

REGULATION 2.16 Title V Operating Permits

Louisville Metro Air Pollution Control District Jefferson County, Kentucky

Pursuant To: KRS Chapter 77 Air Pollution Control

Relates To: KRS Chapter 77 Air Pollution Control

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 procedures for the District to issue operating permits under Title V of the Clean Air Act.

SECTION 1 Definitions

Terms used in this regulation that are not defined in this regulation shall have the meaning given them in Regulation 1.02.

- 1.1 "Acid Rain Program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 40 CFR Parts 72, 73, 75, 77, and 78.
- 1.2 "Act" means the Clean Air Act as defined in Regulation 1.02.
- 1.3 "Administrative Permit Revision" means a revision to a permit processed pursuant to section 5.4, that:
 - 1.3.1 Corrects typographical errors,
 - 1.3.2 Identifies a change in the name, address, or phone number of a person identified in the permit, or provides a similar minor administrative change at the source,
 - 1.3.3 Requires more frequent monitoring, recordkeeping, or reporting by the permittee,
 - 1.3.4 Allows for a change in ownership or operational control of a source, provided that all of the following provisions are met:
 - 1.3.4.1 A written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the District,
 - 1.3.4.2 The District determines that no other changes in the permit are necessary,
 - 1.3.4.3 The District provides public notice of the change in ownership or operation control and the proposed administrative permit revision,
 - 1.3.4.4 The District provides a 30-day period for submittal of public comment on the proposed administrative permit revision, and further the District provides an opportunity for a public hearing for unresolved, germane, non-frivolous issues,
 - 1.3.4.5 The permit contains an additional permit condition that notifies the source of the possibility of increased surveillance, and
 - 1.3.4.6 The permit contains an additional permit condition that allows the District to reopen the permit to increase monitoring, recordkeeping, and reporting requirements, and
 - 1.3.5 Incorporates into the Title V permit the requirements from preconstruction review for District construction permits authorized under an EPA approved District program, provided that such a program meets procedural requirements substantially equivalent to the requirements of 40 CFR 70.7 and 70.8 that would be applicable to the change if it were subject to review as a permit modification and compliance requirements equivalent to those contained in 70.6 of Part 70, or

- 1.3.6 Incorporates any other type of change which EPA has determined as part of the approved Part 70 program to be similar to those listed in this definition.
- 1.4 "Affected source" means a source that includes one or more affected units pursuant to Title IV of the Act.
- 1.5 "Affected states" means Kentucky and Indiana.
- 1.6 "Affected Unit" means a unit that is subject to the Acid Rain Program.
- 1.7 "Applicable requirement" means a federally enforceable standard or other requirement, or District origin requirement or standard, including, but not limited to, the following:
 - 1.7.1 A District origin standard or other requirement that is enforceable by the District but is not federally enforceable,
 - 1.7.2 Standards or other requirements in the District's part of the Kentucky SIP, including revisions to the SIP, promulgated in 40 CFR Part 52,
 - 1.7.3 Any standard or other requirement governing solid waste incineration under the Act Section 129,
 - 1.7.4 A New Source Performance Standard (NSPS) promulgated pursuant to the Act Section 111,
 - 1.7.5 A National Emission Standard for Hazardous Air Pollutants (NESHAPs) promulgated pursuant to the Act Section 112 and any other requirement of Section 112, including any requirement concerning accident prevention under Section 112(r)(7),
 - 1.7.6 Standards or other requirements in the Act Title IV Acid Rain program,
 - 1.7.7 Requirements established pursuant to Section 4 for monitoring and compliance certification,
 - 1.7.8 National ambient air quality standards pursuant to Regulation 3 or increments or visibility requirements pursuant to Regulation 2 as they apply to temporary sources permitted pursuant to Section 4,
 - 1.7.9 A permit requirement to use all available, practical, and reasonable methods to prevent and control air pollutants if emission standards have not been prescribed in a District regulation,
 - 1.7.10 Any standard or other requirement for consumer and commercial products under the Act Section 183(e),
 - 1.7.11 Any standard or other requirement for tank vessels under the Act Section 183(f),
 - 1.7.12 Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under the Act Title VI, unless EPA has determined that those requirements need not be contained in a Title V permit,
 - 1.7.13 Any other standard or requirement with future effective compliance dates,
 - 1.7.14 Any terms or conditions of a federally enforceable District construction permit or federal preconstruction permit,
 - 1.7.15 Any standard or other requirement under the Act Section 126(a)(1) and (c),
 - 1.7.16 Any requirement in 40 CFR Part 64 *Compliance Assurance Monitoring for Major Stationary Sources*, and
 - 1.7.17 Any other standard or requirement promulgated pursuant to the Act.
- 1.8 "Complete application" means an application for a permit or permit revision that meets the requirements of section 3.2.
- 1.9 "Designated representative" means a responsible person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to EPA pursuant to 40 CFR 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.

