

401 KAR 52:040. State-origin permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7412, 7429

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7412, 7429

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for minor sources whose permits are not required to be federally enforceable.

Section 1. Applicability. This administrative regulation shall apply to:

- (1) Sources that emit or have the potential to emit (PTE):
 - (a) More than twenty-five (25) and less than 100 tons per year (tpy) of a nonhazardous regulated air pollutant; and
 - (b) Less than ten (10) tpy of a HAP and less than twenty-five (25) tpy of combined HAPS; or
- (2) Except as exempted in Section 2(1)(h) of this administrative regulation, minor source incinerators that are subject to an applicable requirement in:
 - (a) 401 KAR Chapter 59 or 61;
 - (b) 40 C.F.R. Part 60 or 63; or
 - (c) A federal regulation promulgated under 42 U.S.C. 7429.

Section 2. Exemptions.

- (1) The following sources shall be exempt from this administrative regulation:
 - (a) Sources that are required to be registered under 401 KAR 52:070;
 - (b) Sources that are required to be permitted under 401 KAR 52:020 or 401 KAR 52:030;
 - (c) Sources that emit only pollutants for which there are no applicable requirements;
 - (d) Sources subject only to applicable requirements that clearly specify the method for achieving compliance;
 - (e) Sources that emit only nonprocess fugitive emissions;
 - (f) Sources subject only to the requirements of 40 C.F.R. 60.530 to 60.539b, Standards of Performance for New Residential Wood Heaters;
 - (g) Sawmills that produce only rough-cut or dimensional lumber from logs and which have a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an applicable requirement in 401 KAR Chapter 59, 60, or 61; and
 - (h) Incinerators with unit capacities of less than 500 lbs/hr that are subject only to 401 KAR 59:020, 401 KAR 59:021, 401 KAR 61:010, or 401 KAR 61:011.
- (2) The following activities shall be exempt from this administrative regulation:
 - (a) Vehicles used for the transport of passengers or freight;
 - (b) Publicly-owned roads;
 - (c) Asbestos demolition or renovation operations subject only to an applicable requirement in 401 KAR Chapter 58;
 - (d) Open burning covered under 401 KAR 63:005; and
 - (e) Activities or emission units contained in the "List of Trivial Activities", which the cabinet shall maintain and make available:
 1. On request by contacting the Division for Air Quality, Permit Support Section, phone (502) 564-3999 or fax (502) 564-4666; and
 2. On the internet at: <http://air.ky.gov>.

Section 3. General Provisions.

- (1) Sources subject to this administrative regulation shall:
 - (a) Obtain a permit prior to construction, reconstruction, or modification pursuant to Section 12 of this administrative regulation;
 - (b) Operate in compliance with a permit issued under this administrative regulation;
 - (c) Comply with all applicable requirements;
 - (d) Demonstrate compliance with applicable requirements if requested by the cabinet;
 - (e) Submit an annual compliance certification pursuant to Section 19 of this administrative regulation; and
 - (f)
 1. Allow authorized representatives of the cabinet to enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept, at reasonable times:
 - a. To access and copy any records required by the permit;
 - b. To inspect any facility, equipment (including air pollution control equipment), practice, or operation; and
 - c. To sample or monitor substances or parameters to determine compliance with the permit and applicable requirements.
 2. Reasonable times shall be:
 - a. During all hours of operation;
 - b. During normal office hours; or
 - c. During an emergency.
- (2) Unless exempted in a future rulemaking by the U.S. EPA, minor sources subject to federal standards promulgated under 42 U.S.C. 7411 (NSPS) or 42 U.S.C. 7412 (NESHAP) shall:
 - (a) Be subject to 42 U.S.C. 7661 to 7661f (Title V of the Act);
 - (b) Comply with 401 KAR 50:038, Emissions fee;
 - (c) Submit annual emissions certifications pursuant to Section 20 of this administrative regulation; and
 - (d) Submit an application for a permit under 401 KAR 52:020 within one (1) year following promulgation of a final rulemaking by the U.S. EPA requiring the source to obtain a Title V permit.
- (3) Sources that are located in ozone nonattainment areas and emit or have the potential to emit 25 tpy or more of VOC or NO_x shall submit an annual emission certification pursuant to Section 20 of this administrative regulation.

