

(2) Each owner or operator relying on other documentation to demonstrate compliance with this regulation shall establish that the documentation relied upon demonstrates compliance with the recordkeeping requirements of this regulation.

(i) During the first 12 months of operation under this permit-by-rule, each owner or operator of the processes affected by this permit-by-rule shall operate in a manner that will not exceed any of the permit limitation requirements contained within this regulation at any time during the initial 12-month period.

(j) Within six months of EPA's approval of this regulation into the Kansas state implementation plan, any entity operating under the "general class II air emission source air operating permit for facilities that have actual emissions below 50 percent of major source thresholds" shall apply to operate under this regulation or other applicable operating permit. (Authorized by K.S.A. 2001 Supp. 65-3005; implementing K.S.A. 2001 Supp. 65-3008; effective May 15, 1998; amended Oct. 4, 2002.)

28-19-565 through 28-19-574. Reserved.

28-19-575. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005.)

28-19-576. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005.)

28-19-577. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005.)

28-19-578. (Authorized by K.S.A. 1993 Supp. 65-3005; implementing K.S.A. 1993 Supp. 65-3008; effective Jan. 23, 1995; revoked Sept. 23, 2005.)

28-19-579 through 28-19-644. Reserved.

OPEN BURNING RESTRICTIONS

28-19-645. Open burning prohibited. A person shall not cause or permit the open burning of any wastes, structures, vegetation, or any other materials on any premises except as authorized by K.A.R. 28-19-647 and K.A.R. 28-19-648. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

28-19-645a. Restrictions on open burning operations for certain counties during the month of April.

This regulation shall supersede K.A.R. 28-19-645 during the month of April for the counties listed in subsection (a) below.

(a) A person shall not cause or permit open burning operations of any waste, including vegetation and wood waste, structures, or any other materials on any premises during the month of April in Butler, Chase, Chautauqua, Cowley, Elk, Geary, Greenwood, Johnson, Lyon, Marion, Morris, Pottawatomie, Riley, Sedgwick, Wabaunsee, and Wyandotte counties, except as authorized by subsections (b) through (d).

(b) The following activities shall be exempt from the prohibition in subsection (a):

(1) Open burning operations for the purpose of range or pasture management and conservation reserve program (CRP) burning activities meeting the requirements in K.A.R. 28-19-648 (a)(1) through (a)(4); and

(2) open burning operations listed in K.A.R. 28-19-647 (a)(1) and (a)(2).

(c) A person may obtain approval by the secretary to conduct an open burning operation that is not otherwise exempt if the conditions and requirements of the following are met:

(1) K.A.R. 28-19-647 (b)(1) through (b)(3); and

(2) K.A.R. 28-19-647 (d) and (e).

(d) Open burning operations that shall require approval by the secretary and are deemed necessary and in the public interest shall include the open burning operations listed in K.A.R. 28-19-647 (c)(1) through (c)(3).

(e) In Johnson, Wyandotte, and Sedgwick counties, the open burning operations listed in K.A.R. 28-19-647 (c)(4) and (c)(5) shall require approval by the local authority.

(f) Nothing in this regulation shall restrict the authority of local jurisdictions to adopt more restrictive ordinances or resolutions governing agricultural open burning operations. (Authorized by K.S.A. 2010 Supp. 65-3005; implementing K.S.A. 2010 Supp. 65-3005 and K.S.A. 65-3010; effective, T-28-3-1-11, March 1, 2011; effective Sept. 9, 2011.)

28-19-646. Responsibility for open burning. It shall be prima facie evidence that the person who owns or controls property on which open burning occurs has caused or permitted the open burning. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

28-19-647. Exceptions to prohibition on open burning. (a) The following open burning operations shall be exempt from the prohibition on the open burning of any materials imposed by K.A.R. 28-19-645:

- (1) open burning carried out on a residential premise containing five or less dwelling units and incidental to the normal habitation of the dwelling units, unless prohibited by any local authority with jurisdiction over the premises;
- (2) open burning for cooking or ceremonial purposes, on public or private lands regularly used for recreational purposes;
- (3) open burning for the purpose of crop, range, pasture, wildlife or watershed management in accordance with K.A.R. 28-19-648; or

- (4) open burning approved by the department pursuant to paragraph (b).

(b) A person may obtain an approval from the department to conduct an open burning operation that is not otherwise exempt from the prohibition imposed by K.A.R. 28-19-645 if it is demonstrated that the open burning is:

- (1) necessary, which in the case of burning for the purpose of disposal of any materials, shall mean that there is no other practical means of disposal;

- (2) in the public interest; and

- (3) is not prohibited by any local government or local fire authority.

(c) Open burning operations for which an approval is required but which are deemed to be necessary and in the public interest include the following:

- (1) the use of safety flares for disposal of flammable gases;
- (2) fires related to the training of government or industrial personnel in fire fighting procedures;
- (3) fires set for the removal of dangerous or hazardous liquid materials;
- (4) open burning of trees and brush from nonagricultural land clearing operations; and
- (5) open burning of clean wood waste from construction projects carried out at the construction site.