- 1.10 "District origin permit" means a permit that contains only District required conditions. If the permit contains one or more federally enforceable permit conditions, it is a federally enforceable permit.
- 1.11 "District origin permit condition" means a provision in the permit that is not required pursuant to the Act or any of the Act's applicable requirements, and is not federally enforceable.
- 1.12 "Draft permit" means the version of a permit which the District offers for public participation and affected state review as prescribed in Regulation 2.07.
- 1.13 "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source, including acts of God, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation in the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- 1.14 "Emissions fee" means the fee assessed to an air pollution source pursuant to Regulation 2.08.
- 1.15 "Emissions unit" or "facility" means a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant, any pollutant listed under the Act Section 112(b), or GHGs subject to regulation. This term is not meant to alter or affect the definition of the term "unit" as used in the Acid Rain program.
- 1.16 "Existing source" means a source that commenced operation on or before the effective date of this regulation.
- 1.17 "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision.
- 1.18 "Federally enforceable requirement" means all of the following as they apply to emission units at a source subject to this regulation, including any requirements that have been promulgated or approved by EPA through rulemaking at the time of permit issuance but have future effective compliance dates:
 - 1.18.1 Requirements that have been promulgated in Regulations 1 through 7, except where the requirements are of District or State origin and are not yet in the federally approved SIP at the time of permit issuance,
 - 1.18.2 Standards or other requirements in the District's part of the Kentucky SIP that implement the relevant requirements of the Act, including revisions to the plan promulgated in 40 CFR Part 52,
 - 1.18.3 Standard or other requirements promulgated pursuant to the Act Section 111,
 - 1.18.4 A NESHAP promulgated pursuant to the Act Section 112, including a requirement for accidental release prevention pursuant to the Act Section 112(r),
 - 1.18.5 Standards or requirements in the Act Title IV Acid Rain program,
 - 1.18.6 Requirements established pursuant to Section 4 for monitoring and compliance certification. These requirements are established pursuant to the Act Sections 504(b) and 114(a)(3),
 - 1.18.7 National ambient air quality standards or increments or visibility requirements pursuant to Regulations 2 and 3 as they apply to temporary sources permitted

- pursuant to section 4.5. These requirements are pursuant to the Act Sections 161 through 169 and 504(e),
- 1.18.8 A standard or other requirement for consumer or commercial products adopted pursuant to the Act Section 183(e),
 - 1.18.9 A standard or other requirement for tank vessels pursuant to the Act Section 183(f),
 - 1.18.10 A standard or other requirement to protect stratospheric ozone adopted pursuant to the Act Title VI unless EPA determines that those requirements need not be contained in the permit,
 - 1.18.11 A standard or other requirement promulgated pursuant to the Act Section 126(a)(1) and (c),
 - 1.18.12 Any requirement in 40 CFR Part 64 *Compliance Assurance Monitoring for Major Stationary Sources*, and
 - 1.18.13 Any other standard or requirement promulgated pursuant to the Act.
 - 1.19 "Final Permit" means the version of a permit issued by the District that has completed all the review procedures required in Regulation 2.07 and for which a final determination has been made by EPA.
 - 1.20 "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
 - 1.21 "General permit" means a permit that meets the requirements of section 4.4.
 - 1.22 "Greenhouse gases" (GHGs) means the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.
 - 1.23 "Insignificant activity" means the following:
 - 1.23.1 An affected facility that is not subject to a federally enforceable requirement, other than generally applicable requirements, does not involve the incineration of medical waste, and meets one of the following provisions:
 - 1.23.1.1 The affected facility is listed in Appendix A of Regulation 1.02 and the uncontrolled potential emissions of the affected facility do not exceed either 5 tons per year of a regulated air pollutant or 1,000 pounds per year of a hazardous air pollutant,
 - 1.23.1.2 The affected facility is determined to be insignificant on a case-by-case basis. For a case-by-case approval, all of the following provisions are met:
 - 1.23.1.2.1 The potential emissions of the affected facility do not exceed either 5 tons per year of a regulated air pollutant or 1,000 pounds per year of a hazardous air pollutant,
 - 1.23.1.2.2 The potential emissions of the affected facility are in conformance with the general prohibition of air pollution of Regulation 1.09, and
 - 1.23.1.2.3 Specific approval of the affected facility as an insignificant activity was made pursuant to approval of a Title V permit issuance, renewal, or revision that had undergone the full public participation process, including the notice, comment, and EPA objection provisions, in Regulation 2.07, or
 - 1.23.1.3 The affected facility is listed as an insignificant activity in the District's federally-approved Title V permit program,
 - 1.23.1.4 Other types of activities approved by the District for a specific stationary source on a case-by-case basis may be viewed on the District's List of Title V Operating Permits on its website.

