

401 KAR 50:060. Enforcement.

RELATES TO: KRS 224.10-100(5), (18), (19), (22), (23), (26), 224.10-420, 224.10-440, 224.20-110

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to prescribe administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation provides for enforcement of the terms and conditions of permits and compliance schedules.

Section 1. Permits and Compliance Schedules Subject to Conditions. Permits and compliance schedules issued under these administrative regulations shall be subject to such terms and conditions set forth in the permit or compliance schedule as the cabinet may deem necessary to insure compliance with all applicable standards. Such terms and conditions may include, but shall not be limited to, the maintenance and production for inspection of records relating to operation which may cause or contribute to air pollution including periodic source or stack sampling, or periodic ambient air monitoring.

Section 2. Permit Revocation. The cabinet may revoke any permit issued under these administrative regulations if the permittee:

- (1) Willfully makes material misstatements in the permit application or any amendments thereto;
- (2) Fails to comply with the terms or conditions of the permit;
- (3) Fails to comply with any emission standards applicable to an affected facility included in the permit;
- (4) Causes emissions from the source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standards contained in Title 401, Chapter 53, of these administrative regulations or result in an exceedance of any allowable increase over baseline concentrations contained in Title 401, Chapter 51, of these administrative regulations;
- (5) Fails to report construction, modification, alteration, or reconstruction of an affected facility.

Section 3. Compliance Schedule Revocation. The cabinet may revoke a compliance schedule issued under these administrative regulations if the owner or operator of the source or any other person acting on his behalf:

- (1) Willfully makes material misstatements in the application for the compliance schedule or in any communications relied upon by the cabinet in issuing the compliance schedule;
- (2) Fails to comply with the terms and conditions of the compliance schedule, including but not limited to any increment dates and any interim emission standards;
- (3) Fails to report construction, modification, alteration or reconstruction of the affected facilities.

Section 4. Suspensions, Modifications, Violation of Administrative Regulations Subject to Penalties.

- (1) The grounds for revocation of permits and compliance schedules listed in Sections 2 and 3 of this administrative regulation are declared to be violations of these administrative regulations and are subject to the penalties and all other relief contained in KRS 224.99-010.
- (2) The cabinet may order appropriate modifications to any permit or compliance schedule whenever it appears that the conditions of the permit or compliance schedule will not be sufficient to meet all of the standards and requirements contained in these administrative regulations, including but not limited to Title 401, Chapters 51, 57, 59 and 61.

(3) The cabinet may suspend under such conditions and for such period of time as the cabinet may prescribe any permit or compliance schedule for any of the grounds for revocation contained in Sections 2 and 3 of this administrative regulation or for any other violations of these administrative regulations.

Section 5. Administrative Hearing Procedures.

(1) Whenever the cabinet has reason to believe that a violation of any of the provisions of KRS Chapter 224 or these administrative regulations has occurred it shall issue and serve upon the person complained against a written notice of the provision of KRS Chapter 224 or the rule or administrative regulation alleged to have been violated and the facts alleged to constitute the violation thereof and shall require the person so complained against to answer the charges set out in the notice at a hearing before the cabinet. Nothing herein shall prevent the cabinet from seeking all appropriate relief in circuit court.

(2) Any person not previously heard in connection with the issuance of any order or the making of any determination, including but not limited to the issuance, denial, modification, or revocation of any permit, by which he considers himself aggrieved may file with the cabinet a petition alleging that such order or determination is contrary to law or fact and is injurious to him, alleging the grounds and reasons therefor, and demand a hearing. Unless the cabinet considers that the petition is frivolous, it shall serve written notice of the petition on each person named therein and shall schedule a hearing before the cabinet. The right to demand such a hearing shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the order or determination, or could reasonably have had such notice.

(3) The cabinet shall schedule a hearing before the cabinet not less than twenty-one (21) days after notice of such a hearing is served upon the parties, unless the person complained against waives in writing the twenty-one (21) day period. The notice of the hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for the granting of the hearing.

(4) Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail, return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation, agreed settlement, consent order, or default for nonappearance.

(5)

(a) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice.

(b) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party

may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(c) It will be within the hearing officer's discretion to require official transcripts or to set up other procedures for taking evidence including but not limited to the use of mechanical recording devices for recording the testimony. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order, and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.10-210. The cabinet may cause the mechanical recording of the testimony to be transcribed. When certified as true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.

(d) The hearing officer shall within thirty (30) days of the closing of the hearing record make a report and a recommended order to the secretary. The order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within seven (7) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary shall consider the report and recommended order and exceptions. The secretary may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer as the cabinet's or issue his own written order based on the report and recommended order. The secretary shall act within twenty (20) days of the deadline for filing exceptions, unless extensions of time have been granted to the hearing officer, pursuant to paragraph (e) of this subsection.

(e) After completion of the hearing and filing of exceptions, the cabinet shall notify the parties in writing, certified mail, return receipt requested, of the final decision of the cabinet. If any extension of time is granted by the secretary for a hearing officer to complete his report, the cabinet shall notify all parties at the time of the granting of the extension. Parties shall have seven (7) days to file exceptions to the report and recommended order if such an extension is granted.

(f) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(g) A final order of the cabinet shall be based on the preponderance of the evidence appearing in the record as a whole and shall set forth the decision of the cabinet and the facts and law upon which the decision is based.

(h) There shall be no ex parte communications between a hearing officer and parties to the action.

(i) Any person aggrieved by a final order of the cabinet may have recourse to the courts as set forth in KRS 224.10-470.

(5 Ky.R. 362; 985; eff. 6-6-1979; TAm eff. 8-9-2007; Crt eff. 11-21-2018.)