accompanying information. If a deficiency exists, the receipt date of the completed application shall be the date on which the department of health and environment or its designated representative received all required information.

(Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1986.)

**K.A.R. 28-19-16c CREDITABLE EMISSION REDUCTIONS**

For the purpose of allowing credit for emissions reductions claimed in relation to the modification or reconstruction of a major stationary source issued a determination of reasonable further progress toward attainment of the national ambient air quality standards required under the provisions of K.A.R. 28-19-16g, the following additional requirements shall apply;

(a) If an existing fuel combustion source commits to switch, at some future date, to a fuel that emits less pollutants, emissions offset credit based upon allowable (or actual) emissions for the fuels involved shall not be allowed unless the source that has committed to the fuel switch has also committed to the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the

source switch back, at some later date, to a fuel that emits more pollutants. Before the offset credits are given for these proposed fuel switches, the secretary shall ensure that adequate long term supplies of the new fuel are available.

(b) Where emission reduction credits are proposed to result from a shutdown of an existing source or permanently curtailing production or operating hours below baseline levels, these reductions shall not be credited unless the work force to be affected by this action has been notified of the proposed shutdown or curtailment. Source shutdowns or curtailments in production occurring before the completed source application is received by the department of health and environment or its designated representative may not be used for the purpose of establishing offset credits unless the applicant has demonstrated that this curtailment or shutdown occurred after August 7, 1977, and the proposed new source construction, reconstruction or modification is a replacement for the shutdown or curtailment that is proposed to be used to offset the emissions from it.

(c) Emissions reduction credit shall not be allowed for replacing one volatile organic compound with another of less reactivity, except for those compounds listed in Table 1 of the "Recommended Policy on control of Volatile Organic Compounds" as published on page 35314 of the July 8, 1977 issue of the Federal Register. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982.)

#### **K.A.R. 28-19-16d FUGITIVE EMISSION EXEMPTION**

The provisions of K.A.R. 28-19-16b shall not apply to a source or modification of a source that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification, except for the following source categories:

- (a) Coal cleaning plants (with thermal dryers);
- (b) kraft pulp mills;
- (c) portland cement plants;
- (d) primary zinc smelters;
- (e) iron and steel mills;
- (f) primary aluminum ore reduction plants;
- (g) primary copper smelters;

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(h) municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day;  
(i) hydrofluoric, sulfuric, or nitric acid plants;  
(j) petroleum refineries;  
(k) lime plants;  
(l) phosphate rock processing plants;  
(m) coke oven batteries;  
(n) sulfur recovery plants;  
(o) carbon black plants (furnace process);  
(p) primary lead smelters;  
(q) fuel conversion plants;  
(r) sintering plants;  
(s) secondary metal production plants;  
(t) chemical process plants;  
(u) fossil-fuel boilers (or combinations thereof) totaling more than 250,000,000 British thermal units per hour heat input;  
(v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;  
(w) taconite ore processing plants;  
(x) glass fiber processing plants;  
(y) charcoal production plants;  
(z) fossil fuel-fired steam electric plants of more than 250,000,000 British thermal units per hour heat input; and  
(aa) any other stationary source category which, as of August 7, 1980, was being regulated under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. 7411 and 7412). (Authorized by and implementing K.S.A. 65-3005, 1984 Suppl. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1986.)

**K.A.R. 28-19-16e RELAXATION OF EXISTING EMISSION LIMITATIONS**

At such time as any individual source or modification becomes a major source subject to the provisions of K.A.R. 28-19-16b solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the requirements of K.A.R. 28-19-16 through 28-19-16m shall become applicable to the source or modification as though construction had not yet commenced on the source or modification. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981.)

**K.A.R. 28-19-16f NEW SOURCE EMISSION LIMITS**

A permit for major stationary source construction, reconstruction, or major modification shall not be issued under the provisions of K.A.R. 28-19-16b unless the emissions resulting from this permitted activity are limited to the lowest achievable emission rate that has been established for the constructed or modified source. For phased construction projects, the determination of lowest achievable emission rate shall be reviewed by the secretary and modified as appropriate, at the latest reasonable time prior to commencement of construction of each independent phase of the proposed construction or modification. Final determination of compliance with lowest achievable emission rate requirements shall be made by the secretary. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005; 65-3010; effective E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982.)

