

REGULATION 1.08 Administrative Procedures

Air Pollution Control District of Jefferson County Jefferson County, Kentucky

Relates to: KRS Chapter 77 Air Pollution Control and KRS Chapter 424 Legal Notices

Pursuant to: KRS Chapter 77 Air Pollution Control and KRS Chapter 424 Legal Notices

Necessity and Function: KRS 77.180 authorizes the Air Pollution Control Board to adopt and enforce all orders, rules, and regulations necessary or proper to accomplish the purposes of KRS Chapter 77. This regulation establishes the procedures for public hearings for certain actions by the Board and the District, the requirements for compliance plans and schedules and enforcement orders, the procedures for compliance with the Kentucky Open Records Act KRS 61.870 to 61.884, and the procedures for the adoption, amendment, and repeal of regulations.

SECTION 1 Public Hearings

- 1.1 A public hearing shall be held by the Air Pollution Control Board (Board) before any of the following actions are taken:
 - 1.1.1 The adoption of an order for a stationary source or person,
 - 1.1.2 The issuance of a compliance plan and schedule to a stationary source,
 - 1.1.3 The adoption of a new regulation,
 - 1.1.4 The adoption of an amended regulation,
 - 1.1.5 The repeal of a regulation,
 - 1.1.6 The revocation of a permit for cause by the Board pursuant to Regulation 2.09 *Causes for Permit Modification, Revocation, or Suspension* Section 2 *Permit Revocation by the Board*,
 - 1.1.7 The adoption of an alternate emission standard pursuant to Regulation 2.12 *Emissions Trading (Including Banking and Bubble Rules)*, Section 8 *Alternate Emission Standards (Bubbles)*,
 - 1.1.8 The use of unallocated emission reduction credits pursuant to Regulation 2.12, Section 5 *Use of Emission Reduction Credits*, and
 - 1.1.9 The modification of an environmental acceptability goal to a cancer risk exceeding 25×10^{-6} pursuant to Regulation 5.21 *Environmental Acceptability for Toxic Air Contaminants*, Section 2.
- 1.2 A public hearing may be held by the Board before any of the following actions are taken:
 - 1.2.1 A permit action for a stationary source that is subject to a public notice requirement in Regulation 2.07 *Public Notification for Title V, PSD, and Offset Permits; SIP Revisions; and Use of Emission Reduction Credits* or Regulation 2.16 *Title V Operating Permits*,
 - 1.2.2 A permit action for a stationary source that is subject to a public notice requirement in Regulation 2.17 *Federally Enforceable District Origin Operating Permits*,
 - 1.2.3 A permit action for a stationary source for which the District or the Board determines that there is significant public concern regarding the permit action or for which the public interest is better served by having an opportunity for a public hearing,
 - 1.2.4 The approval, revision, or discontinuance of an upset condition prevention program pursuant to Regulation 1.20 *Upset Condition Prevention Programs*,

- 1.2.5 The modification of an environmental acceptability goal to a cancer risk not exceeding 25×10^{-6} or to a Hazard Quotient exceeding 1.0 pursuant to Regulation 5.21, Section 2,
- 1.2.6 The issuance of a construction permit containing an emission standard developed pursuant to Regulation 5.21 section 3.1.2.2, and
- 1.2.7 The approval of a Risk Reduction Plan pursuant to Regulation 5.21.
- 1.3 A public hearing shall be held by the Board if requested by the permittee within 10 days after receipt of notice that a permit has been suspended pursuant to Regulation 2.09 *Causes for Permit Modification, Revocation, or Suspension*, Section 3 Permit Suspension by the District.

