

MATERIAL INCORPORATED BY REFERENCE IN

401 KAR 52:020, TITLE V PERMITS

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection
Division for Air Quality

Cabinet Provisions and Procedures for Issuing Title V Permits

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BACKGROUND

This document contains procedures and timelines which the cabinet shall use when issuing Title V permits. It also contains the terms and conditions which are required to be written in all Title V permits, including:

- Initial Title V permits issued to new and existing sources that are major for Title V;
- Title V permits issued to new and existing sources that are major under Title I and subject to review under the PSD or NSR in Non-attainment rules;
- Affected sources under the Acid Rain Program; and
- Minor, synthetic minor, and conditional major sources that become major following a change, or that become subject to a MACT or other federal standard that requires them to obtain a Title V permit.

Sources that are subject to PSD review under 401 KAR 52:017 or NSR review under 401 KAR 52:052 are, by definition, major sources for Title V, since the major source thresholds for Title I (which contains the PSD/NSR rules) are equal to or greater than those for Title V.

This document specifies the terms and conditions which will be included in all Title V permits issued by the cabinet under 401 KAR 52:020.

Section
1a

GENERAL PROVISIONS

Title V permits issued by the Division for Air Quality shall contain terms and conditions consistent with the following general provisions:

- 1) The permit shall contain all applicable requirements for emission units.
- 2) Fugitive emissions shall be included in the permit even if the source is not on the list of 26 categories in the definition for "major source."
- 3) The permit shall provide that the permittee shall comply with all conditions of the permit and that noncompliance shall be a violation of 401 KAR 52:020 and the Act and shall be grounds for enforcement action, including termination, revocation and reissuance, revision, or denial of a permit.
- 4) The permit shall provide that it shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance.
- 5) The permit shall provide that the permit may be revised, revoked and reissued, reopened and reissued, or terminated for cause, pursuant to 401 KAR 52:020, Section 18.
- 6) The permit shall provide that the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.
- 7) The permit shall provide that the permittee shall furnish information requested by the cabinet to determine:
 - a) If cause exists for modifying, revoking and reissuing, or terminating the permit; or
 - b) Compliance with the permit.
- 8) The permit shall provide that, upon request, the permittee shall furnish the cabinet with copies of records required by the permit.

- 9) The permit shall not convey property rights or exclusive privileges.
- 10) The permit shall contain a provision to ensure payment of emission fees by the source pursuant to 401 KAR 50:038.
- 11) The permit shall include all insignificant activities and their applicable requirements that are required to be included in the permit application pursuant to 401 KAR 52:020, Section 6.
- 12) The permit shall contain a provision that requires the source to submit an annual emissions certification pursuant to 401 KAR 52:020, Section 22.
- 13) The permit shall contain a provision stating that a permit revision shall not be required in approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided in the permit.
- 14) The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to portions of the permit.
- 15) The permit shall contain a provision stating that all emission limitations and standards contained in a permit or a compliance plan issued by the cabinet:
 - a) Shall be enforceable as a practical matter; and
 - b) Except for those specifically identified as state-origin requirements, shall be enforceable by the U. S. EPA and citizens.

Section
1b

STANDARD REQUIREMENTS

Title V permits issued by the Division for Air Quality shall contain the following standard provisions and requirements:

I. Emission Limitations and Standards

Permits shall contain emission limitations and standards, including operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance, including:

- 1) The origin of and authority for each term or condition, and any variation from the applicable requirement on which the term or condition is based.
- 2) If an applicable requirement of the Act is more stringent than an applicable requirement promulgated under 42 U.S.C. 7651 to 7651o (Title IV of the Act), both provisions shall be incorporated into the permit and shall be federally enforceable.
- 3) If a permit contains a determination that an alternative emission limit is equivalent to a limit contained in the SIP, the permit shall contain conditions to ensure that the resulting emissions limit is permanent, quantifiable, accountable, enforceable, and based on replicable procedures.
- 4) The permit shall not contain provisions that waive, or make less stringent, any limitation or requirement contained in the SIP or that is otherwise federally enforceable.

II. Duration and Renewal

The permit shall include a statement which provides that the permit shall expire and be renewed pursuant to 401 KAR 52:020, Section 12.

