

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection Division for Air Quality

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

RELATES TO: KRS 224.10-100,224.20-100,224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. 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.**

- (1) "Acid Rain program" means the national program for reducing SO<sub>2</sub> and NO<sub>x</sub> emissions established under 42 U.S. C. 7651 to 7651 o {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 states" means states that:
  - (a) Border Kentucky and whose air quality may be affected by the proposed permit, permit revision, or permit renewal; or
  - (b) Are 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 in KRS 224.01-010(1).
- (9) "Air pollutant" means air contaminant.
- (10) "Air pollution" is defined in KRS 224.01-01 0(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" means a method of sampling and analyzing for an air pollutant that is not a reference method or equivalent method and has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.
- (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 in KRS 224.01-010.
- (18) "Capital expenditure" is defined in 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 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 owners or operators 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" 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 which:
- (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) Shall not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.
- (28) "Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50:038, made effective April 12, 1995.
- (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) "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.
- (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, which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction 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 the items specified in this subsection as they apply to emission units at a source subject to 40 C.F.R. Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:
- (a) Standards or requirements in the state implementation plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 C.F.R. Part 52;
  - (b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations 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 42 U.S.C. 7429 governing solid waste incinerators;
  - (d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;
  - (e) Standards or requirements of the Acid Rain Program;
  - (f) Requirements established pursuant to 42 U.S.C. 7661c(b) or 42 U.S.C. 7414(a)(3) 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 temporary sources 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. 7511 b(e);
  - (i) A standard or other requirement for tank vessels 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 7671 q, 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.
  - (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 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. 7602U).

(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; or
- (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<sub>10</sub>) for PM<sub>10</sub> nonattainment areas classified as serious.
- (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 one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.
- (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 one (1) hour national ambient air quality standard for ozone in 401 KAR 51 :010.
- (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;
  - 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 would constitute 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 to which an affected facility is a part.
- (55) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.
- (56) "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design where:

- (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 shall be treated as part of its design if the limitation is enforceable as a practical matter; and
  - (b) This definition does not alter or affect the use of this term for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.
- (57) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for 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 52; 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 7671 q (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 either:
    - 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 in advance by the cabinet;
  - (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 the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51.
- (67) "Start-up" 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, which 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.
- (72) "Title V permit" means a permit issued pursuant to 401 KAR 52:020 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995 (60 FR 571 86) and made effective on December 14, 1995.
- (73) "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).
- (74) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.
- (75) "tpy" means ton per year.
- (76) "U.S. EPA" means the U.S. Environmental Protection Agency.
- (77) "Volatile organic compound" or "VOC" is defined in 40 C.F.R. 51.100(s).
- (78) "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 which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

Effective Date: November 18, 2006

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg.	MAR 15, 2001	SEP 6, 2006	71 FR 52460
1st Revision	DEC 14, 2006	SEP 13, 2007	72 FR 52282

**401 KAR 52:020. Title V permits.**

**Section 22.** Annual Emissions Certification. An annual emission certification shall be submitted to the cabinet by sources subject to this administrative regulation.

**Section 23.** 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: (4) Emissions certifications.

Effective Date: January 15, 2001

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg.	NOV 18, 2015	JAN 28, 2016	81 FR 4896

**401 KAR 52:030. Federally enforceable permits for non-major sources.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 70, 42 U.S.C. 7661 to 7661(f)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 70, 42 U.S.C. 7661 to 7661(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for air contaminant sources located in Kentucky that accept emission limitations to avoid the New Source Review requirements under Title I of the Clean Air Act or the Operating Permit Program requirements under Title V of the Clean Air Act.

**Section 1.** Applicability. This administrative regulation shall apply to sources that accept permit conditions that are legally and practically enforceable to limit their potential to emit (PTE) below the major source thresholds that would make them subject to 401 KAR 52:020.

**Section 2.** Exemptions.

- (1) The following sources shall be exempt from this administrative regulation:
  - (a) Sources required to be registered under 401 KAR 52:070;
  - (b) Sources required to be permitted under 401 KAR 52:040;
  - (c) Sources required to be permitted under 401 KAR 52:020; and
  - (d) Sources subject only to the requirements of 40 C.F.R. 60.530 to 60.539b, Standards of Performance for New Residential Wood Heaters.
- (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; and
  - (d) Open burning covered under 401 KAR 63:005.

**Section 3.** General Provisions.

- (1) Sources subject to this administrative regulation shall:

- (a) Not construct, reconstruct, or modify without a permit issued under this administrative regulation, except as provided in Sections 13, 14, 15, and 17 of this administrative regulation;
  - (b) Operate in compliance with a permit issued under this administrative regulation;
  - (c) Demonstrate compliance with applicable requirements if requested by the cabinet;
  - (d) Comply with 401 KAR 50:038, Emissions fee, if applicable; -
  - (e) Submit an annual compliance certification pursuant to Section 21 of this administrative regulation; and
  - (f)
    - 1. Allow authorized representatives of the cabinet to enter upon the premises 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 all applicable requirements.
    - 2. Reasonable times shall be:
      - a. During all hours of operation;
      - b. During normal office hours; or
      - c. During an emergency.
- (2) (a) Permits issued to construct, reconstruct, or modify a source shall become invalid if the permitted action:
- 1. Is not commenced within eighteen (18) months after the date the permit is issued;
  - 2. Begins but is discontinued for a period of eighteen (18) months or more; or
  - 3. Is not completed within eighteen (18) months of the scheduled completion date.
- (b) The cabinet may extend these time periods if the source shows good cause.