**K.A.R. 28-19-16g ATTAINMENT AND MAINTENANCE OF NATIONAL AMBIENT AIR QUALITY STANDARDS**

(a) A permit for major stationary source construction, reconstruction, or modification, shall not be issued under the provisions of K.A.R. 28-19-16b if emissions from this source would prevent the attainment and maintenance of the national ambient air quality standards by the date specified in the approved Kansas implementation plan.

(b) Attainment and maintenance of the national ambient air quality standards shall be determined according to compliance with either of the two following requirements:

(1) Reasonable further progress toward attainment of the national ambient air quality standards shall be required. This progress shall be demonstrated when, by the time the newly permitted source is to commence operation, total allowable emissions from:

(A) other existing sources in the identified nonattainment area;

(B) other new or modified sources which are not major stationary sources; and

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(C) this proposed source shall be less than the total emissions allowed from sources existing before application for the permit.

(2) Emissions resulting from the proposed new or modified major stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for the pollutant in the area for all new or modified major stationary sources in the approved plan. (Authorized by and implementing K.S.A. 65-3005, 1984 Suppl. 63-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1986.)

**K.A.R. 28-19-16h COMPLIANCE OF OTHER SOURCES**

A permit for major stationary source construction, reconstruction, or major modification shall not be issued under the provisions of K.A.R. 28-19-16b unless the owner or operator of this source has demonstrated to the secretary that all major stationary sources owned and operated by this person (or by an entity controlling, controlled by, or under common control of this person) in the state of Kansas are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the federal clean air act and amendments thereto. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008; 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982.)

**K.A.R. 28-19-16i OPERATING REQUIREMENTS**

A constructed, reconstructed, or modified major stationary source subject to the provisions of K.A.R. 28-19-16b shall not be operated, except in compliance with the requirements established by the permit issued for the source. Each permitted physical change in a source that is intended to serve as a replacement unit, and which requires a shakedown period before it can be expected to operate at maximum efficiency, shall be considered operational only after completion of this period, provided that this period shall not exceed 180 days. (Authorized by and implementing K.S.A. 65-3005, 1984 Suppl. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1986.)

**K.A.R. 28-19-16j REVOCATION AND SUSPENSION OF PERMIT**

Any permit issued under the provisions of K.A.R. 28-19-16b may be suspended or revoked by the secretary upon his or her findings that the owner or operator of such source has failed to comply with any requirement specified in the permit. (Authorized by K.S.A. 65-3005; implementing K.S.A. 65-3005; effective E-81-35, Nov. 12, 1980; effective May 1, 1981.)

**K.A.R. 28-19-16k NOTIFICATION REQUIREMENTS**

A permit shall not be issued, suspended or revoked under the provisions of K.A.R. 28-19-16b or 28-19-16j unless provision has been made for a public hearing on the matter upon the written request of any person affected by such proposed action. Such request shall be made within thirty (30) days of:

(a) publication of notice in a newspaper, having general circulation in the nonattainment area in which the source is, or will be, located, indicating the nature of the proposal and advising the public of the opportunity to either request a hearing or submit written comments directly to the secretary concerning the proposal.

(b) sending a copy of the public notice to the applicant and to the state and local officials and agencies having cognizance over the location where the proposed actions will occur or emissions from it could significantly contribute to levels of air pollution in excess of the national ambient air quality standards; and

(c) sending a copy of the public notice to the regional administrator of the U.S. Environmental Protection Agency. (Authorized by K.S.A. 675-3005; implementing K.S.A. 65-3005; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981.)

**K.A.R. 28-19-16l FAILURE TO CONSTRUCT**

Each permit issued for the construction, reconstruction, or major modification of a major stationary source under the provisions of K.A.R. 28-19-16b shall become void if the construction has not commenced within 18 months after the applicant's receipt of such permit or if such construction is discontinued for 18 months or more. The secretary may extend the eighteen (18) month period upon a satisfactory showing that an

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extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project, in which case the construction shall be commenced on each phase within eighteen (18) months of the projected and approved commencement date. (Authorized by and implementing K.S.A. 65-3005, 1984 Supp. 65-3008 and K.S.A. 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981; amended May 1, 1986.)

**K.A.R. 28-19-16m COMPLIANCE WITH PROVISIONS OF LAW REQUIRED**

Any approval of a permit under the provisions of K.A.R. 28-19-16b shall not relieve any source owner or operator of the responsibility to comply fully with any other requirements of state, federal, or local law. (Authorized by K.S.A. 65-3005, 65-3008, 65-3010; implementing K.S.A. 65-3005, 65-3008, 65-3010; effective, E-81-35, Nov. 12, 1980; effective May 1, 1981.)