SECTION 2 Compliance Plans and Schedules

- 2.1 No person shall operate an affected facility resulting in the presence of air contaminants in the atmosphere in contravention of these regulations unless an approved compliance plan and schedule has been issued by the Board and is currently in effect.
- 2.2 An application for approval of a compliance plan and schedule authorized by this Section shall contain the following:
 - 2.2.1 The reason for requesting a compliance plan and schedule,
 - 2.2.2 A plan and schedule for compliance,
 - 2.2.3 The level of emissions expected during the period prior to compliance,
 - 2.2.4 A plan for emission monitoring and monthly reporting,
 - 2.2.5 Facts establishing that the proposed system is the best practical system of emission reduction, and
 - 2.2.6 Any other information required by the District or the Board to determine whether the compliance plan and schedule should be issued.
- 2.3 An approved compliance plan and schedule that is inconsistent with any provision of the Kentucky State Implementation Plan (SIP) shall be forwarded to the Kentucky Division for Air Quality for submittal to the EPA as a requested revision to the SIP; This compliance plan and schedule does not change the federally-enforceable SIP unless approved by the EPA.
- 2.4 Applications for compliance plans and schedules shall be signed by the corporate president or an authorized agent; by an equivalently responsible officer in the case of organizations other than corporations; by the stationary source owner or operator; or, in the case of political subdivisions, by an appropriate elected official. This signature shall constitute personal affirmation that the statements made in the application are true and complete.
- 2.5 The information submitted in the application shall, when specifically requested by the District or the Board, include an analysis of the characteristics, properties, and volume of the air contaminants based upon samples of air contaminants taken under maximum operating conditions. Failure to supply information required or deemed necessary by the District or the Board to enable the Board to act upon the compliance plan and schedule application shall result in disapproval of the compliance plan and schedule application.
- 2.6 If, for any reason, the District and the owner of the affected facility are unable to develop a mutually acceptable compliance plan and schedule, then the District may develop and propose an appropriate compliance plan and schedule to the Board. After a public hearing, the Board may issue a compliance plan and schedule incorporating, in its judgement, the most expeditious and practicable schedule for bringing the affected

facility into compliance. Once issued, this compliance plan and schedule, including all increments of progress, shall be legally enforceable.

- 2.7 Compliance plans and schedules shall include the terms and conditions that the Board deems necessary to insure compliance with the compliance plan and schedule and these regulations. These terms and conditions may include maintenance and availability of records relating to operations that may cause or contribute to air pollution, including periodic sampling of the affected facilities.
- 2.8 An application for a compliance plan and schedule shall be submitted to the District at least 40 days prior to the proposed hearing date, unless the District finds either of the following:
 - 2.8.1 The late request was beyond the control of the applicant, or
 - 2.8.2 The delay in holding the hearing until after the 40-day period may result in significant impairment or disruption of the applicant's business.

SECTION 3 Procedures at Public Hearings

- 3.1 Public hearings shall be held just prior to the monthly Board meeting, unless the Board Chair sets a different date. At any public hearing:
 - 3.1.1 The staff recommendation shall first be made by a representative of the District,
 - 3.1.2 A representative of the affected entity, if any, shall then be given the opportunity to present any statements to the Board regarding the recommendation,
 - 3.1.3 Any person who wishes to present evidence either in support of, or in opposition to, the proposed action may then make a statement,
 - 3.1.4 The representative of the affected entity shall then be given an opportunity to rebut any of the opposition statements,
 - 3.1.5 Further opportunity for comment may be granted at the discretion of the Chair, and
 - 3.1.6 Board members may ask questions of the District staff or any person addressing the Board.
- 3.2 At the conclusion of the statements, the public hearing shall be adjourned. The Board shall place the matter of the public hearing on its agenda for appropriate action, although the Board may delay action until a subsequent Board meeting. This provision for Board action does not apply if the subject of a public hearing is a construction or operating permit application or other matter to be ruled on by the District.

SECTION 4 Enforcement Orders

- 4.1 An enforcement order shall be issued to a stationary source that has been granted a compliance plan and schedule pursuant to this regulation. The order shall contain the terms and conditions imposed upon the stationary source by the Board. Failure of the owner or operator of the stationary source to comply with any term or condition of the order may result in an immediate enforcement action by the Board through either an enforcement order of the Board or through appropriate judicial action.
- 4.2 The Board may issue an order to prevent or abate a violation of these regulations by any person.

SECTION 5 [Reserved]

SECTION 6 Confidentiality and Open Records Policy

- 6.1 Definitions

Terms that are used in this Section that are not defined in this Section or Regulation 1.02 *Definitions* shall have the meaning given to them in the Kentucky Open Records Act, KRS 61.870 to 61.884.