- (c) For phased construction projects, each phase shall commence construction within eighteen (18) months of the projected and approved commencement dates.
- (3) Sources that construct, reconstruct, or modify shall demonstrate compliance pursuant to 401 KAR 50:055 as follows:
  - (a) Constructing or reconstructing sources shall demonstrate compliance with all applicable requirements;
  - (b) Modifying sources shall demonstrate compliance with all requirements that:
    - 1. Become applicable following the modification; or
    - 2. May be affected as a result of the modification; and
  - (c) Sources that have not demonstrated compliance during the prescribed timeframe given in 401 KAR 50:055 shall operate only for purposes of demonstrating compliance unless otherwise authorized by an approved compliance plan or an order of the cabinet.
- (4) Sources that are located in ozone nonattainment areas and emit or have the potential to emit 25 tpy or more of VOC or NO<sub>x</sub> shall submit an annual emission certification pursuant to Section 25(2) of this administrative regulation.

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

- (1) Complete applications shall be submitted using Forms DEP7007AI to DD, which are incorporated by reference in 401 KAR 52:050, for the following permit actions:
  - (a) Initial permits for sources commencing construction;
  - (b) Initial permits for sources that become subject to this administrative regulation as the result of a change;
  - (c) Renewal permits; and
  - (d) Permit revisions, including administrative permit amendments, minor permit revisions, significant permit revisions, and modifications at sources that do not have source wide permits.
- (2) A complete application shall contain the information specified in Section 5 of this administrative regulation, except that:
  - (a) Forms DEP7007AA, BB, and CC shall not be required for a source commencing construction unless a compliance plan is required under Section 3(3)(c) of this administrative regulation;



- (b) Applications for permit revisions shall provide only the information related to the change; and
  - (c) Applications for permit renewals shall provide only the information that is new or different from the most recent source-wide permit application.
- (3) Sources that submit an application with a claim of confidential information shall:
- (a) Authorize the cabinet to submit the information to the U.S. EPA; or
  - (b) Submit the information directly to the U.S. EPA.
- (4) Completed application forms shall be submitted to Kentucky Division for Air Quality, Attn: Permit Support Section, 803 Schenkel Lane, Frankfort, Kentucky 40601:
- (a) For initial permits, minor permit revisions, significant permit revisions, and permit renewals, original plus two (2) copies; and
  - (b) For administrative permit amendments, the original only.
- (5) The cabinet may request up to seven (7) additional copies of the completed application form if needed for public review.
- (6) Forms DEP7007 AI to DO may be obtained:
- (a) By contacting the Kentucky Division for Air Quality, Permit Support Section, 803 Schenkel Lane, Frankfort, KY 40601, phone (502) 573-3382, e-mail NREPC.DEPAirPermits@mail.state.ky.us, or fax (502) 573-3787; or
  - (b) On the Internet at [www1.nr.state.kv.us/nreoc/dep/daq/prb/dagao0.htm](http://www1.nr.state.kv.us/nreoc/dep/daq/prb/dagao0.htm).

**Section 5. Information Required on Application.** Applications shall contain:

- (1) All the information needed to determine the applicable requirements and applicable emission fees;
- (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 Code;

- (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) All fugitive emissions listed in the same manner as stack emissions;
  - (c) Additional information if needed to verify which requirements are applicable;
  - (d) Identification of the applicable requirements for each emissions unit;
  - (e) Identification and description of all emission units and emission points in sufficient detail to establish the basis for applicable requirements and applicable emission fees;
  - (f) Emission rates in terms necessary to determine compliance with applicable requirements;
  - (g) Fuels, fuel use, raw materials, production rates, and operating schedules to the extent needed to determine or to limit emissions;
  - (h) Other information required by an applicable requirement, including stack height limitations developed pursuant to 401 KAR 50:042; and
  - (i) Calculations on which the information in this paragraph is based;
- (4) Citation and description of all applicable requirements, and the applicable test method for determining compliance with each;
- (5) An explanation of proposed exemptions to otherwise applicable requirements;
- (6) Other information if needed to implement and enforce other applicable requirements or to determine their applicability;
- (7) If applicable, information needed to determine the applicable requirements and emission fees, and to define the permit terms and conditions for:
  - (a) Each alternate operating scenario; and
  - (b) Emissions trading under federally enforceable emissions caps;
- (8) A compliance plan containing:
  - (a) The compliance status for all applicable requirements, including:

1. For requirements with which the source is in compliance, a statement that the source will continue to comply; and
  2. For requirements with which the source is 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 with which the source is 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;
- (9) A certification of compliance with all applicable requirements by a responsible official;
- (10) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping and reporting requirements, and test methods;
- (11) A schedule for submission of compliance certifications during the permit term, to be submitted annually or more frequently if specified by the cabinet or in an applicable requirement;
- (12) A statement describing the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements; and
- (13) Insignificant activities as specified in Section 6 of this administrative regulation.