Section 4. Applying for a Permit, Permit Revision, or Permit Renewal.

- (1) Applications for permits, permit revisions, or permit renewals shall be made using Forms DEP7007AI to DD, which are incorporated by reference in 401 KAR 52:050.
- (2) A complete application shall contain the information specified in Section 5 of this administrative regulation, except that:
 - (a) Forms DEP7007V to 7007Z shall not be required;
 - (b) Forms DEP7007AA, BB, and CC shall not be required for a source that is commencing construction unless a compliance plan is required under Section 12(4)(a) of this administrative regulation;
 - (c) Applications for permit revisions shall provide only the information related to the change; and
 - (d) Applications for permit renewals shall:
 1. Provide only the information that is new or different from the most recent permit application for sources with source-wide permits; or
 2. Be a complete application pursuant to Sections 5 and 15(5) of this administrative regulation for sources that have not applied for a source-wide permit.

(3) Completed application forms shall be submitted in triplicate (original plus two (2) copies) to Kentucky Division for Air Quality, Attn: Permit Support Section, 300 Sower Boulevard, Frankfort, Kentucky 40601.

(4) Forms DEP7007AI to DD may be obtained:

(a) By contacting the Kentucky Division for Air Quality, Permit Support Section, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3999 or fax (502) 564-4666; or

(b) On the Internet at: <http://air.ky.gov>.

Section 5. Information Required on Application. Complete applications shall include:

(1) All information needed to determine applicable requirements, including emission fees if applicable;

(2) The following administrative information:

(a) Company name and address and, if different, plant name and address;

(b) Owner's and agent's names and addresses;

(c) Name, address, and phone number of the plant site manager or contact;

(d) Description of the source's processes and products; and

(e) Appropriate SIC Codes;

(3) The following emissions-related information:

(a) All emissions of regulated air pollutants except those exempted in Section 2(2) of this administrative regulation;

(b) Additional information if needed to verify which requirements are applicable;

(c) Identification and description of all emission units in sufficient detail to establish the basis for applicable requirements;

(d) Emission rates in terms necessary to determine compliance with applicable requirements;

(e) Fuels, fuel use, raw materials, production rates, and operating schedules to the extent needed to determine emissions;

(f) Other information required by an applicable requirement, including stack height limitations developed in compliance with 401 KAR 50:042; and

(g) Calculations upon which the information in this paragraph is based.

(4) An explanation of proposed exemptions to otherwise applicable requirements;

(5) Additional information if needed to implement and enforce applicable requirements or to determine their applicability;

(6) If applicable, information needed to determine the applicable requirements and emission fees and to define the permit terms and conditions for each alternate operating scenario;

(7) A compliance plan containing:

(a) The compliance status for all applicable requirements, including:

1. For requirements that are in compliance, a statement that the source will continue to comply; and

2. For requirements that are not in compliance, a narrative description of how the source will achieve compliance;

(b) A compliance schedule, including:

1. For applicable requirements that will become effective during the permit term, a statement that the source will comply on a timely basis, unless a more detailed schedule is called for in the applicable requirement; and

2. For requirements that are not in compliance, remedial measures leading to compliance, including checkpoints and scheduled completion dates; and

(c) For sources required to have a schedule of compliance to remedy a violation or noncompliance, a schedule for submission of certified progress reports no less frequent than every six (6) months;

- (8) A certification of compliance with all applicable requirements by a responsible official;
- (9) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping and reporting requirements, and test methods;
- (10) A statement including the source's compliance status with applicable monitoring requirements;
- (11) A schedule for submission of annual compliance certifications of this administrative regulation; and
- (12) Insignificant activities as specified in Section 6 of this administrative regulation.

