401 KAR 52:001. Definitions for 401 KAR Chapter 52.

RELATES TO: KRS 224.1-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 50-53, 60-63, 70-78, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5)

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 52. The definitions contained in this administrative regulation are neither more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. The definitions with citations to the Code of Federal Regulations shall be governed by 40 C.F.R. Parts 50 through 96, effective July 1, 2010.

(1) "Acid Rain Program" means the national program for reducing SO_2 and NOx emissions established under 42 U.S.C. 7651 to 7651o (Title IV of the Act) and codified at 40 C.F.R. Parts 72 to 78.

(2) "Act" means the Clean Air Act established under 42 U.S.C. 7401 to 7671q.

(3) "Actual emissions" means the quantity of an air pollutant that is physically emitted into the ambient air during a specified time period.

(4) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(5) "Affected source" means a source that includes one (1) or more affected units.

(6) "Affected state" means a state that:

(a) Borders Kentucky and whose air quality may be affected by the proposed permit, permit revision, or permit renewal; or

(b) Is situated within fifty (50) miles of the source requesting the proposed permit action.

(7) "Affected unit" means a unit subject to the Acid Rain Program.

(8) "Air contaminant" is defined by KRS 224.1-010(1).

(9) "Air pollutant" means air contaminant.

(10) "Air pollution" is defined by KRS 224.1-010(3).

(11) "Air pollution control equipment" means a mechanism, device, or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(12) "Alternative method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the U.S. EPA and the cabinet.

(13) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(14) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(15) "Applicable requirement" means a state-origin or federally enforceable requirement or standard that applies to a source.

(16) "Batch mix plant" means a source or affected facility that produces hot mix asphalt by heating and drying the aggregate in a dryer before separating and mixing it with asphalt cement in separate batches.

(17) "Cabinet" is defined by KRS 224.1-010(9).

(18) "Capital expenditure" is defined by 40 C.F.R. 60.2.

(19) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.
(20) "Construction" means fabrication, erection, installation, or modification of an air contaminant source.
(21) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations in 401 KAR Chapters 50 to 65, used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.
(22) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.
(23) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.
(24) "Designated representative" means a person authorized by the owner or operator of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA in accordance with 40 C.F.R. 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain Program. In matters relating to the acid rain portion of a Title V permit, the term "responsible official", as defined in this section, means the designated representative.
(25) "Draft permit" means the version of a federally enforceable permit, which the cabinet offers for public review and any applicable affected state review.
(26) "Drum mix plant" means a source or affected facility that produces hot mix asphalt by heating, drying, and mixing the aggregate with asphalt cement in one (1) operation.
(27) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source that:
(a) Requires immediate corrective action to restore normal operation;
(b) Causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency; and
(c) Does not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.
(28) "Emission standard" means the numerical expression of quantity per unit of time or other parameter that limits the amount of a regulated air pollutant that a source or emission unit is allowed to emit to the ambient air.
(29) "Emission unit" means an affected facility, or a part or activity of a source, that emits or has the potential to emit a regulated air pollutant and does not alter the definition of the term "unit" as used in the Acid Rain Program.
(30) "Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50:038, made effective April 12, 1995.
(31) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:
(a) Technically accurate emission standards and the portions of the source that are subject to the standards;
(b) A time period adequate to demonstrate compliance with the standards; and
(c) The method the source will use to achieve and demonstrate compliance with the standards, including appropriate monitoring, recordkeeping, and reporting.
(32) "Equivalent method" means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet and the U.S. EPA pursuant to 40 C.F.R. 53.3 to

have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(33) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(34) "Federally enforceable requirement" means an item specified in this subsection as it applies to an emission unit at a source subject to 40 C.F.R. Part 70, including a requirement promulgated or approved by the U.S. EPA in conjunction with the permit issuance but which has future-effective compliance dates.

(a) A standard or requirement in the SIP that implements the relevant requirements of the Act, including a revision to that plan promulgated at 40 C.F.R. Part 52;

(b) A term or condition of a preconstruction permit issued pursuant to an applicable administrative regulation in 401 KAR Chapters 50 to 65 approved or promulgated pursuant to 42 U.S.C. 7401 to 7515;

(c) A standard or other requirement promulgated pursuant to 42 U.S.C. 7411 or 7429 governing solid waste incinerators;

(d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;

(e) A standard or requirement of the Acid Rain Program;

(f) A requirement established pursuant to 42 U.S.C. 7414(a)(3) or 7661c(b) for monitoring and compliance certification;

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 U.S.C. 7470 to 7492 for a temporary source permitted pursuant to 42 U.S.C. 7661c(e);

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 U.S.C. 7511b(e);

(i) A standard or other requirement for a tank vessel adopted pursuant to 42 U.S.C. 7511b(f); and

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 U.S.C. 7671 to 7671q, unless the U.S. EPA determines that those requirements need not be contained in the permit.

(35) "Final permit" means:

(a) For a federally enforceable permit, the version issued by the cabinet that has completed all the applicable review procedures of 401 KAR 52:100 and for which a final determination has been made; or

(b) For a state-origin permit, the version that meets the applicable provisions of 401 KAR 52:040, and for which a final determination has been made.

(36) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(37) "Fuel" means natural gas; petroleum; coal; wood; or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(38) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(39) "Hazardous air pollutant" or "HAP" means a pollutant listed pursuant to 42 U.S.C. 7412(b).

(40) "Hot mix asphalt plant" means a stationary source or portable affected facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements.