**Section 6. Insignificant and Trivial 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 non-hazardous 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 or a limit contained in the permit to avoid major source applicability under Title I or Title V of the Act.
- (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) 573-3382, e-mail NREPC.DEPAirPermits@mail.state.ky.us, or fax (502) 573-3787.
- (4) The cabinet shall maintain a list of approved trivial activities, which shall not be required to be included in permit applications. The list shall be made available:
- (a) On request by contacting the Division for Air Quality, Permit Support Section, phone (502) 573-3382, e-mail NREPC.DEPAirPermits@mail.state.ky.us, or fax (502) 573-3787; or
  - (b) On the internet at [www.nr.state.ky.us/nreoc/deo/daa/prb/trivial.html](http://www.nr.state.ky.us/nreoc/deo/daa/prb/trivial.html).

**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.
- (2) If new requirements become applicable to a source after the application is submitted, but before a draft permit is issued, the applicant shall promptly provide the supplemental information to the cabinet.
- (3) Failure to supplement or correct an application shall be a violation of this administrative regulation and may result in:
  - (a) Termination of a permit;
  - (b) Revocation and reissuance of a permit;

- (c) Revision of a permit; or
- (d) Denial of a permit.

**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) A source's authority to operate shall cease to apply if the source fails to submit additional information requested by the cabinet, by the deadline set by the cabinet, after the completeness determination has been made.

**Section 9. Completeness Review and Determination.** Applications shall be reviewed by the cabinet for completeness pursuant to Section 2-1 of "Cabinet Provisions and Procedures for Issuing Federally-Enforceable Permits for Non-Major Sources," which is incorporated by reference in Section 26 of this administrative regulation, for:

- (1) Initial permits for sources commencing construction;
- (2) Significant permit revisions; and
- (3) Permit renewals.

**Section 10. Permit Content.** Permits shall contain terms and conditions as provided in Sections 1 a to 1 c of "Cabinet Provisions and Procedures for Issuing Federally Enforceable Permits for Non-Major Sources."

**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 for violating an applicable requirement prior to or at the time of permit issuance.

**Section 12. Permit Duration and Renewal.**

- (1) Permits issued pursuant to this administrative regulation shall remain in effect for five (5) years, except that permits for municipal waste incinerators shall remain in effect for twelve (12) years and shall be reviewed by the cabinet every five (5) years.
- (2) An application for a permit renewal shall be submitted at least six (6) months prior to expiration of the current permit.
- (3) Expiration of a permit shall terminate the source's authority to operate unless the source has submitted a timely and complete renewal application.
- (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 the renewal permit before the expiration of the previous permit; and
  - (b) The source has submitted a timely and complete renewal application.

**Section 13. Administrative Permit Amendments.**

- (1) The following permit revisions may be processed as administrative permit amendments:
  - (a) Correct typographical errors;
  - (b) Change the name, address, or phone number of a person identified in the permit, or make similar administrative changes;
  - (c) Change in ownership or operational control;
  - (d) Require more frequent monitoring or reporting; and
  - (e) Add an insignificant activity.
- (2) Sources requesting an administrative permit amendment shall submit the appropriate Forms DEP7007 AI to DO reflecting the desired change and may implement the change immediately upon submittal.
- (3) For administrative permit amendments in which 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:
  - (a) Administrative Information Forms DEP7007AI showing the names and other information that has changed; and
  - (b) If ownership has changed, a signed written agreement specifying the date of

transfer of permit responsibility, coverage, and liability.

**Section 14. Minor Permit Revisions.**

- (1) The procedures in this section shall be used for permit revisions that:
  - (a) Do not violate an applicable requirement;
  - (b) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
  - (c) Do not require or change a case-by-case determination of:
    1. An emission limitation or other standard;
    2. A source-specific determination for temporary sources of ambient impacts; or
    3. A visibility or increment analysis;
  - (d) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and which the source has assumed to avoid an otherwise applicable requirement, including:
    1. A federally enforceable emissions cap assumed to avoid classification as a modification under Title I; and
    2. An alternative emissions limit approved pursuant to 42 U.S. C. 7412(i)(5);
  - (e) Are not modifications under Title I of the Act; and
  - (f) Are not required to be processed as significant permit revisions.
- (2) The procedures in this section may be used for changes involving the use of economic incentives, marketable permits, emissions trading, or similar programs in:
  - (a) The State Implementation Plan (SIP); or
  - (b) A federal requirement.
- (3) Applications for minor permit revisions shall include:
  - (a) A description of the change, and the resulting change in emissions;
  - (b) New requirements that will apply after the change;
  - (c) Certification that the change meets the criteria for use of minor permit revision procedures, and a request for their use; and

- (d) A suggested draft permit showing only the information that is new or different than the existing permit.
- (4) The source may implement the change immediately upon filing a complete application.
- (5) The permit shield shall not extend to minor permit revisions.