- 1.23.2 For the purpose of this definition, potential emissions mean the emissions before air pollution control devices. An R&D facility that has the same SIC as the manufacturing facility or is considered a support facility at the manufacturing facility shall be considered a part of the stationary source, but may be treated as an insignificant activity if the R&D facility meets the qualifications of this definition. The emissions from insignificant activities shall be accounted for in determining major source status, and
- 1.23.3 For the purpose of an initial permit pursuant to this regulation, an affected facility that had been identified as an insignificant activity in a permit application that was, before December 20, 2000, determined by the District to be complete pursuant to section 3.2, and the District had determined that the potential emissions of the affected facility do not exceed either 5 tons per year of a regulated air pollutant or 1,000 pounds per year of a hazardous air pollutant, shall be treated as an insignificant activity. However, the District may require the applicant to submit additional information to demonstrate compliance with these requirements. The determination by the District that the potential emissions of an affected facility do not exceed these levels shall be subject to EPA review and approval.
- 1.24 "Major industrial grouping" means a source or group of sources whose pollutant emitting activities all have the same two-digit classification code as described in the Standard Industrial Classification (SIC) Manual (1987).
- 1.25 "Major source" means a stationary source, or a group of stationary sources, that are located on one property or two or more contiguous or adjacent properties under common control of the same person (or persons) and that belong to a single major industrial grouping which emits an air pollutant that is described as follows:
- 1.25.1 A major source pursuant to the Act Section 112 is defined as a stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year (tpy) or more of a hazardous air pollutant or such lesser quantity as EPA may establish by rule or 25 tpy or more of a combination of hazardous air pollutants. Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station, shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources. For radionuclides, "major source" shall have the meaning specified by EPA by rule,
- 1.25.2 A stationary source of air pollutants that emits or has the potential to emit 100 tpy or more of a regulated air pollutant or a pollutant subject to regulation, including any source of fugitive emissions of a pollutant. The fugitive emissions of a stationary source shall not be considered in determining if it is a major source unless it belongs to one of the following categories:
- 1.25.2.1 Coal cleaning plants with thermal dryers,
- 1.25.2.2 Kraft pulp mills,
- 1.25.2.3 Portland cement plants,
- 1.25.2.4 Primary zinc smelters,
- 1.25.2.5 Iron and steel mills,
- 1.25.2.6 Primary aluminum ore reduction plants,
- 1.25.2.7 Primary copper smelters,
- 1.25.2.8 Municipal incinerators capable of charging more than 250 tons of refuse per day,

