

**MATERIAL INCORPORATED BY REFERENCE IN
401 KAR 52:040, STATE-ORIGIN PERMITS**

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

**Cabinet Provisions and
Procedures for Issuing
State-Origin Permits**

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BACKGROUND

Permits issued to minor sources by the Division for Air Quality under 401 KAR 52:040 are not federally enforceable and therefore are not submitted for public, affected state, or U.S. EPA review.

Many of these sources are subject to federally-enforceable requirements, such as NSPS, NESHAP, or SIP requirements. However, except for those that are subject to prohibitory rules (the 50% rule and the hot-mix asphalt rule), they are "true" minor sources, or sources whose unrestricted potential to emit is less than the major source thresholds for Title V. And, since they are below the Title V thresholds, they are also below any threshold that would subject them to new source review under the PSD or NSR rules.

The majority of state-origin permits, as of this writing, are "fragmented" permits, i.e., they cover one or more emission units or affected facilities at a source but do not cover the entire source. Some existing permits are more than 20 years old, and it was not until Title V requirements were added to our permitting regulations in late 1993 that the cabinet began to require "source-wide operating permits." In an effort to begin cleaning up these old, fragmented permits, 401 KAR 52:040 requires that any source that does not have a source-wide permit must apply for one the next time a fragmented permit is due for renewal.

The permit content provisions contained in this document were written for source-wide permits but, to the extent possible and practicable, they should also be applied to revisions made to fragmented permits in the interim.

This document specifies the terms and conditions which will be included in all state-origin permits issued by the cabinet under 401 KAR 52:040.

1a. GENERAL PROVISIONS

State-origin 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 that cause the source to be subject to 401 KAR 52:040.
- 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 52:040.
- 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) Permits that are subject to federal NSPS or NESHAP standards shall contain a provision to ensure payment of emission fees by the source 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 52:040, Section 20 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 shall be enforceable as a practical matter.

1b. STANDARD REQUIREMENTS

State-origin 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 52:040, Section 15.

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) 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 assures 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) 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

State-origin 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

Permits shall contain:

- 1) A schedule of compliance as required in 401 KAR 52:040, Section 5(7(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.

III. Compliance Demonstration

The permit shall contain a specific condition, for a source that is constructing, reconstructing, or making a change that will cause its PTE to increase by 25% or more of a major source threshold, that the source shall not commence operation until:

- 1) Compliance has been demonstrated pursuant to 401 KAR 50:055 and 401 KAR 52:040, Section 12(4); 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; or
 - 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 52:040, Section 9:
 - a) Initial source-wide permits;
 - b) Permit actions subject to 401 KAR 52:040, Section 12; and
 - c) Permit renewals subject to 401 KAR 52:040, Section 15.
- 2) A complete application shall:
 - a) Include the information required in 401 KAR 52:040, 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 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 Issuance Timeline for Permit Actions Subject to 401 KAR 52:040, Section 12 (*Actions that Require a Permit in Advance*)

Within sixty (60) days after receiving a complete application for a permit action that requires a permit or permit revision in advance the cabinet shall:

- 1) Issue the permit or permit revision; or
- 2) Deny the permit or permit revision. 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.

III. Permit Issuance Timeline for Permit Revisions Subject to 401 KAR 52:040, Section 12 (*Actions that Do Not Require a Permit in Advance*)

Within ninety (90) days after receiving a complete application for a permit action that does not require permit revision in advance, the cabinet shall:

- 1) Issue the permit revision; or
- 2) Deny the permit revision. If the 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.

IV. Permit Issuance Timeline for Permit Actions Subject to 401 KAR 52:040, Section 13 (*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; 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.