**Section 15. Group Processing of Minor Permit Revisions.**

- (1) Group processing shall be used only for permit revisions that:
  - (a) Meet the criteria for minor permit revisions; and
  - (b) Are collectively below the following thresholds:
    - 1. Ten (10) percent of the emissions allowed in the permit for the emission unit or units affected by the change; and
    - 2. The lesser of twenty (20) percent of the applicable major source threshold or five (5) tpy.
- (2) A source with two (2) or more pending minor permit revisions may apply for group processing by submitting:
  - (a) A written request to use group processing;
  - (b) A list of pending permit revision applications awaiting group processing, and a determination of whether the sum of all the revisions will equal or exceed a threshold in this section;
  - (c) Certification that all the pending revisions meet the criteria for use of group processing procedures;
  - (d) A list of new requirements that will apply after each revision is made; and
  - (e) A suggested draft permit showing only the information that is new or different than the existing permit.
- (3) The source may implement the changes immediately upon filing a complete application.
- (4) The permit shield shall not extend to permit revisions eligible for group processing.

**Section 16. Significant Permit Revisions.**

- (1) Significant permit revision procedures shall be used for revisions that:
  - (a) Involve significant changes in the monitoring requirements or a relaxation in the



reporting or recordkeeping requirements contained in the permit; or

- (b) Do not qualify as administrative permit amendments or minor permit revisions.
- (2) Significant permit revisions shall follow the same procedures that are required for initial permits and permit renewals.
- (3) The permit shield shall extend to significant permit revisions.

**Section 17. Off-Permit and Section 502(b)(10) Changes.**

- (1) Off-Permit Changes.
  - (a) A permit revision shall not be required for changes that:
    - 1. Are not modifications under Title I of the Act;
    - 2. Do not violate any terms or conditions of the permit; and
    - 3. Meet all applicable requirements.
  - (b) Except for changes that qualify as insignificant activities under Section 6 of this administrative regulation, sources shall notify the cabinet in writing at least seven (7) workdays in advance of each change. The notification shall include:
    - 1. A brief description of the change;
    - 2. The date on which the change will occur;
    - 3. Any change in emissions or pollutants that result from the change; and
    - 4. Any new applicable requirements that will apply after the change.
  - (c) Sources shall keep records describing:
    - 1. Off-permit changes that resulted in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit; and
    - 2. The emissions that resulted from those changes.
- (2) Section 502(b)(10) changes.
  - (a) A permit revision shall not be required for changes that:
    - 1. Are not modifications under Title I of the Act; and
    - 2. Do not exceed the emissions allowed under the permit.

- (b) Sources shall notify the cabinet in writing at least seven (7) workdays in advance of each change. The notification shall include:
  - 1. A brief description of each change;
  - 2. The date on which the change will occur;
  - 3. Any change in emissions that will result; and
  - 4. Any permit term or condition that will no longer be applicable after the change.
- (3) For all changes made under this section:
  - (a) Sources shall keep a copy of each change notice on file with the permit;
  - (b) The permit shield shall not extend to these changes; and
  - (c) Changes shall be incorporated into the permit upon renewal.

**Section 18. Reopening for Cause.**

- (1) A permit shall be reopened prior to expiration, if:
  - (a) New requirements become applicable to a source with a remaining permit term of three (3) or more years; or
  - (b) The cabinet or the U.S. EPA determines that:
    - 1. The permit contains a material mistake or an inaccurate statement was made when establishing the standards, terms or conditions of the permit; or
    - 2. It is necessary to revise or revoke the permit to assure compliance with applicable requirements.
- (2) Reopening a permit:
  - (a) Shall follow the same procedures as initial permit; and
  - (b) Shall affect only those parts of the permit for which cause to reopen exists.

**Section 19. 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) The permit shield shall apply to general permits.
- (6) 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 20. 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 DEP7007 AI to DD that show:
  - (a) The size and location of both 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) The PTE of the replacement unit or the resulting PTE of the source shall not 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) Re-install the original unit; or
  - (b) Submit an application to permit the replacement unit as a permanent change.

**Section 21. 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, 803 Schenkel Lane, Frankfort, KY 40601, and a copy sent to the appropriate Regional Office listed in Section 26 of this administrative regulation.

**Section 22. 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 23. 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 criteria for an emergency;
  - (b) The source took all reasonable steps to minimize excess emissions; and
  - (c) The source notified the cabinet as quickly as possible and followed-up with a written report within two (2) workdays 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 24. Public Review.** Initial permits, significant permit revisions, and permit renewals issued under this administrative regulation shall be offered for public review pursuant to 401 KAR 52:100.