(d) Each person seeking an approval to conduct an open burning operation pursuant to this regulation shall submit a written request to the department containing the following information:

- (1) the location of the proposed open burning and the name, address and telephone number of the person responsible for the open burning;

- (2) a description of the open burning including:

- (A) the estimated amount and nature of material to be burned;

- (B) the proposed frequency, duration and schedule of the burning;

- (C) the size of the area to which the burning will be confined;

- (D) the method of igniting the material;

- (E) the location of any public roadways within 1,000 feet of the proposed burn;

- (F) the number of occupied dwellings within 1,000 feet of the proposed burn; and

- (G) evidence that the open burning has been approved by appropriate fire control authority having jurisdiction over the area;

and

- (3) the reason why the proposed open burning is necessary and in the public interest if the activity is not listed in subsection (c) of this regulation.

(e) Each open burning operation for which the department issues an approval pursuant to paragraph (b) shall be subject to the following conditions, except as provided in paragraph (f):

- (1) The person conducting the burning shall stockpile the material to be burned, dry it to the extent possible before it is burned, and assure that it is free of matter that will inhibit good combustion.

- (2) A person shall not burn heavy smoke-producing materials including heavy oils, tires, and tarpaper.

- (3) A person shall not initiate burning during the nighttime, which for the purposes of this regulation is defined as the period from two hours before sunset until one hour after sunrise. A person shall not add material to a fire after two hours before sunset.

- (4) A person shall not burn during inclement or foggy conditions or on very cloudy days, which are defined as days with more than 0.7 cloud cover and with a ceiling of less than 2,000 feet.

- (5) A person shall not burn during periods when surface wind speed is less than 5 mph or more than 15 mph.

- (6) A person shall not burn within 1,000 feet of any occupied dwelling, unless the occupant of that dwelling has been notified before the burn.

- (7) A person shall not conduct a burn that creates a traffic or other safety hazard. If burning is to take place within 1,000 feet of a roadway, the person conducting the burn shall notify the highway patrol, sheriff's office, or other appropriate state or local traffic

authority before the burning begins. If burning is to take place within one mile of an airport, the person conducting the burn shall notify the airport authority before the burning begins.

(8) The person conducting the burn shall insure that the burning is supervised until the fire is extinguished.

(9) The department may revoke any approval upon 30 days notice.

(10) A person shall conduct an open burning operation under such additional conditions as the department may deem necessary to prevent emissions which:

(A) may be injurious to human health, animal or plant life, or property; or

(B) may unreasonably interfere with the enjoyment of life or property.

(f) The department may issue an approval for an open burning operation that does not meet the conditions set forth in subsection (e) upon a clear demonstration that the proposed burning:

(1) is necessary and in the public interest;

(2) can be conducted in a manner that will not result in emissions which:

(A) may be injurious to human health, animal or plant life or property; or

(B) may unreasonably interfere with the enjoyment of life or property; and

(3) will be conducted in accordance with such conditions as the department deems necessary. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

28-19-648. Agricultural open burning. (a) Open burning of vegetation such as grass, woody species, crop residue, and other dry plant growth for the purpose of crop, range, pasture, wildlife or watershed management shall be exempt from the prohibition on the open burning of any materials imposed by K.A.R. 28-19-645, provided that the following conditions are met:

(1) the person conducting the burn shall notify the local fire control authority with jurisdiction over the area before the burning begins, unless the appropriate local governing body has established a policy that notification is not required;

(2) a person shall not conduct a burn that creates a traffic safety hazard. If conditions exist that may result in smoke blowing toward a public roadway, the person conducting the burn shall give adequate notification to the highway patrol, sheriff's office or other appropriate state or local traffic control authorities before burning;

(3) a person shall not conduct a burn that creates an airport safety hazard. If smoke may affect visibility at an airport, the person conducting the burn shall give adequate notification to the appropriate airport authorities before burning; and

(4) the person conducting the burn shall insure that the burning is supervised until the fire is extinguished.

(b) Nothing in this regulation shall restrict the authority of local jurisdictions to adopt more restrictive ordinances or resolutions governing agricultural open burning operations. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

28-19-649. Reserved.

OPACITY RESTRICTIONS

28-19-650. Emissions opacity limits. (a) Except as otherwise provided in K.A.R. 28-19-9, K.A.R. 28-19-11, or K.A.R. 28-19-31, in subsections (b) and (c) of this regulation, or in other applicable air quality regulations, opacity of visible air emissions from any emission unit shall not exceed the following limits:

(1) 40 percent opacity for any portable source existing on or before January 1, 1971;

(2) 40 percent opacity for any emission unit, other than a portable source, that existed on or before January 1, 1971 and that has not been relocated after January 1, 1971; and

(3) 20 percent opacity for any other emission unit.

(b) Special opacity limits, Wyandotte county. Air emissions within Wyandotte county from any processing of materials or other uses of the premises within the county shall not exceed 20 percent opacity.

(c) Exceptions. Air emissions opacity levels that exceed the specified limits in subsections (a) and (b) of this regulation shall not be considered a violation of this regulation if the owner or operator of the emission unit demonstrates to the satisfaction of the department that the opacity exceedance is due solely to the presence of uncombined water in the plume.

(d) Method. The determination of opacity of air emissions shall be made either by 40 C.F.R. Part 60, appendix A, method 9, as adopted in K.A.R. 28-19-720, or by another method approved in advance by the department. (Authorized by K.S.A. 1997 Supp. 65-3005 and K.S.A. 1997 Supp. 65-3007; implementing K.S.A. 1997 Supp. 65-3005, K.S.A. 65-3006, and 65-3010; effective Jan. 29, 1999.)

28-19-651 through 28-19-713. Reserved.