III. Monitoring Requirements

- 1) The permit shall contain all emissions monitoring and analysis procedures and test methods that are specified in the applicable requirements, including those in 42 U.S.C. 7414(a)(3) or 42 U.S.C. 7661c(b).
- 2) If the applicable requirement does not require periodic testing or monitoring, the permit shall contain periodic monitoring sufficient to yield reliable data from the relevant time period representative of the source's compliance with the permit.
- 3) Monitoring requirements shall be specified in the permit, which assure the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet this requirement.
- 4) The permit shall contain requirements covering the use, maintenance, and installation of monitoring equipment or methods.

IV. Recordkeeping Requirements

The permit shall incorporate all applicable recordkeeping requirements and shall include requirements for the following:

1) Records of Required Monitoring Information that Include:

- a) The date, place, and time of sampling or measurements;
- b) The dates analyses were performed;
- c) The company or entity that performed the analyses;
- d) The analytical techniques or methods used;
- e) The results of analyses; and
- f) The operating conditions at the time of sampling or measurement.

2) Records Retention

- a) Retention of records of all required monitoring data for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application; and

- b) Retention of support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

V. Reporting Requirements

- 1) The permit shall require the submittal of monitoring reports at least every six (6) months.
- 2) The permit shall require that all deviations from permit requirements shall be clearly identified in the reports, and all reports shall be certified by a responsible official pursuant to 401 KAR 52:020, Section 23.
- 3) The permit shall require the prompt reporting of deviations from permit requirements, including those attributed to upset conditions, the probable cause of the deviations, and corrective or preventive measures taken.
- 4) The cabinet shall define prompt reporting in the permit in relation to the applicable requirement and the degree and type of deviation likely to occur.

VI. Affected Sources in the Acid Rain Program

The permit shall contain the following conditions for affected sources under the Acid Rain Program:

- 1) Emissions shall not exceed allowances that the source lawfully holds under the Acid Rain Program.
- 2) Permit revisions shall not be required for increases in emissions authorized by allowances acquired under the Acid Rain Program if the increases do not require a permit revision in other applicable requirements.
- 3) Except as provided in the Acid Rain Program, there shall be no limit on the number of allowances held by a source.
- 4) A source shall not be allowed to use allowances in defense of noncompliance with an applicable requirement.

- 5) Allowances shall be accounted for pursuant to the procedures in 40 C.F.R. Part 73.

VII. Alternate Operating Scenarios

The permit shall contain terms and conditions for reasonably anticipated alternate operating scenarios identified by the source in its application and approved by the cabinet. The terms and conditions shall:

- 1) Require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility the scenario in which it is operating;
- 2) Extend the permit shield to all terms and conditions in each operating scenario; and
- 3) Ensure that the terms and conditions of each alternate operating scenario meet all applicable requirements and the requirements of 401 KAR 50:020.

VIII. Emissions Trading for Federally-Enforceable Emissions Caps

If requested by the applicant, the permit shall contain terms and conditions for trading emission increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap established in the permit independent of other requirements.

- 1) The permit shall include replicable procedures and terms that ensure emission trades are measurable and enforceable.
- 2) The cabinet shall not include in the trading provisions emissions that are not measurable, or for which there are no replicable procedures to enforce the trades.
- 3) The terms and conditions shall:
 - a) Include all terms required under Sections 1a to 1c of this document and 401 KAR 52:020, Sections 12 and 20, to determine compliance;

- b) Extend the permit shield to all terms and conditions that allow changes in emissions;
- c) Meet all applicable requirements and the requirements of 401 KAR 52:020; and
- d) Require written notice to the cabinet and the U.S. EPA seven (7) days prior to the change, and require that a copy of the notice be attached to the permit. The notice shall:
 - i. State when the change will occur;
 - ii. Describe any change in emissions that results; and
 - iii. Describe how these changes will comply with the terms of the permit.

Section
1C

COMPLIANCE REQUIREMENTS

Title V permits issued by the Division for Air Quality shall contain the elements for compliance, including but not limited to, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

I. Compliance Schedule

- 1) The permit shall contain a schedule of compliance as required in 401 KAR 52:020, Section 5(8)(b).
- 2) The permit shall contain a requirement for progress reports consistent with the compliance schedule, to be submitted semiannually or more frequently if specified in an applicable requirement or if deemed necessary to ensure compliance. Progress reports shall include:
 - a) Dates for achieving the activities, milestones, or compliance required in the schedule, and dates when these activities, milestones, or compliance requirements were achieved; and
 - b) An explanation of why dates in the compliance schedule were not or will not be met, and the preventive or corrective actions taken.