**Section 25. Sources Subject to Title V.**

- (1) Unless exempted in a future rulemaking by the U.S. EPA, sources that are 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, Emission fees;
  - (c) Submit annual emissions certifications pursuant to subsection 2 of this section; 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.
- (2) During the first quarter of each calendar year, the cabinet shall survey each source to determine its actual emissions during the preceding calendar year, and the source shall provide and certify the information requested and return the updated survey to the cabinet within thirty (30) days from the date that the survey is mailed to the source.
  - (a) Each day past the deadline that a source fails to submit the required information shall be a separate violation of this administrative regulation;

- (b) If no response is received from a source, the cabinet may estimate its actual emissions based on prior history and other relevant information that is available; and
- (c) Failure by the cabinet to notify a source shall not relieve the source of its obligation to submit an annual emissions statement.

**Section 26. Incorporation by Reference.**

- (1) "Cabinet Provisions and Procedures for Issuing Federally-Enforceable Permits for Non-Major Sources," 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, 8:00a.m. to 4:30p.m.:
  - (a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;
  - (b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41 105, (606) 920-2067;
  - (c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;
  - (d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 292-6411;
  - (e) Frankfort Regional Office, 643 Teton Trail, Suite B, 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) 878-0157;
  - (h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and
  - (i) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8468.
- (3) This material may also be obtained:
  - (a) By e-mail request to [NREPC.DEPAirPermits@mail.state.ky.us](mailto:NREPC.DEPAirPermits@mail.state.ky.us); or
  - (b) On the Internet at [WWW.nr.state.ky.us/nrepc/deo/daa/orb](http://WWW.nr.state.ky.us/nrepc/deo/daa/orb).

Effective Date: January 15, 2001

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg.	MAR 15, 2001	SEP 6, 2006	71 FR 52460

DRAFT

**401 KAR 52:040. State-Origin Permits.**

**Section 3. General Provisions.**

- (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:
  - (c) Submit annual emissions certifications pursuant to Section 20 of this administrative regulation;
- (3) Sources that are located in ozone nonattainment areas and emit or have the potential to emit 25 tpy or more of VOC or NOx shall submit an annual emission certification pursuant to Section 20 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.

**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:

- (4) Emissions certifications.

Effective Date: January 15, 2001

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg.	NOV 18, 2015	JAN 28, 2016	81 FR 4896



**401 KAR 52:070. Registration of designated sources.**

**Section 3. General Provisions.**

- (2) Sources that are located in ozone nonattainment areas and emit or have the potential to emit twenty-five (25) tpy or more of VOC or NO<sub>x</sub> shall submit an annual emission certification as follows:
  - (a) 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:
    - 1. Make the appropriate additions or corrections to the survey;
    - 2. Return the updated survey to the cabinet within thirty (30) days of the date that the survey is mailed to the source.

Effective Date: January 15, 2001

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg.	NOV 18, 2015	JAN 28, 2016	81 FR 4896

**401 KAR 52:090. Prohibitory rule for hot mix asphalt plants.**

RELATES TO: KRS 224.10-100,224.20-100,224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation sets production limits for hot mix asphalt plants, which keeps their emissions below the major source threshold and avoids the necessity of having to obtain a Title V or conditional major permit.

**Section 1. Applicability.**

- (1) This administrative regulation shall apply to hot mix asphalt plants:
  - (a) Whose potential to emit (PTE) equals or exceeds a major source threshold for Title V;
  - (b) Who have not been issued a Title V or conditional major permit; and
  - (c) Who operate in compliance with:
    1. 401 KAR 59:010 or 401 KAR 61:020, as applicable; and
    2. The operational limits, fuel restrictions, and recordkeeping and reporting requirements of this administrative regulation.
- (2) Hot mix asphalt plants shall be treated as separate sources unless:
  - (a) Two (2) or more plants are located on one (1) or more contiguous or adjacent properties; and
  - (b) The plants are under common control of the same person or persons under common control.
- (3) For purposes of this administrative regulation, a covered source shall be a hot mix asphalt plant that chooses to comply with this administrative regulation in lieu of obtaining a Title V or conditional major permit.

**Section 2. General Provisions.**

- (1) Covered sources shall not be required to obtain Title V or conditional major permits, except as provided in:
  - (a) Subsections (3) and (4) of this section; and
  - (b) Section 4 of this administrative regulation.

- (2) Covered sources shall:
- (a) Comply with the operation limits, fuel restrictions, and the notification, recordkeeping, and reporting requirements of this administrative regulation;
  - (b) Allow authorized representatives of the cabinet to enter the premises where the source is located or where records are kept:
    - 1. During normal office hours;
    - 2. During all hours of operation; or
    - 3. During periods of emergency;
  - (c) Demonstrate compliance with applicable requirements if so requested by the
  - (d) Obtain a state-origin permit if required to do so under 401 KAR 52:040; and
  - (e) Operate in compliance with all applicable requirements.
- (3) If a covered source receives a notice of violation for noncompliance with any provision in subsection (2)(a) to (c) of this section:
- (a) Within six (6) months after receiving the notice of violation, the source shall submit an application for a Title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030; and
  - (b) Each incidence of noncompliance shall be a separate violation until a Title V or conditional major permit is issued to the source.
- (4) If a covered source is required to obtain a Title V permit by the U.S. EPA, the source shall submit an application under 401 KAR 52:020 within twelve (12) months after publication of the final federal rulemaking.
- (5) Sources that meet the applicability criteria for this administrative regulation may voluntarily apply for a Title V or conditional major permit.