- 1.25.2.9 Hydrofluoric, sulfuric, or nitric acid plants,
- 1.25.2.10 Petroleum refineries,
- 1.25.2.11 Lime plants,
- 1.25.2.12 Phosphate rock processing plants,
- 1.25.2.13 Coke oven batteries,
- 1.25.2.14 Sulfur recovery plants,
- 1.25.2.15 Carbon black plants (furnace process),
- 1.25.2.16 Primary lead smelters,
- 1.25.2.17 Fuel conversion plant,
- 1.25.2.18 Sintering plants,
- 1.25.2.19 Secondary metal production plants,
- 1.25.2.20 Chemical process plants,
- 1.25.2.21 Fossil fuel boilers (or combination thereof) totaling more than 250 million BTU/hr heat input,
- 1.25.2.22 Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,
- 1.25.2.23 Taconite ore processing plants,
- 1.25.2.24 Glass fiber processing plants,
- 1.25.2.25 Charcoal production plants,
- 1.25.2.26 Fossil-fuel fired steam electric plants of more than 250 million BTU/hr of heat input, or
- 1.25.2.27 Any other stationary source category, that as of August 7, 1980, is being regulated under the Act Section 111 or 112, or
- 1.25.3 A stationary source located in an area designated nonattainment pursuant to Regulation 3.01 including, for ozone nonattainment areas, sources with a potential to emit 100 or more tpy of VOCs or NO_x in areas classified as "moderate."
- 1.26 "Minor Permit Revision" means a permit review required to be processed pursuant to section 5.5.
- 1.27 "Minor source" means a stationary source that is not a major source and whose emission reductions were credited in the SIP toward the requirements of the Act or is subject to an NSPS or NESHAP standard promulgated pursuant to the Act Section 111 or 112.
- 1.28 "Permit" or "Title V Permit", unless the text clearly indicates otherwise, means an operating permit or group of operating permits covering a source that is issued, amended, or revised pursuant to this regulation.
- 1.29 "Permit revision" means a minor permit revision, a significant permit revision, or administrative permit revision.
- 1.30 "Phase II" means the Acid Rain program period beginning January 1, 2000, and continuing thereafter.
- 1.31 "Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant given its physical and operational design. 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 by EPA. This term 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.
- 1.32 "Program", unless the text clearly indicates otherwise, means an operating permit program installed and implemented pursuant to 40 CFR Part 70 (1992).

- 1.33 "Proposed permit" means the version of a permit that the District proposes to issue and submit to EPA for review pursuant to Regulation 2.07.
- 1.34 "Regulated air pollutant" means the following:
- 1.34.1 Nitrogen oxides,
 - 1.34.2 Volatile organic compounds,
 - 1.34.3 A pollutant for which a national ambient air quality standard has been promulgated,
 - 1.34.4 Any Class I or II substance subject to a standard promulgated under or established by the Act Title VI,
 - 1.34.5 Any pollutant that is subject to a standard promulgated under the Act Section 111,
 - 1.34.6 Any pollutant that is subject to a standard promulgated under the Act Section 112 or other requirements established under Section 112, including Sections 112(g), 112(j), and 112(r), and including the following:
 - 1.34.6.1 Any pollutant subject to requirements under Section 112(j). If EPA fails to promulgate a standard by the date established pursuant to Section 112(e), any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e), and
 - 1.34.6.2 Any pollutant for which the requirements of Section 112(g)(2) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirements.
- 1.35 "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 5.
- 1.36 "Responsible official" means one of the following:
- 1.36.1 For a corporation: a president, vice-president, secretary, or treasurer 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 or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - 1.36.1.1 The source employs more than 250 person or has gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or
 - 1.36.1.2 The delegation of authority to the representative is approved by the District,
 - 1.36.2 For a partnership or sole proprietorship, a general partner or the proprietor, respectively,
 - 1.36.3 For a municipal, state, federal, or other public agency, either a principal executive officer or ranking elected official. For this regulation, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA), or
 - 1.36.4 For affected sources, the designated representative.
- 1.37 "Significant Permit Revision" means a permit revision required to be processed pursuant to section 5.7.
- 1.38 "Source", unless the text clearly indicates otherwise, means a source required to obtain a permit pursuant to this regulation.
- 1.39 "State Implementation Plan" (SIP) means the most recently prepared plan or revision required by the Act Section 110 which has been submitted by the District and approved by Kentucky and EPA.