EPA Rulemakings

CFR: 40 C.F.R. 52.870(c)  
 FRM: 65 FR 1545 (1/11/00)  
 PRM: 65 FR 1583 (1/11/00)  
 State Submission: 5/3/99  
 State Effective Date: 9/25/97  
 APDB File: KS-54  
 Description: This revision removes duplications of certain terms that were previously contained in K.A.R. 28-19-7 that now appear in K.A.R. 28-19-200.

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CFR: 40 C.F.R. 52.870(c) (25) (i) (A)  
 FRM: 55 FR 1422 (1/16/90)  
 PRM: 54 FR 11413 (3/20/89)  
 State Submission: 10/5/89  
 State Effective Date: 10/16/89  
 APDB File: KS-29  
 Description: This revision provides a significant emission rate for PM<sub>10</sub> and deletes the definition of "Significantly contribute."

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CFR: 40 C.F.R. 52.870(c) (25) (i) (A)  
 FRM: 54 FR 43812 (10/27/89)  
 PRM: none  
 State Submission: none  
 State Effective Date: none  
 APDB File: KS-11  
 Description: Withdraws the rule published on July 17, 1989, because adverse comments were submitted.

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CFR: 40 C.F.R. 52.870(c) (25) (i) (A)  
 FRM: 54 FR 29893 (7/17/89)  
 PRM: none  
 State Submission: 6/15/82  
 State Effective Date: 5/1/82  
 APDB File: KS-11  
 Description: To revise regulatory changes related to the definition of source. This revision was delayed because of pending litigation. Also, this revision alters the Kansas source definition for new source review in the nonattainment areas.

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CFR: 40 C.F.R. 52.870(c) (24) (i) (A)  
 FRM: 54 FR 15934 (4/20/89)  
 PRM: 52 FR 5559 (2/25/87)  
 State Submission: 3/27/86  
 State Effective Date: 5/1/86  
 APDB File: KS-27  
 Description: The EPA approved changes to the regulation which deletes the time limit required for KDHE to act on a permit application and makes minor wording changes.

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CFR: 40 C.F.R. 52.870(c) (15) (i) (A)  
 FRM: 49 FR 1491 (1/12/84)  
 PRM: 48 FR 10081 (3/10/83)  
 State Submission: 6/15/82  
 State Effective Date: 5/1/82  
 APDB File: KS-11  
 Description: The EPA approved most of the revised portions of the new source permitting regulations, and adopted a regulation controlling volatile organic compound emissions from tank trucks serving bulk terminals. This revision satisfied the condition on the state's Part D plan revision that Kansas adopt permanent new source permitting requirements by May 1, 1982. Action on the regulatory changes related to the definition of source was deferred to a later date. Because of changes that were made, the EPA approved the renumbering.

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CFR: 40 C.F.R. 52.870(c) (14)  
 FRM: 48 FR 10062 (3/10/83)  
 PRM: none  
 State Submission: none  
 State Effective Date: none  
 APDB File: KS-11  
 Description: Withdraws the rule published on September 1, 1982 (47 FR 38532), but restores paragraph 40 C.F.R. § 52.875.

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CFR: 40 C.F.R. 52.870(c)(14)(i)(A)  
FRM: 47 FR 38532 (9/1/82)  
PRM: 47 FR 12965 (3/26/82)  
State Submission: 6/15/82  
State Effective Date: 5/1/82  
APDB File: KS-11  
Description: This revision was made to satisfy conditions placed on the state's Part D plan revision and removed the remaining conditions found at 40 C.F.R. § 52.875. Also, additional regulations were submitted (16, 16a, 16b, 16c, 16f, 16g, 16h, and 16i) that changes the definition of contemporaneous to be consistent with the EPA-approved definition in the comparable Missouri regulations.

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CFR: 40 C.F.R. 52.870(c)(9)(ii)  
FRM: 46 FR 20164 (4/3/81)  
PRM: 45 FR 9012 (2/11/80) 45 FR 81608 (12/11/80)  
State Submission: 9/22/80, 9/25/80  
State Effective Date: 5/1/81  
APDB File: KS-01  
Description: This rule was adopted with conditions to satisfy requirements for the Kansas Part D SIP.

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Difference Between the State and EPA-Approved Regulation

The state regulations K.A.R. 28-19-16, 16b, 16c, 16f, 16g, 16h, and 16i have deleted the word "reconstruction." The EPA has deferred action on this term.