

**MATERIAL INCORPORATED BY REFERENCE IN
401 KAR 52:030, FEDERALLY ENFORCEABLE PERMITS
FOR NON-MAJOR SOURCES**

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

**Cabinet Provisions and
Procedures for Issuing
Federally-Enforceable Permits for
Non-Major Sources**

Table of Contents

BACKGROUND	3
1a. GENERAL PROVISIONS	4
1b. STANDARD REQUIREMENTS	6
I. Emission Limitation and Standards	6
II. Duration and Renewal	6
III. Monitoring Requirements	6
IV. Recordkeeping Requirements.....	6
V. Reporting Requirements	7
VI. Alternate Operating Scenarios	7
1c. COMPLIANCE REQUIREMENTS	8
I. Compliance Schedule	8
II. Compliance Certification	8
III. Compliance Demonstration.....	9
IV. Inspection and Entry Requirements	9
V. Other Provisions	10
2. CABINET PROCEDURES FOR PERMIT ISSUANCE	11
I. Completeness Review and Determination	11
II. Permit Review and Issuance Procedures for Initial Permits Issued to New or Existing Sources, Significant Permit Revisions, and Permit Renewals	11
III. Permit Issuance Procedures for Administrative Permit Amendments Under 401 KAR 52:030, Section 13.....	13
IV. Permit Issuance Procedure for Administrative Amendments Under 401 KAR 52:030, Section 13(3) (<i>Change of Ownership or Name of Permittee</i>)	13
V. Minor Permit Revisions Under 401 KAR 52:030, Section 14	13
VI. Off-Permit & 502(b)(10) Changes Under 401 KAR 52:030, Section 17.....	14
VII. Reopening for Cause Under 401 KAR 52:030, Section 18	14

BACKGROUND

The term "synthetic minor" is frequently used both by the U.S. EPA and many state agencies to denote an otherwise major source whose emissions have been limited below the major source thresholds for either Title I or Title V of the Clean Air Act. The reason sources do this is to avoid the somewhat onerous application, permitting, and compliance requirements for Title V, and the very onerous, time-consuming, and expensive review requirements under the PSD and NSR in Non-attainment area rules in Title I, promulgated in 401 KAR 51:017 and 51:052. Kentucky prefers to distinguish between the Title V and Title I requirements that a source is attempting to avoid. Hence, we use the term "conditional major" for sources whose emissions are limited below the threshold for Title V, and "synthetic minor" for sources whose emissions are limited below the threshold for Title I. Since the major source thresholds for Title I are equal to or greater than those for Title V, a conditional major source is always a synthetic minor source as well. A synthetic minor source, however, may or may not be a conditional major. A synthetic minor source can also be major for Title V, and the permitting requirements for these sources is contained in 401 KAR 52:020, which covers all sources required to have a Title V permit.

This document specifies the terms and conditions which shall be included in permits issued by the cabinet under 401 KAR 52:030 for sources that are synthetic minor only or both conditional major and synthetic minor.

1a. GENERAL PROVISIONS

Permits issued by the Division for Air Quality that are synthetic minor only, or both conditional major and synthetic minor, shall contain terms and conditions consistent with the following general provisions:

- 1) The permit shall contain all applicable requirements for emission units that cause the source to be subject to 401 KAR 52:030.
- 2) 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 52:030 and the Clean Air Act and shall be grounds for enforcement action, including termination, revocation and reissuance, revision, or denial of a permit.
- 3) 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.
- 4) The permit shall provide that the permit may be revised, revoked and reissued, reopened and reissued, or terminated for cause.
- 5) 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.
- 6) 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.
- 7) The permit shall provide that, upon request, the permittee shall furnish the cabinet with copies of records required by the permit.
- 8) The permit shall not convey property rights or exclusive privileges.
- 9) The permit shall contain a provision to ensure payment of emission fees, if applicable, pursuant to 401 KAR 50:038.
- 10) The permit shall contain a provision that requires the source to submit an annual emissions certification pursuant to 401 KAR 52:030, Section 25(2) for sources that:
 - a) Are subject to 42 U.S.C. 7411 (NSPS);
 - b) Are subject to 42 U.S.C. 7412 (NESHAP); or

c) Emit 25 tons per year or more of VOC or NOx and are located in an ozone nonattainment area.

11)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.

12)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.