Section 6. Insignificant Activities.

- (1) Activities that meet the following conditions shall be classified as insignificant activities:
 - (a) The PTE from each activity shall not exceed:
 1. One-half (1/2) tpy of combined HAPs; or
 2. Five (5) tpy of a nonhazardous regulated air pollutant;
 - (b) The activity shall not involve the incineration of medical waste;
 - (c) The activity shall not be subject to a federally-enforceable requirement, other than generally applicable requirements; and
 - (d) The sum of the PTE from all insignificant activities, when added with the source's other potential emissions, shall not cause the source to exceed a major source threshold.
- (2) In applications for permits, permit revisions, and permit renewals, sources shall:
 - (a) Include descriptions for all insignificant activities;
 - (b) Include all applicable requirements for each insignificant activity; and
 - (c) Not be required to provide detailed estimates for insignificant activities.
- (3) A list of insignificant activities and generally applicable requirements approved by the cabinet shall be maintained and made available on request by contacting the Division for Air Quality, Permit Support Section, phone (502) 564-3999 or fax (502) 564-4666.

Section 7. Duty to Supplement or Correct Application.

- (1) An applicant who fails to submit relevant facts or who has submitted incorrect information in an application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information to the cabinet.
- (2) If new requirements become applicable to a source after the application is submitted, but before a permit is issued, the applicant shall promptly provide the supplemental information to the cabinet.
- (3) A source's authority to operate shall cease to apply if, by the deadline set by the cabinet, the source fails to submit additional information requested by the cabinet.

Section 8. Application Shield.

- (1) If a source submits a timely and complete application for a source-wide permit or permit renewal, the source's failure to have a permit shall not be a violation of this administrative regulation unless the cabinet makes a final determination to deny the permit or permit renewal.
- (2) The application shield shall cease to exist if a source fails to supplement or correct an application pursuant to Section 7 of this administrative regulation.

Section 9. Completeness Review and Determination. Applications shall be reviewed by the cabinet for completeness pursuant to Section 2-I "Cabinet Provisions and Procedures for Issuing State-Origin Permits", which is incorporated by reference in Section 23 of this administrative regulation, for:

- (1) Initial source-wide permits;
- (2) Permit revisions subject to Section 12 of this administrative regulation; and

(3) Permit renewals.

Section 10. Permit Content. Permits shall contain terms and conditions as provided in Sections 1a to 1c of "Cabinet Provisions and Procedures for Issuing State-Origin Permits."

Section 11. Permit Shield.

- (1) Compliance with the conditions of a permit shall be considered in compliance with all applicable requirements if:
 - (a) The applicable requirements are included and specifically identified in the permit; or
 - (b) The cabinet, in reviewing the application, determines that other specifically identified requirements are not applicable to the source, and this determination is stated in the permit.
- (2) A permit shall not have a permit shield unless the permit expressly states that a shield exists.
- (3) A permit shield shall not protect the owner or operator from enforcement actions for violating an applicable requirement prior to or at the time of permit issuance.

Section 12. Actions that Require a Permit or Permit Revision in Advance.

- (1) Sources shall obtain a permit or permit revision prior to commencing construction for the following actions:
 - (a) Construction of a source;
 - (b) Reconstruction of a source; or
 - (c) Modification at a source that will increase its PTE by:
 1. Two and one-half (2 1/2) tpy or more of a HAP;
 2. Seven and one-half (7 1/2) tpy or more of combined HAPs; or
 3. Twenty-five (25) tpy or more of a nonhazardous regulated air pollutant.
- (2) The source shall not commence construction, reconstruction, or modification until a permit or permit revision has been issued.
- (3) For a source that is issued a permit to construct, reconstruct, or modify:
 - (a) The permit shall become invalid if the permitted action:
 1. Is not commenced within eighteen (18) months after the permit is issued;
 2. Begins but is discontinued for a period of eighteen (18) months or more; or
 3. Is not completed within a reasonable timeframe; and
 - (b) The cabinet may extend these time periods if the source shows good cause.
- (4) Sources that construct, reconstruct, or modify under this section:
 - (a) Shall demonstrate compliance with all applicable requirements pursuant to 401 KAR 50:055; and
 - (b) For sources that have not demonstrated compliance within the timeframes prescribed in 401 KAR 50:055, shall operate only for purposes of demonstrating compliance unless authorized under an approved compliance plan or an order of the cabinet.

