

401 KAR 5:075. Cabinet review procedures for KPDES permits and permit timetables for 401 KAR Chapter 5.

RELATES TO: KRS 224.1-010, 224.1-070, 224.1-400, 224.10-420, 224.10-440, 224.10-470, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 124

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-220, 224.16-050, 224.70-110, 33 U.S.C. 1251-1387

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19) authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. KRS 224.10-220 requires the cabinet to establish timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is established by statute. This administrative regulation establishes timetables for permits that are required by 401 KAR Chapter 5 and the procedures for receiving permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits.

Section 1. Review of the Application. An application for a KPDES permit shall be submitted and reviewed as established in 40 C.F.R. 124.3.

Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or Revocation. A KPDES permit modification, revocation and reissuance, or revocation shall be as established in 40 C.F.R. 124.5, except that a request for a hearing shall be made as established in Section 13 of this administrative regulation.

Section 3. Draft Permits. Preparation or denial of a draft permit shall be as established in 40 C.F.R. 124.6.

Section 4. Fact Sheets. A fact sheet shall be prepared as established in 40 C.F.R. 124.8.

Section 5. Public Notice of Permit Actions and Public Comment Period. Public notice of a permit action and the public comment period shall be as established in 40 C.F.R. 124.10.

Section 6. Public Comments and Requests for Public Hearings. Provisions for public comments and requests for a public hearing shall be as established in 40 C.F.R. 124.11.

Section 7. Public Hearings. A public hearing shall be conducted as established in 40 C.F.R. 124.12.

Section 8. Obligation to Raise Issues and Provide Information During the Public Comment Period. An obligation to raise issues and provide information during the public comment period shall be as established in 40 C.F.R. 124.13.

Section 9. Conditions Requested by the Corps of Engineers and Other Government Agencies. Conditions requested by the Corps of Engineers or another government agency shall be as established in 40 C.F.R. 124.59.

Section 10. Reopening of the Public Comment Period. The public comment period shall be reopened as established in 40 C.F.R. 124.14.

Section 11. Issuance and Effective Date of Permit.

(1) After the close of the public comment period established in Section 5 of this administrative regulation, the cabinet shall make a determination to issue, deny, modify, revoke and reissue, or revoke a permit.

(a) The cabinet shall provide written notice to the applicant and to each person who submitted written comments or requested notice of the determination.

- (b) The notification shall include reference to the procedures to request a hearing to contest the determination.
- (2) A final permit determination shall become effective thirty (30) days after the service of notice of the determination, unless:
 - (a) A later effective date is specified in the determination; or
 - (b) Comments did not request a change in the draft permit, in which case the permit shall become effective immediately upon issuance.
- (3) The determination, which is a condition precedent to demanding a hearing pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation, shall be the final permit decision.

Section 12. Response to Comments. Response to comments shall be as established in 40 C.F.R. 124.17.

Section 13. Hearings pursuant to KRS 224.10-420.

- (1) A determination pursuant to Section 11 of this administrative regulation shall be subject to a demand for a hearing pursuant to KRS 224.10-420(2).
- (2) A hearing held pursuant to this section shall comply with the provisions of KRS 224.10-440 and 224.10-470.
- (3) Failure to raise an issue pursuant to Section 8 of this administrative regulation shall not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.10-420(2).

Section 14. Permit Timetables.

- (1) This section shall apply to permits required by 401 KAR 5:005.
- (2) The cabinet shall issue its final decision on a complete permit application within the review time established in this section.
- (3) A complete permit application shall contain all the administrative and technical information required by applicable statutes and administrative regulations.
- (4)
 - (a) The review time for construction or minor modification of a wastewater treatment plant shall be ninety (90) calendar days from the receipt of a complete permit application.
 - (b) The review time for all other permits required by 401 KAR 5:005 shall be forty-five (45) calendar days from receipt of a complete permit application except as established in Section 15 of this administrative regulation.

Section 15. Timetables for KPDES Permits.

- (1) This section shall apply for KPDES permits issued pursuant to KRS 224.16-050(1).
- (2) The cabinet shall issue its final decision on a complete permit application within 180 calendar days after receipt of an administratively complete permit application, except as provided in Section 16 of this administrative regulation.
- (3) A complete permit application shall contain all the administrative and technical information required by applicable statutes and administrative regulations.
- (4) Within thirty (30) calendar days of initial receipt of an application for a KPDES permit, the cabinet shall notify the applicant as to whether the application is administratively complete, or if not complete, of the deficiencies that make the application administratively incomplete. A determination that the application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.
- (5) If the application is determined to be administratively incomplete, the applicant shall correct identified deficiencies within thirty (30) calendar days of the date of notification. If the applicant does not correctly identify deficiencies within the time frame, the cabinet may return the application, and the fee may be retained by the cabinet.

(6) After the notification that the application is administratively complete, if the cabinet determines that the application is technically deficient, the cabinet shall notify the applicant of deficiencies that make the application technically incomplete or unapprovable. The applicant shall correct the technical deficiencies within thirty (30) days of the notification, or other time as agreed upon by the applicant and cabinet. If the technical deficiencies are not corrected within thirty (30) calendar days or the agreed upon time frame, the cabinet may deny the permit, and the fee may be retained by the cabinet.

Section 16. Timetable Exclusions. The time periods that shall not be included in the cabinet's consideration of its decision on a KPDES shall include:

- (1) Time waiting for the applicant to respond to a notice of deficiency;
- (2) Time during which the permit, application, decision, or related matter is held in litigation, including administrative hearings;
- (3) Time during which an opportunity for public hearing or public comment period on a draft or proposed permit is given, and time during which a public hearing is scheduled and held;
- (4) Time waiting for federal, state, or local agencies to comment on the permit or to respond to written requests from the cabinet for additional information; and
- (5) Other times as agreed to by the applicant and the cabinet.

Section 17. Timetable Extensions.

- (1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate and final permit actions shall be accomplished. The established time frame for final action shall not exceed the last date for action that is provided for under applicable statutes and administrative regulations, based on all applications being considered and their filing dates.
- (2) The applicant and the cabinet may agree that the timetables or review times established in this administrative regulation may be extended.

Section 18. Substitutions, Exceptions, and Additions to Cited Federal Regulations.

- (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in this administrative regulation.
- (2) "Cabinet" shall be substituted for "Director", "EPA", and "Regional Administrator" in the federal regulations cited in this administrative regulation.
- (3) "KPDES" shall be substituted for "NPDES" in the federal regulations cited in this administrative regulation.
- (4) "Mail", as used in 40 C.F.R. 124.10 and cited in Section 5 of this administrative regulation, shall include electronic transmissions.

(9 Ky.R. 874; 1136; eff. 6-1-1983; 12 Ky.R. 554; eff. 12-10-1985; 20 Ky.R. 3285; 21 Ky.R. 432; eff. 8-24-1994; 29 Ky.R. 1087; 1597; eff. 12-18-2002; TAm eff. 8-9-2007; 36 Ky.R. 2119-M; 2339; 37 Ky.R. 45; eff. 8-5-2010; 44 Ky.R. 2625; 45 Ky.R. 1355; eff. 11-1-2018.)