**Section 3. Operation Limits and Fuel Restrictions.** Covered sources shall meet the requirements of this section.

- (1) Operational Limits.
- (a) Batch mix plants shall not produce more than 360,000 tons of asphalt during any consecutive twelve (12) month period.
  - (b) Drum mix plants shall not produce more than 500,000 tons of asphalt during any consecutive twelve (12) month period.

- (2) Fuel Restrictions. Waste oil shall not be used as fuel in the production of asphalt unless the oil has been recycled. Recycled oil:
  - (a) Shall not contain more than:
    - 1. Five (5) ppm of arsenic;
    - 2. Two (2) ppm of cadmium;
    - 3. Ten (10) ppm of chromium;
    - 4. 100 ppm of lead; or
    - 5. 1000 ppm of total halogens; and
  - (b) Shall have a minimum flash point of 1 00°F.

**Section 4. Reconstruction or Modification.** Prior to making a change that will cause the source to be unable to comply with this administrative regulation, a covered source shall:

- (1) Notify the cabinet by contacting the Division for Air Quality, Permit Support Section, at (502) 573-3382;
- (2) Submit an application for a Title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030; and
- (3) Comply with the requirements of this administrative regulation until the source is issued a Title V or conditional major permit.

**Section 5. Recordkeeping Requirements.** Covered sources shall maintain records as specified in this section.

- (1) Logs shall be kept that show:
  - (a) The tons of asphalt produced for each month;
  - (b) The tons of asphalt produced for each consecutive twelve (12) month period, computed by adding each month's production to the total production for the previous eleven (11) months; and
  - (c) The type and amount of fuels used each month, as follows:
    - 1. Gaseous fuels usage, expressed in cubic feet or gallons and identified as natural gas (NAT), liquid propane gas (LPG), or liquid butane gas (LBG);

2. Fuel oil usage, expressed in gallons and identified by number (i.e., #2, #4, etc.); and
  3. Additional information which the cabinet may request.
- (2) Material Safety Data Sheets (MSDS) shall be maintained with the fuel usage log for all fuel oils purchased and used.
  - (3) The records shall be sufficient to determine actual emissions for each emission unit and shall be:
    - (a) Maintained on site for five (5) years from date of last entry in the log; and
    - (b) Made available on request for inspection by the cabinet or the U.S. EPA.

**Section 6. Reporting Requirements.** At the beginning of each calendar year, the cabinet shall mail a printout of the latest emission inventory data in the KyEIS to each covered source. On receiving the printout the source shall:

- (1) Update the emissions information;
- (2) Certify the report; and
- (3) Return the report to the cabinet within thirty (30) days from the date that the printout is mailed to the source.

Effective Date: January 15, 2001

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg.	MAR 15, 2001	SEP 6, 2006	71 FR 52460

**401 KAR 52:100. Public, affected state, and U.S. EPA review.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120; 40 C.F.R. Part 2, Part 51, 40 C.F.R. Part 70, 42 U.S. C. 7410, 42 U.S.C. 7661 to 7661f

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120; ,42 U.S.C. 7410, 42 U.S.C. 7661 to 7661f

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-1 00 authorizes the Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the procedures used by the cabinet to provide for the review of federally enforceable permits by the public, affected states, and the U.S. EPA.

**Section 1. Applicability.** This administrative regulation shall apply to the permit actions established in 401 KAR 52:020 and 401 KAR 52:030 that require public, affected state, and U.S. EPA review.

**Section 2. Public Comment Period.**

- (1) For permit actions that require public review, the cabinet shall:
  - (a) Provide a minimum of thirty (30) days for public comment; and
  - (b) Prepare a response to the comments received during the comment period.
- (2) The comment period:
  - (a) Shall begin on the date the public notice is posted on the Cabinet website at <https://eec.ky.gov>; and
  - (b) Shall end thirty (30) days after the date the public notice is posted on the Cabinet website at <https://eec.ky.gov>.
- (3) The cabinet shall consider:
  - (a) All written comments received during the public comment period;
  - (b) Comments received in alternate format to accommodate persons with disabilities; and
  - (c) The permit applicant's written response concerning the public comments, if received not later than ten (10) days after the close of the public comment period.
- (4) The cabinet shall keep a record of the commenters and issues raised during the public comment period and shall make this record available, upon request, to the public and the U.S. EPA.