1b. STANDARD REQUIREMENTS

Conditional major and/or synthetic minor permits issued by the Division for Air Quality shall contain the following standard provisions and requirements:

I. Emission Limitation and Standards

Permits shall contain emission limitations and standards, including operational requirements and limitations that assure compliance with all applicable requirements, 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 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; and
- 3) 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 52:030, 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.
- 2) 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) Monitoring information
 - 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; and
- b) Retention of support information for a period of at least five (5) years. 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;
- 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; and
- 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. 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.

1c. COMPLIANCE REQUIREMENTS

Conditional major and/or synthetic minor 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

Permits shall contain:

- 1) A schedule of compliance as required in 401 KAR 52:030, Section 5(8)(b); and
- 2) 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;
- 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;
- 3) The permit shall establish that compliance certifications shall be submitted to the cabinet 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; and
- 6) The permit shall include a requirement that all compliance certifications shall be submitted to the cabinet and the U.S. EPA.

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 52:030, Section 3(3); and
- 2) That until compliance has been demonstrated, the source may operate only for the purpose of demonstrating compliance.

IV. Inspection and Entry Requirements

The permit shall contain a requirement that 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, at reasonable times:
 - a) To access and copy any records required by the permit;
 - b) To inspect any facility, equipment (including air pollution control equipment), practice, or operation; and
 - c) To sample or monitor substances or parameters to determine compliance with the permit and applicable requirements.
- 2) Reasonable times shall include:
 - a) During all hours of operation at the source,
 - 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.

2. 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 52:030, Section 9:
 - a) Conditional major/synthetic minor permits for new sources;
 - b) Initial conditional major/synthetic minor permits for existing sources that were previously minor and have become conditional major or synthetic minor following a change;
 - c) Significant permit revisions; and
 - d) Permit Renewals.
- 2) A complete application shall:
 - a) Include the information required in 401 KAR 52:030, 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) Unless the cabinet proves 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 Permits Issued to New or Existing Sources, Significant Permit Revisions, and Permit Renewals

- 1) The cabinet shall use the following provisions for the issuance of:
 - a) Initial permits to new or existing sources;
 - b) Significant revisions; and
 - c) Permit renewals.
- 2) The cabinet shall issue a draft permit within sixty (60) days after the application is deemed complete.

- 3) For synthetic minor permit applications, the draft permit shall be the preliminary determination.
- 4) The cabinet shall provide notice of the draft permit for public review as provided in 401 KAR 52:100.
- 5) The cabinet shall provide a copy of the public notice to the U.S. EPA and, if requested, a copy of the application and draft permit.
- 6) The cabinet shall respond to comments received during the public comment period.
- 7) If no substantial changes are made in the permit as a result of comments received, either from the public or the U.S. EPA, the cabinet shall issue a final permit within sixty (60) days after the close of the public comment period.
- 8) If the terms and conditions in the draft permit are substantially revised as a result of comments received, the cabinet shall issue a new draft permit and repeat the procedures in items 4) to 6) above.
- 9) For synthetic minor permit applications:
 - a) The final 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 final determination and public comments available for inspection at the same locations where the draft permit was made available.
- 10) A new or reconstructing source that is conditional major only shall be allowed to construct and operate in compliance with the draft permit until a final permit is issued or denied.
- 11) A new or reconstructing source that is also a synthetic minor shall not be allowed to construct or operate until the final permit is issued.
- 12) An existing source that is subject to an existing permit, authorization to operate, or order of the cabinet shall operate in compliance with those terms and conditions until a final permit is issued.
- 13) Modifications at sources that do not have source-wide permits shall be processed pursuant to 401 KAR 52:030, Section 13 to 16, as applicable.

III. Permit Issuance Procedures for Administrative Permit Amendments Under 401 KAR 52:030, Section 13

- 1) The cabinet shall approve or deny the requested change within sixty (60) days of receipt of the request for an administrative amendment;
- 2) If the permit or permit revision 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; and
- 4) The cabinet shall submit a copy of the revised permit to the U.S. EPA.

IV. Permit Issuance Procedure for Administrative Amendments Under 401 KAR 52:030, 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.

V. Minor Permit Revisions Under 401 KAR 52:030, Section 14

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

Within ninety (90) days after receiving a complete application for a minor permit revision, the cabinet shall:

- 1) Issue the permit revision as proposed;
- 2) Deny the permit revision; or
- 3) Determine that the proposed change does not meet the criteria for minor revisions and should be processed as a significant revision.

VI. Off-Permit & 502(b)(10) Changes Under 401 KAR 52:030, Section 17

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

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

VII. Reopening for Cause Under 401 KAR 52:030, Section 18

- 1) Reopening a permit shall follow the same procedures, including the provisions for review by the public, 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.