Section 13. Actions that Do Not Require a Permit Revision in Advance. For all permit revisions except those in Section 12 of this administrative regulation, the source:

- (1) Shall submit a complete application for a permit revision; and
- (2) May implement the change immediately upon submittal of the application.

Section 14. Change of Ownership or Name of Permittee. If the owner or person to whom a permit is issued changes, the following information shall be submitted to the cabinet within ten (10) days following the change:

- (1) The administrative information required by Form DEP7007AI showing the names and other information that has changed; and

- (2) If ownership has changed, a signed written agreement specifying the date of transfer of permit responsibility, coverage, and liability.

Section 15. Permit Duration and Renewal.

- (1) Permits issued pursuant to this administrative regulation shall remain in effect for a period of ten (10) years.
- (2) Applications for a renewal permit shall be submitted at least six (6) months prior to expiration of the existing permit.
- (3) Expiration of a permit shall terminate the source's right to construct and operate unless a timely and complete renewal application has been submitted.
- (4) All terms and conditions of the previous permit, including the permit shield, shall remain in effect until the renewal permit has been issued or denied if:
 - (a) The cabinet fails to issue or deny a renewal permit before the expiration of the previous permit; and
 - (b) The source has submitted a timely and complete renewal application.
- (5) After January 15, 2001, sources that have not applied for a source-wide permit shall submit a complete application for a source-wide permit the next time a permit held by the source is due for renewal.

Section 16. General Permits. The cabinet may issue a general permit covering similar sources in the same source category.

- (1) A general permit shall require compliance with all requirements applicable to other permits and shall identify criteria by which sources may qualify for coverage.
- (2) Sources that qualify for a general permit may:
 - (a) Apply to the cabinet for coverage under the terms of the general permit; or
 - (b) Apply for an individual permit under this administrative regulation.
- (3) An application for a general permit shall include information necessary to determine qualification for, and to assure compliance with, the general permit.
- (4) If the cabinet determines that a source does not meet the criteria for a general permit, the application shall be processed as a single-source permit pursuant to this administrative regulation.
- (5) If a source applies for and receives a general permit and is later determined not to qualify for the permit's terms and conditions:
 - (a) The source shall be subject to enforcement action for operating without a permit; and
 - (b) The permit shield shall not be a defense to this violation.

Section 17. Portable Sources.

- (1) The cabinet may issue a permit that authorizes a source to move its entire operation from one location to another within the Commonwealth.
- (2) Owners and operators of these sources shall:
 - (a) Notify the Division for Air Quality, Field Operations Branch, at (502) 564-3999, at least fifteen (15) days in advance of each relocation;
 - (b) Submit Administrative Information Form DEP7007AI to reflect the change in location; and
 - (c) Comply with all applicable requirements at each location.
- (3) It shall be a violation of this administrative regulation and 40 C.F.R. Part 70 for one (1) or more portable sources to operate on the same site or contiguous area if the combined PTE of all the sources operating at that site or the contiguous area exceeds a major source threshold.

Section 18. Temporary Replacement Units. The cabinet may authorize the temporary use of an emission unit to replace a similar unit that is taken off line for maintenance, if the following conditions are met:

- (1) The owner or operator shall submit to the cabinet, at least ten (10) days in advance of replacing a unit, the appropriate Forms DEP7007AI to DD that show:
 - (a) The size and location of the original and replacement units; and
 - (b) Any resulting change in emissions;
- (2) The PTE of the replacement unit shall not exceed that of the original unit by more than twenty-five (25) percent of a major source threshold, and the emissions from the unit shall not cause the source to exceed the emissions allowable under the permit;
- (3) Neither the PTE of the replacement unit nor the resulting PTE of the source shall subject the source to a new applicable requirement;
- (4) The replacement unit shall comply with all applicable requirements; and
- (5) Within six (6) months after installing the replacement unit, the owner or operator shall:
 - (a) Reinstall the original unit; or
 - (b) Submit an application to permit the replacement unit as a permanent change.