### **Section 3. Public Hearing.**

- (1) A public hearing shall be held if the cabinet determines that:
  - (a) On the basis of written requests received, material issues have been raised concerning the terms and conditions of the permit; or
  - (b) The permit action is of significant interest to the public.
- (2) A request for a public hearing shall not require an extension of the public comment period; however, the cabinet may allow additional time after the close of a public hearing for public hearing participants to submit their comments in writing.
- (3) If a public hearing is held, the cabinet shall:
  - (a) Provide public notice on the Cabinet website at <https://eec.ky.gov>, at least thirty (30) days prior to the scheduled public hearing date; and
  - (b) Designate a presiding officer, who shall be responsible for the scheduling and orderly conduct of the public hearing.
- (4) Any person may submit statements or data during the public hearing concerning the permit action.
- (5) The cabinet may:
  - (a) Set reasonable limits on the time allowed for oral statements; and
  - (b) Require that statements be submitted in writing.
- (6) The cabinet shall:
  - (a) Consider all comments received at the public hearing, including comments received in alternate format to accommodate persons with disabilities;
  - (b) Keep a record of the participants and issues raised at the public hearing and make this record available, upon request, to the public and the U.S. EPA; and
  - (c) Make available to the public at a reasonable reproduction cost;
    1. A tape recording or written transcript of the public hearing; and
    2. If requested, a written transcript in large type or Braille.

### **Section 4. Public Notice.**

- (1) The cabinet shall provide public notice of a public comment period and any scheduled public hearing on the Cabinet website at <https://eec.ky.gov>. This shall be the Cabinet's consistent method of public notice.
- (2) The cabinet may provide additional notice to the public through other methods, including newspapers, newsletters, and press releases.

**Section 5. Information Included in Public Notice.** The public notice shall include the following information:

- (1) Contact name and address of the Energy and Environment Cabinet, Department for Environmental Protection, Division for Air Quality;
- (2) Name and address of the permit applicant and, if different, the name and address of the facility;
- (3) A brief description of the business conducted at the facility and the activity involved in the permit action;
- (4) A brief description of the comment procedures, including how to request a public hearing;
- (5) Date, time, and place of the public hearing, if a hearing has been scheduled;
- (6) The end date of the public comment period;
- (7) The end date of the U.S. EPA's review period;
- (8) Reference to the dates of previous public notices relating to the permit;
- (9) Description of any emission change involved in a permit revision;
- (10) For permits subject to review under 401 KAR 51 :017, the degree of increment consumption expected to occur; and
- (11) Name, address, and telephone number where interested persons may obtain the following information:
  - (a) Copies of the draft permit or permit revision;
  - (b) Relevant supporting material, including permit applications, permits, compliance plans, and monitoring and compliance certification reports, except for confidential business information pursuant to 40 C.F.R. Part 2 and 400 KAR 1:060; and
  - (c) Other materials available to the cabinet that are relevant to the permit decision.



**Section 6. Distribution of Public Notice.** Copies of the public notice shall be distributed as established in this section.

- (1) For permit actions subject to review under 401 KAR 51:017 or 401 KAR 51:052, the public notice shall be sent to:
  - (a) The permit applicant;
  - (b) The administrator of the U. S. EPA through the appropriate regional office;
  - (c) Affected states;
  - (d) All persons on the mailing list established in Section 7 of this administrative regulation; and
  - (e) The officials and agencies having authority over the area where the source will be located, as follows:
    1. Local air pollution control agencies;
    2. The chief executive of the city and county;
    3. Any comprehensive regional land use planning agency; and
    4. Federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source.
- (2) For permit actions at a major source that are not subject to review under 401 KAR 51:017 or 401 KAR 51 :052, the public notice shall be sent to:
  - (a) The permit applicant;
  - (b) The administrator of the U.S. EPA through the appropriate regional office;
  - (c) Affected states; and
  - (d) All persons on the mailing list established in Section 7 of this administrative regulation.
- (3) For permit actions at a synthetic minor or conditional major source, notice shall be sent to:
  - (a) The permit applicant;
  - (b) The administrator of the U.S. EPA through the appropriate regional office; and

- (c) All persons on the mailing list established in Section 7 of this administrative regulation.

**Section 7. Mailing List.**

- (1) The cabinet shall compile and maintain a mailing list of persons who request to be notified of permit actions.
- (2) The cabinet may:
  - (a) Notify the public of the opportunity to be on the list on the Cabinet website at <https://eec.ky.gov>; and
  - (b) Delete from the list persons who fail to show continued interest in receiving notice.

**Section 8. Public Inspection of Documents.**

- (1) During the public comment period, the cabinet shall make available for public inspection all information, except that which is confidential, contained in the:
  - (a) Permit application;
  - (b) Draft permit; and
  - (c) Supporting materials.
- (2) The information shall be made available at:
  - (a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601; and
  - (b) The Division for Air Quality Regional Office having jurisdiction over the source.
- (3) The draft permit shall also be posted, for the duration of the public comment period, on the internet at <https://eec.ky.gov>.

**Section 9. Affected States Review.** Except as provided in subsection (3) of this section, for permit actions that require affected state review the cabinet shall provide the draft permit or permit revision to affected states at the same time or before notice of the permit action is provided to the general public.

