Purpose: To clarify the treatment of ethanol production facilities within “chemical process plants” source category under the statutory definition of “major emitting facility” and regulatory definitions of “major stationary source” and “major source,” under the Prevention of Significant Deterioration (PSD) and Title V permitting programs, respectively.

Background

On May 1, 2007, the EPA published a final rule entitled “Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V: Treatment of Certain Ethanol Production Facilities Under the “Major Emitting Facility” Definition” (2007 Ethanol Rule) (72 FR 24059). The 2007 Ethanol Rule amended the PSD definition of “major stationary source” to exclude ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140 from the “chemical process plants” source category and clarified that the PSD major source applicability threshold for this industry is 250 tons per year (tpy) rather than 100 tpy. The 2007 Ethanol Rule amendments also established that fugitive emissions from ethanol production facilities within the “chemical process plants” source category are not considered when determining whether a source is a major source under the PSD, nonattainment New Source Review, or Title V programs.

PSD Permitting Program:

K.A.R. 28-19-350 implements the PSD review requirements of new major stationary sources and major modifications of stationary sources and adopts by reference all of the definitions including the definition of “major stationary source” under 40 C.F.R. 52.21, as revised on July 1, 2011 and as amended by 76 fed. reg. 43507 (2011) and 77 fed. reg. 65118-65119 (2012).

On April 17, 2020, EPA published final approval of Kansas’ PSD program as implemented by K.A.R. 28-19-350 (FR 85 21329), which aligns with the changes reflected in the 2007 Ethanol Rule, specifically the following underlined amendments:

- The term “major stationary source” is defined in 40 C.F.R. 52.21(b)(1)(i)(a) as “Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:...chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140),...”
• 40 C.F.R. 52.21(b)(1)(iii) states, “The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:
  (t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;”

Title V Permitting Program


• The term “major source” is defined in K.A.R. 28-19-200(kk) and is further described by paragraphs (kk)(1) through (4). K.A.R. 28-19-200(kk)(3) specifically requires that fugitive emissions from a federally designated fugitive emissions source be considered in determining whether a source is a major source, as cited below:

  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.

• The term “federally designated fugitive emissions source” is defined in K.A.R. 28-19-200(dd) and lists source categories that include “chemical process plants” in K.A.R. 28-19-200(dd)(20). These definitions do not currently align with the “major source” definition in 40 C.F.R. 70.2, specifically 70.2(2)(xx), which excludes ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140 from the “chemical process plants” source category.

It is Kansas’ intent to amend the definitions in K.A.R. 28-19-200 that govern the operating permits program to coincide with the changes reflected in the 2007 Ethanol Rule. Until such rulemaking is final, Kansas will apply the “major source” definition in 40 C.F.R. 70.2 to determine applicability for operating permits, as this will promote consistency between both Title V and PSD permitting programs. This is further supported in the proposed and final rulemakings for the 2007 Ethanol Rule that states: “Sources required to obtain Title V permits include those sources subject to PSD. Therefore, Title V relies in part on the definition of ‘major emitting facility’ for the PSD program, and any change to this definition under this program could affect whether a source is required to obtain a Title V permit.”
Summary

1. PSD major stationary source applicability threshold is 250 tons per year for ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140.

2. Ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140 are not required to count fugitive emissions in determining “major stationary source” and “major source” applicability under PSD and Title V programs, respectively.

This regulatory guidance does not pertain to New Source Review (NSR) requirements for minor sources covered under K.A.R 28-19-300 through K.A.R. 28-19-304, which implement the review requirements for new sources and modifications as promulgated in 40 C.F.R. 51.160. The 2007 Ethanol Rule involves changes to the definition of “major stationary source” under major NSR as it relates specifically to production of ethanol through natural fermentation processes, and affects both the applicability threshold and whether this industry must count fugitive emissions in determining its major stationary source status. The 2007 Ethanol Rule was not intended to amend states’ minor NSR permitting programs designed to ensure attainment and maintenance of the national ambient air quality standards. Therefore, this change in definition is not considered when determining applicability under K.A.R. 28-19-300.

Approved by:

[Signature]
Rick Brunetti, Director
Bureau of Air

Date: 10/11/2022