II. Compliance Certification

- 1) The permit shall require that a responsible official shall certify all submitted documents, pursuant to 401 KAR 52:020, Section 23.
- 2) The permit shall contain requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, and work practices, as applicable, pursuant to 401 KAR 52:020, Section 21.
- 3) The permit shall establish that compliance certifications shall be submitted annually or more frequently if specified in an applicable requirement or if deemed

necessary to ensure compliance.

- 4) The permit shall establish a means for monitoring the compliance of the source with its emission limits, standards, and work practices.
- 5) The permit shall establish that the compliance certification shall include:
 - a) The identification of each term or condition that is the basis of the certification;
 - b) The compliance status;
 - c) Whether compliance was continuous or intermittent;
 - d) The method used for determining the compliance status of the source, currently and over the reporting period; and
 - e) Other facts the cabinet may require to determine the compliance status of the source.
- 6) The permit shall include a requirement that all compliance certifications shall be submitted to the cabinet and the U.S. EPA.
- 7) The permit shall include requirements for monitoring and compliance certification consistent with 42 U.S.C. 7414(a)(3) and 42 U.S.C. 7661c(b).

III. Compliance Demonstration

The permit shall contain a specific condition, for a source that is constructing, reconstructing, or modifying that the source shall:

- 1) Demonstrate compliance with all requirements that become applicable as a result of the permit action, or which may be affected by the permit action pursuant to 401 KAR 50:055 and 401 KAR 52:020, Section 3(3), and
- 2) If compliance is not demonstrated within the prescribed timeframe provided in 401 KAR 50:055, the source shall operate thereafter only for the purpose of demonstrating compliance, unless otherwise authorized by a compliance plan or order of the cabinet.

IV. Inspection and Entry Requirements

The permit shall contain a requirement that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the cabinet or an authorized representative of the cabinet to perform the following functions:

- 1) To enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept, during reasonable times:
 - a) To access and copy any records required by the permit;
 - b) To inspect any facility, equipment (including monitoring and air pollution control equipment), practice, or operation required by the permit; and
 - c) To sample or monitor substances or parameters to determine compliance with the permit and all applicable requirements.
- 2) Reasonable times shall include:
 - a) During all hours of operation;
 - b) During normal office hours; and
 - c) During an emergency.

V. Other Provisions

The permit may contain other provisions, which the cabinet deems necessary to ensure compliance with applicable requirements.

CABINET PROCEDURES FOR PERMIT ISSUANCE

I. Completeness Review and Determination

- 1) The Cabinet shall log-in and review for completeness the following applications pursuant to 401 KAR 52:020, Section 9:
 - a) Initial permits for new sources;
 - b) The first Title V permit for existing sources;
 - c) Significant permit revisions; and
 - d) Renewal permits.
- 2) A complete application shall:
 - a) Include the information required in 401 KAR 52:020, Section 5; and
 - b) Be sufficient to evaluate the source and its application and to determine all applicable requirements.
- 3) The cabinet may request additional information at any time prior to the issuance of the permit.
- 4) The cabinet shall promptly provide notice to the applicant if the application is complete. Unless the cabinet provides a written notice of incompleteness to the applicant within sixty (60) days after the application is submitted, the application shall be deemed complete.

II. Permit Review and Issuance Procedures for Initial Title V Permits for New or Existing Sources, PSD/NSR Permits, Significant Permit Revisions for Title V Permits after the Initial Draft Permit Has Been Issued, and Title V Permit Renewals