(41) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(42) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(43) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.
(44) "KyEIS" means the Kentucky Emissions Inventory System.
(45) "Major source" means a stationary source or a group of stationary sources that emits or has a potential to emit a pollutant that is subject to regulation at or above a major source threshold and:

(a) For HAPs:

1. Is located within a contiguous area;
2. Is under common control;
3. Includes all fugitive HAP emissions in determining if the source is major; and
4. Even if the units are in a contiguous area under common control, emissions are not aggregated with emissions from other similar units to determine major source status for:
   a. Oil or gas exploration or production wells and the associated equipment; or
   b. Pipeline compressors or pump stations; and

(b) For regulated air pollutants other than HAPs:

1. Is located on one (1) or more contiguous or adjacent properties;
2. Is under common control;
3. Belongs to a single major industrial grouping where all of the pollutant emitting activities belong to the same major group (i.e., all have the same two (2) digit code) as described in the 1987 Standard Industrial Classification (SIC) Manual; and
4. Fugitive emissions are considered in determining if the source is major if it belongs to a category listed in this clause:
   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;
   h. Municipal incinerators capable of charging more than 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 a combination thereof) totaling more than 250 million BTU per hour heat input;
   v. Petroleum storage and transfer units with a total storage capacity of more than 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 million BTU per hour of heat input; or

aa. All other stationary source categories subject to a standard promulgated pursuant to 42 U.S.C. 7411 or 42 U.S.C. 7412 and for which the U.S. EPA has made an affirmative determination pursuant to 42 U.S.C. 7602(j).

(46) "Major source threshold" means PTE:

(a) For HAPs:

1. Ten (10) tons per year or more of a single HAP;
2. Twenty-five (25) tons per year or more of combined HAPs; or
3. A lesser quantity that the U.S. EPA establishes in a final rulemaking;

(b) 100 tons per year or more for regulated air pollutants other than HAPs, except that:

1. For ozone nonattainment areas:

a. 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as marginal or moderate;

b. Fifty (50) tons per year or more in areas classified as serious;

c. Twenty-five (25) tons per year or more in areas classified as severe; or

d. Ten (10) tons per year or more in areas classified as extreme;

2. Fifty (50) tons per year or more of carbon monoxide for carbon monoxide nonattainment areas that are classified as serious and in which stationary sources contribute significantly to carbon monoxide levels; or

3. Seventy (70) tons per year or more of particulate matter (PM_{10}) for PM_{10} nonattainment areas classified as serious; or

(c) A quantity established by the U.S. EPA in a final rulemaking for a pollutant that is subject to regulation.

(47) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented.

(48) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the national ambient air quality standard for ozone.

(49) "Minor source" means a stationary source that emits and has the potential to emit less than the major source thresholds.

(50) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the national ambient air quality standard for ozone.

(51) "Modification" means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any regulated air pollutant emitted into the atmosphere by that facility, or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category considering available information;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an

alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change;

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, except if an emission control system is removed or is replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

(52) "Modification under Title I of the Act" means a change at a facility that constitutes a modification under 42 U.S.C. 7470 to 7492 or 42 U.S.C. 7501 to 7515.

(53) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(54) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source of which an affected facility is a part.

(55) "Person" is defined by KRS 224.1-010(17).

(56) "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design in which:

(a) A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed is treated as part of its design if the limitation is enforceable as a practical matter; and

(b) Use of this term for other purposes of the Act or for the term "capacity factor" as used in the Acid Rain Program is not altered.

(57) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for a forty-five (45) day review period.

(58) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements in 401 KAR Chapters 50 to 65.

(59) "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 C.F.R. Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(60) "Regulated air pollutant" means:

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 U.S.C. 7409 (Section 109 of the Act);

(d) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 U.S.C. 7671 to 7671q (Title VI of the Act);

(e) A pollutant subject to a standard promulgated pursuant to 42 U.S.C. 7411; or

(f) A hazardous air pollutant (HAP) subject to a standard or other requirement established pursuant to 42 U.S.C. 7412.

(61) "Renewal" means the process by which a permit is reissued at the end of its permit term.

(62) "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs

similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved by the cabinet in advance pursuant to this subsection;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency (e.g., a regional administrator of the U.S. EPA); or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(63) "Section 502(b)(10) changes" means changes that contravene an express permit term and does not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(64) "Shutdown" means the cessation of an operation.

(65) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(66) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard promulgated in 401 KAR Chapters 50 to 65 or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(67) "Start-up" or "startup" means the setting in operation of an affected facility.

(68) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410, that has been approved by the U.S. EPA.

(69) "State-origin permit" means a permit that is issued pursuant to 401 KAR 52:040 and is not federally enforceable.

(70) "State-origin requirement" means an applicable requirement contained in 401 KAR Chapters 50 to 65, which is not mandated by the Act and is not federally enforceable.

(71) "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant or an air pollutant subject to regulation pursuant to 40 C.F.R. 70.2.

(72) "Subject to regulation" is defined by 40 C.F.R. 70.2 for the Title V program.

(73) "Title V permit" means a permit issued under Kentucky's Title V program.

(74) "Title V program" means a state operating permit program approved by the U.S. EPA pursuant to 42 U.S.C. 7661 to 7661f (Title V of the Act).

(75) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

(76) "tpy" means ton per year.

(77) "U.S. EPA" means the U.S. Environmental Protection Agency.

(78) "Volatile organic compound" or "VOC" is defined by 40 C.F.R. 51.100(s).

(79) "Waste oil" means a petroleum based or synthetic oil such as an engine lubricant, engine oil, motor oil, or lubricating oil for use in an internal combustion engine, or a lubricant for motor transmissions, gears, or axles that through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(401 KAR 052:001. 27 Ky.R. 612; 1277; 1775; eff. 1-15-2001; 33 Ky.R. 209; eff. 11-8-2006; 37 Ky.R. 469; 1245; eff. 1-3-2011; TAm eff. 9-16-2013; Crt eff. 9-12-2018; Crt eff. 8-28-2025.)