Section 19. Compliance Certifications.

- (1) Sources whose permits contain a requirement for annual compliance certifications shall certify compliance with all terms and conditions in the permit using Form DEP7007CC:
 - (a) Sources with permits issued prior to December 31, 2000 shall submit their certification in 2001 on the permit anniversary, unless otherwise instructed by the local regional office.
 - (b) All sources (required to submit a certification) shall submit their certification in 2002 and each year thereafter on or before January 30, except that sources who submitted a certification after September 30, 2001, shall not be required to submit their next certification until January 30, 2003.
- (2) The compliance certification shall contain the following information for each term or condition of the permit that is the basis for the certification:
 - (a) Identification of the term or condition;
 - (b) Compliance status;
 - (c) The method used for determining compliance over the reporting period, and whether the method provided continuous or intermittent data; and
 - (d) The method currently used for determining compliance.
- (3) Compliance certifications shall be mailed to the Division for Air Quality, Central Files, 300 Sower Boulevard, Frankfort, Kentucky 40601, and a copy sent to the appropriate Regional Office listed in Section 23 of this administrative regulation.

Section 20. Annual Emissions Certification for Specified Sources.

- (1) An annual emissions certification shall be submitted to the cabinet for minor sources specified in Section 3(2) and (3) of this administrative regulation.
- (2) During the first quarter of each calendar year, the cabinet shall survey these sources to determine their actual emissions during the preceding calendar year, and the source shall:
 - (a) Make the appropriate additions or corrections to the survey; and
 - (b) Return the updated survey to the cabinet within thirty (30) days of the date that the survey is mailed to the source. For this response:
 1. Each day past the deadline that a source fails to submit the required information shall be a separate violation of this administrative regulation;
 2. If no response is received by the deadline, the cabinet shall estimate the actual emissions based on prior history and other relevant information that is available; and
 3. Failure of the cabinet to notify a source under this section shall not relieve the source from the obligation to submit an emissions statement.

Section 21. Certification by Responsible Official. A responsible official shall certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the following documents are true, accurate, and complete:

- (1) Applications;
- (2) Reports;
- (3) Compliance certifications; and
- (4) Emissions certifications.

Section 22. Emergency Provision.

- (1) An emergency shall be an affirmative defense to enforcement actions brought for noncompliance with a technology-based emission standard if:
 - (a) The source demonstrates that the incident meets the criteria for an emergency;
 - (b) The source took all reasonable steps to minimize the excess emissions; and
 - (c) The source notified the cabinet as quickly as possible and followed-up with a written report within two (2) working days after the emergency occurred.
- (2) In an enforcement proceeding seeking to establish that an emergency occurred, the burden of proof shall rest with the source.
- (3) This provision shall be in addition to any emergency or upset provision contained in an applicable requirement.

Section 23. Incorporation by Reference.

- (1) "Cabinet Provisions and Procedures for Issuing State-Origin Permits", June 2000, is incorporated by reference.
 - (2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:
 - (a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3999;
 - (b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;
 - (c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;
 - (d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;
 - (e) Frankfort Regional Office, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3358;
 - (f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;
 - (g) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;
 - (h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and
 - (i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; or
 - (3) This material is also available on the internet at: <http://air.ky.gov>.
- (27 Ky.R. 628; 1293; 1789; eff. 1-15-2001; TAm eff. 8-9-2007; TAm eff. 5-20-2010; TAm eff. 9-16-2013; TAm eff. 4-2-2014; TAm eff. 7-8-2016; Crt eff. 9-12-2018; TAm eff. 2-14-2019.)