- 1) The cabinet shall use the following provisions for the issuance of:
 - a) Initial Title V permits to new or existing sources;
 - b) Significant revisions to Title V permits after the initial draft permit has been issued; and
 - c) Renewal of Title V permits.
- 2) The cabinet shall issue a draft permit within sixty (60) days after the application is deemed complete.
- 3) For permit applications that are subject to PSD review pursuant to 401 KAR 51:017 or NSR in Non-attainment Area review pursuant to 401 KAR 51:052, the draft permit shall be the preliminary determination.
- 4) The cabinet shall provide notice of the draft permit for public and affected state review as provided in 401 KAR 52:100.
- 5) The cabinet shall submit the draft permit to the U.S. EPA if it is:
 - a) A preliminary determination for a permit subject to PSD/NSR review; or
 - b) A "draft/proposed" permit which the U.S. EPA has agreed to "parallel review" under the Title V Implementation Protocol.
- 6) If a draft/proposed permit is submitted to the U.S. EPA under parallel review and no substantial change is made to the permit as a result of comments received, it shall be issued as the final permit with no further review required.
- 7) The cabinet shall issue or deny a proposed permit within sixty (60) days after the public and affected state review is complete, and shall respond to comments received during the comment period.
- 8) For permit applications that are subject to PSD/NSR review:

- a) The proposed permit shall be the final determination;
 - b) The cabinet shall notify the applicant in writing of the final determination; and
 - c) The cabinet shall make the notice and public comments available for inspection at the same locations where the draft permit was available.
- 9) The cabinet shall submit the proposed permit to the U.S. EPA for its forty-five (45) day review. This review shall not amend or affect a final determination made for permits that are also subject to review under 401 KAR 51:017 or 401 KAR 51:052.
- 10) The cabinet shall issue or deny a final permit within eighteen (18) months after submittal of a complete application.
- 11)
 - a) A source shall be allowed to construct when the proposed permit is issued and must demonstrate compliance pursuant to 401 KAR 50:055 before the final permit is issued.
 - b) For sources that are subject to 401 KAR 51:017 or 51:052, the final determination under PSD/NSR procedures shall be the proposed permit for Title V purposes.
 - c) Existing sources getting their first Title V permit, renewal permit, or making a significant permit revision, shall operate in compliance with the existing permit, compliance plan, or order of the cabinet until the final permit is issued.
- 12) The cabinet shall not issue a permit, permit revision, or permit renewal until the affected states and the U.S. EPA have had an opportunity to review the proposed permit action pursuant to this section and 401 KAR 52:100.

III. Interim Review and Issuance Procedures

The cabinet shall use the following procedures for changes at sources that are required to obtain Title V permits, but whose applications are scheduled for review and processing at a later date.

- 1) Changes that qualify as major modifications or synthetic minor revisions under PSD/NSR rules shall be processed pursuant to Section 2-II of this document, except that the draft, proposed, and final permit shall cover only

the change.

- 2) Changes that require a case-by-case MACT determination pursuant to 42 U.S.C. 7412(g) shall be processed pursuant to Section 2-II, except that the draft, proposed, and final permit shall cover only the change.
- 3) Changes that qualify as administrative permit amendments shall be processed according to Sections 2-IV or V of this document, as applicable.
- 4) Changes that qualify as minor permit revisions shall be processed according to Sections 2-VI or VII of this document, as applicable.
- 5) Changes that qualify as off-permit or 502(b)(10) changes shall be processed according to Section 2-VIII of this document.
- 6) Changes that are not described in Section 2-III-1) to 5) but that cause an increase in potential to emit of five (5) or more tpy of a HAP, twenty-five (25) or more tpy of combined HAPs, or 100 or more tpy of another regulated air pollutant shall be processed as follows:
 - a) A draft permit covering only the change shall be issued within sixty (60) days after receipt of a complete application;
 - b) The draft permit shall be submitted for public review pursuant to 401 KAR 52:100, but not for U.S. EPA or affected state review;
 - c) The source may construct and operate in compliance with the draft permit until the final permit is issued; and
 - d) The cabinet shall issue or deny a final permit within sixty (60) days after the public review is complete, and shall respond to comments received during the comment period.
- 7) Changes involving construction or modification that are not described in Section 2-III.1) to 6) above shall be processed as follows:
 - a) The cabinet shall issue or deny a final permit covering only the change within sixty (60) days after receipt of a complete application; and
 - b) The source shall be allowed to construct and operate in compliance with the final permit.

IV. Permit Issuance Procedures for Administrative Permit Amendments Under 401 KAR 52:020, Section 13

- 1) The cabinet shall approve or deny the requested change within sixty (60) days after receiving an application for an administrative amendment.
- 2) If the requested change is denied, the cabinet shall notify the source, in writing, of the reason for denial and any action the source is required to take.
- 3) The cabinet may incorporate an administrative permit amendment into the permit without providing notice to the public or affected states.
- 4) The cabinet shall submit a copy of the revised permit to the U.S. EPA.
- 5) The cabinet shall notify the U. S. EPA of actions proposed under 401 KAR 52:020, Section 13(4) and, if requested, shall submit a copy of the preconstruction review permit and the application for an administrative permit amendment to the U.S. EPA for review.