- 6.1.1 "Emission data" means, with reference to any source of emission of any substance into the air, the following:
 - 6.1.1.1 Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing,
 - 6.1.1.2 Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source), and
 - 6.1.1.3 A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).
- 6.2 General Rule
Inspection of public records shall be governed by the Kentucky Open Records Act, KRS 61.870 to 61.884.
- 6.3 A request to inspect public records shall be in writing, signed by the applicant and with the applicant's name printed legibly on the application, directed to the attention of the Custodian of Records. The request shall describe the records with sufficient specificity to enable the District to identify and locate the public records sought.
- 6.4 A person may inspect public records:
 - 6.4.1 During the regular office hours of the District, 8:00 a.m. to 5:00 p.m., Monday through Friday, in the District's office, 850 Barret Avenue, Louisville, Kentucky 40204. After inspection, a person may request copies of the records, or
 - 6.4.2 By requesting a copy of the public records from the District that the District may send by mail, electronic mail, or facsimile.
- 6.5 Exemption from Public Inspection
 - 6.5.1 Records furnished to the District shall be available for inspection by the public unless the records or portions of the records are designated by the District as confidential or otherwise exempt from public inspection. Records furnished to the District may be exempt from public inspection only after the individual or company furnishing the records has requested in writing an exemption provided by the Kentucky Open Records Act in KRS 61.878 and the request has been approved by the District.
 - 6.5.2 Emission data shall not be exempt from public inspection.
 - 6.5.3 An applicant requesting a designation of a record as exempt shall provide all of the following:
 - 6.5.3.1 A statement identifying the specific exemption that would authorize the District to exempt the record from public inspection and a brief explanation of how the exemption applies to the record. The burden of showing the applicability of the exemption rests with the applicant,
 - 6.5.3.2 A copy of the furnished record completely filled out, including the exempt information, and a second copy of the furnished record omitting the information

requested to be designated as exempt but including a general description of the omitted information. The second copy shall be available for public inspection.

- 6.5.4 The applicant shall be notified in writing if the District determines that the record does not qualify as exempt from public inspection. The applicant shall, within 14 calendar days, resubmit the record without any marking as confidential. This determination may be appealed as provided by Regulation 1.19 *Administrative Hearings*.

SECTION 7 Procedures for the Adoption, Amendment, or Repeal of a Regulation

- 7.1 Prior to the commencement of the public comment period and public hearing on a proposed action on a regulation, a committee of the Board shall review the draft proposed action and the preliminary assessment of the regulatory impact of the proposed action on the regulated community and the public. An action includes the adoption of a new regulation, the amendment of an existing regulation, and the repeal of an existing regulation. The draft proposed action shall be available to the Board and the public prior to the day that the committee takes action on the draft proposed action. The regulatory impact assessment shall include the purpose of the draft proposed action, the estimated costs and savings associated with the action, the feasibility of all alternatives considered, and a comparison with any minimum or uniform standards under the Act or any other federal or state requirement. The District may rely on reasonably available information in developing the regulatory impact assessment. The regulatory impact assessment required by this section need not be developed when the proposed regulatory action is substantively identical to federal or state standards or requirements. As part of this review, the District shall report on its public outreach efforts on the proposed action. Upon committee approval of the proposed action and preliminary regulatory impact assessment for public review, the District shall schedule the public comment period and public hearing.
- 7.2 For the purpose of the regulatory impact assessment required by section 7.1:
- 7.2.1 The estimated costs and savings shall include the following:
- 7.2.1.1 The estimated number of affected facilities,
- 7.2.1.2 A description of the range of affected facilities, and
- 7.2.1.3 The estimated capital and operating costs and savings associated with compliance with the proposed action for affected facilities, and
- 7.2.2 The feasibility of alternatives considered shall include, for each alternative, a description of the following:
- 7.2.2.1 The approach for reducing emissions,
- 7.2.2.2 The estimated level of emission reductions,
- 7.2.2.3 The available pollution prevention measures, and
- 7.2.2.4 The reason that the alternative was chosen or not chosen.
- 7.3 The public shall be provided with at least 30 days' notice prior to the public hearing on a proposed action on a regulation. Legal notice shall be made in accordance with KRS Chapter 424 Legal Notices and any applicable EPA requirements.
- 7.4 At the time of the legal notice, copies of the proposed action shall be available from the District during normal working hours.
- 7.5 Prior to final action on a regulation:
- 7.5.1 The District shall prepare a preliminary response to all written comments on the proposed action received by the District within the time period specified in the public

- notice and, unless the Board takes action on the proposed action on the same day as the public hearing, oral comments made during the public hearing. The preliminary response shall be available to the Board and the public prior to the day that the Board takes action on the proposed action,
- 7.5.2 The Board shall consider written comments received by the District within the time period specified in the legal notice and oral comments made during the public hearing, and
 - 7.5.3 The District shall identify, for Board consideration, unresolved issues raised during the public comment period and the public hearing.
 - 7.6 The written record of final action on a regulation shall be made available to the public and shall include the following:
 - 7.6.1 A final response to all written comments on the proposed action received by the District within the time period specified in the public notice and oral comments made during the public hearing,
 - 7.6.2 A statement explaining the basis for any substantive amendments made to a proposed action on a regulation after its initial proposal, and
 - 7.6.3 A final regulatory impact assessment that shall include any additional information submitted pursuant to the public comment period and public hearing. The Board may rely on reasonably available information in assessing the regulatory impact of its regulatory action.

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