- (1) The cabinet may accept a recommendation made by an affected state if the recommendation:
  - (a) Is received during the public comment period established in Section 2 of this administrative regulation;

- (b) Is applicable to the permit action; and
  - (c) Does not conflict with the requirements of Kentucky Revised Statutes or 401 KAR Chapters 50 to 65.
- (2) If the cabinet does not accept a recommendation made by an affected state, the cabinet shall provide a written notice to the affected state and the U.S. EPA that:
- (a) Gives the reason for not accepting the recommendation; and
  - (b) Is submitted to the state no later than the date the proposed permit is submitted to the U.S. EPA.
- (3) For a minor permit revision at a major source, the Cabinet shall:
- (a) Provide notice to affected states with a brief description of the requested revision within five (5) workdays after a complete permit application is received; and
  - (b) After submittal of a proposed minor permit revision to the U.S. EPA:
    - 1. Notify the affected state and the U.S. EPA if a recommendation is not accepted; and
    - 2. Provide the reason for not accepting the recommendation.

**Section 10. U.S. EPA Review.**

- (1) For permit actions that require U.S. EPA review, the cabinet shall not issue a final permit, permit revision, or permit renewal until the U.S. EPA:
  - (a) Has had an opportunity to review and comment on the permit action and has not objected to issuance of the permit within the forty-five (45) day period for an objection; or
  - (b) Waives its right of review.
- (2) The cabinet shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to applicable statutory or regulatory provisions, and shall send the statement to the U.S. EPA and to any other person who requests it.
- (3) The cabinet shall provide the U.S. EPA with copies of the:
  - (a) Permit application, including attachments;

- (b) Other permit-related information such as public comments, settlements, and decisions from permit appeals;
  - (c) Proposed permit or proposed permit revision; and
  - (d) Final permit or final permit revision.
- (4) On a case-by-case basis and with prior U.S. EPA approval, the cabinet may submit a summary form and the relevant portion of the permit application and compliance plan in lieu of the complete application and compliance plan.
- (5) On a case-by-case basis and with prior U.S. EPA approval, the cabinet may submit the draft permit or permit revision in lieu of a proposed permit or permit revision. For these submittals:
- (a) The cabinet shall provide the U.S. EPA with:
    - 1. The permit application, draft permit or permit revision, and supporting information no later than the first day of the public comment period; and
    - 2. All timely submitted public comments after the close of the public comment period.
  - (b) The draft permit shall become the final permit or permit revision at the end of the U.S. EPA's forty-five (45) day review, unless:
    - 1. A substantial change is made in the permit or permit revision following the public comment period; or
    - 2. The U.S. EPA files an objection to the permit or permit revision.
  - (c) If a substantial change is made in the draft permit or permit revision, the cabinet shall make appropriate revisions and submit a proposed permit or permit revision to the U.S. EPA for another forty-five (45) day review period.
- (6) If the U.S. EPA objects to the issuance of a permit or permit revision, the U.S. EPA shall:
- (a) File a statement of objection, in writing, within forty-five (45) days after receiving the permit or permit revision and supporting information;
  - (b) Include in the statement the reasons for the objection and a description of the permit changes needed to resolve the objection; and
  - (c) Provide the permit applicant with a copy of the filed objection.

- (7) After an objection is filed, the cabinet shall make the appropriate revisions and submit a new proposed permit or permit revision to the U.S. EPA within ninety (90) days after the objection is filed.
- (8) If the cabinet does not submit a revised proposed permit or permit revision within ninety (90) days after an objection is filed, the U.S. EPA may issue or deny the permit.
- (9) If the U.S. EPA does not object to the issuance of a permit, a citizen may petition the U.S. EPA to file an objection.
  - (a) The U.S. EPA shall file the citizen objection if the petition is:
    1. Made within sixty (60) days following the end of the U.S. EPA's forty-five (45) day review period; and
    2. Based only on objections raised with reasonable specificity during the public comment period, unless:
      - a. The petitioner can demonstrate that it was impractical to raise the objection within the public comment period; or
      - b. The grounds for objection arose after the end of the public comment period.
  - (b) If the U.S. EPA objects to a permit action as a result of a petition filed, the cabinet shall not issue the permit until the U.S. EPA objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to the U.S. EPA objection.
  - (c) If the cabinet issues a permit or permit revision prior to receipt of a U.S. EPA objection:
    1. The U.S. EPA may modify, terminate, or revoke the permit consistent with the procedures in 40 C.F.R. 70.7(g)(4) and (g)(5);
    2. The Cabinet shall, upon receipt of the U.S. EPA objection, issue a revised permit that satisfies the U.S. EPA objection; and
    3. The source shall not be in violation for failing to submit a complete and timely application.
- (10) To the extent possible, all information provided to the U.S. EPA shall be submitted in an electronic format that is compatible with the U.S. EPA's national database management system.

- (11) The cabinet shall keep records of all information submitted to the U.S. EPA for a - period of five (5) years.
- (12) (a) If the cabinet is authorized by the source to submit confidential information to the U. S. EPA, a claim of confidentiality shall accompany the relevant information.
- (b) If the cabinet is not authorized by the source to submit confidential information to the U.S. EPA, the source shall submit the confidential information directly to the U.S. EPA with a claim of confidentiality.

Effective Date: January 15, 2001

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg.	MAR 15, 2001	SEP 6, 2006	71 FR 52460
1st Revision:	AUG 12, 2020	OCT 1, 2021	86 FR 54379

**Commented [LS1]:** This was KY-281 that published last year. I've added the correct information.