V. Permit Issuance Procedure for Administrative Permit Amendments Under 401 KAR 52:020, Section 13(3) (*Change of Ownership or Name of Permittee*)

If no other change is made at the source, within sixty (60) days after receiving the required information for a change of source ownership, or name of permittee, the cabinet shall:

- 1) Reissue the permit to the new owner or permittee as an administrative amendment; or
- 2) Deny the permit. If the permit is denied, the cabinet shall specify the reason for denial and the action the source is required to take.

VI. Minor Permit Revisions Under 401 KAR 52:020, Section 14

The cabinet shall process minor permit revisions pursuant to the following:

- 1) The cabinet shall notify the U.S. EPA and affected states of the requested revision within five (5) workdays after receiving a complete application.

- 2) The cabinet shall not issue the final permit revision until after the U.S. EPA's forty-five (45) day review, unless the U.S. EPA notifies the cabinet that it will not object to issuing the permit revision.
- 3) Within ninety (90) days after receiving a complete application, or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review, whichever is later, the cabinet shall:
 - a) Issue the permit revision as proposed;
 - b) Deny the permit revision;
 - c) Determine that the proposed change does not meet the criteria for minor revisions and should be processed as a significant revision;
or
 - d) Revise the draft permit to meet the minor revision criteria and transmit a new proposed permit to the U.S. EPA.

VII. Group Processing of Minor Permit Revisions Under 401 KAR 52:020, Section 15.

The cabinet shall use the following procedures for requested group processing of minor permit revisions:

- 1) The cabinet shall notify the U.S. EPA and affected states of the requested permit revisions on a quarterly basis, or within five (5) work days after receipt of an application demonstrating that the aggregate of a source's pending applications do not equal or exceed the threshold specified in 401 KAR 52:020, Section 15(1)(b), whichever date is sooner.
- 2) Within 180 days after receiving a complete application, or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review, whichever is later, the cabinet shall:
 - a) Issue the permit revisions as proposed;
 - b) Deny the permit revisions;
 - c) Determine that one or more of the proposed changes do not meet the criteria for group processing of minor revisions and should be processed as a significant revision; or

- d) Revise the draft permit to meet the minor revision criteria and transmit a new proposed permit to the U.S. EPA.

VIII. Off-Permit & 502(b)(10) Changes Under 401 KAR 52:020, Section 17

For off-permit and 502(b)(10) changes, the cabinet shall:

- 1) Retain a copy of the notice submitted by the source with the source's permit; and
- 2) Incorporate the changes into the permit upon renewal.

IX. Reopening for Cause Under 401 KAR 52:020, Section 19

- 1) Reopening a permit shall follow the same procedures, including the provisions for review by the public, U.S. EPA, and affected states, as initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.
- 2) The cabinet shall notify the source of its intent to reopen the permit at least thirty (30) days prior to the reopening, unless shorter notice is warranted by an emergency.
- 3) If the U.S. EPA finds cause to terminate, modify, or revoke and reissue a permit, it shall notify the source and the cabinet in writing. If this occurs:
 - a) The cabinet shall submit to the U.S. EPA a proposal to terminate, revise, or revoke and reissue the permit within ninety (90) days after receipt of notice.
 - b) The U.S. EPA may extend this ninety (90) day period for an additional ninety (90) days if it determines that:
 - i. A new or revised permit application is needed; or
 - ii. The cabinet has requested additional information from the source.

- c) The U.S. EPA shall review the cabinet's proposed determination within ninety (90) days of receipt.
- d) If the U.S. EPA objects to any part of the cabinet's proposed determination, the cabinet shall have ninety (90) days from receipt of objection to terminate, modify, or revoke and reissue the permit in accordance with the objection.
- e) If the cabinet fails to submit a proposed determination or fails to resolve an objection made by the U.S. EPA:
 - i. The U.S. EPA shall notify the source of its intent to terminate, modify, or revoke and reissue the permit; and
 - ii. The source shall have thirty (30) days from receipt of notice to comment and to request a hearing.