- 1.40 "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated air pollutant, any pollutant listed under the Act Section 112(b) or GHGs subject to regulation.
- 1.41 "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified in title 40, chapter I of the Code of Federal Regulations (CFR) subchapter C, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:
 - 1.41.1 GHGs shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions.
- 1.42 "Timely application" means an application that meets the requirements of section 3.1.1.
- 1.43 "Trivial activities" means any activity that is considered inconsequential, as determined by the District. The District will maintain a list of trivial activities. This list shall be made available to the public upon request.
- 1.44. "tpy CO₂ equivalent emissions" (CO₂e) represents an amount of GHGs emitted, computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98--Global Warming Potentials, and summing the resultant value for each to compute a tpy CO₂e.

SECTION 2 Applicability

- 2.1 Permitted sources

Except as provided in section 2.2, this regulation applies to all of the following sources in Jefferson County, Kentucky:

 - 2.1.1 A major source, as defined in this regulation,
 - 2.1.2 A minor source, as defined in this regulation,
 - 2.1.3 Any affected source under the Acid Rain Program, and
 - 2.1.4 Any other source in a source category designated by EPA.
- 2.2 Facilities exempt from the requirements in section 2.1 are:
 - 2.2.1 Asbestos sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 61.145,
 - 2.2.2 Sources and source categories that would be required to obtain a permit solely because they are subject to the requirements of 40 CFR 60 Subpart AAA, and
 - 2.2.3 Sources that would be required to obtain a permit solely because they are subject to the Act Section 112(r).
- 2.3 Fugitive emissions

Fugitive emissions from a source subject to this regulation shall be included in the permit application and the permit in the same manner as stack emissions.

SECTION 3 Permit Applications

- 3.1 Duty to Apply

The owner or operator of a source subject to this regulation shall submit a timely and complete permit application pursuant to this Section.

 - 3.1.1 Timely application

- 3.1.1.1 An existing major source that is subject to a federally enforceable requirement, and is required to apply for a Title V permit for the first time, shall submit a complete permit application as follows:
- 3.1.1.1.1 The District shall calculate a score for each such major source according to the following formula:

$$\text{Score} = (1 + n) (1 + p/2)$$
Where: n = number of operating permits at the source as of 11-15-93
p = number of pollutants, for which there is a national ambient air quality standard, emitted at the source
- 3.1.1.1.2 The District shall notify each such major source by December 30, 1993, as to whether the source is in the lowest 1/3 or higher 2/3 of these major sources.
- 3.1.1.1.3 Each major source which has a score in the lowest 1/3 of the major sources shall submit a complete permit application by December 15, 1994.
- 3.1.1.1.4 Each major source which has a score in the higher 2/3 of the major sources shall submit a complete permit application by April 22, 1997.
- 3.1.1.1.5 Notwithstanding the required submittal date in section 3.1.1.1.3, a company with two or more major sources located in Jefferson County which have a score in the lowest 1/3 of the major sources may, upon written notice to the District, delay the submittal of all but one permit applications until the date specified by section 3.1.1.1.4.
- 3.1.1.2 A source not previously required to obtain a permit under this regulation that becomes subject to an applicable requirement after the effective date of this regulation shall submit a complete permit application within 12 months after becoming subject to this regulation.
- 3.1.1.3 An existing minor source that is subject to a federally enforceable requirement or was included as a source category in the Jefferson County portion of the Kentucky SIP to meet the VOC reduction requirements of the Act and is required to apply for a Title V permit for the first time, shall submit a complete permit application within 12 months after EPA has promulgated a standard or by December 15, 1997, whichever is earlier, unless specifically exempted by EPA.
- 3.1.1.4 A source constructing, reconstructing, modifying, or performing a case-by-case MACT determination pursuant to the Act Section 112(j) after December 15, 1993, shall submit a complete permit application for a Title V permit revision within 12 months after commencing operation. If an existing permit would prohibit construction or a change in operation, the source must obtain a permit revision before commencing operation. Modification and major modification are defined in Regulations 2.04 and 2.05.
- 3.1.1.5 A source that is required to reopen an existing permit pursuant to the requirements of Section 5 must submit a complete application for a permit revision within six months after notification by the District that the permit must be reopened.
- 3.1.1.6 A complete permit application must be submitted to the District at least six months prior to the date of permit expiration and in accordance with Section 5 for permit renewal.
- 3.2 Complete application
For an application to be deemed complete:
- 3.2.1 An application must include all information required pursuant to section 3.5, except that applications for a permit revision must supply the information only as it relates to

- the proposed change. This information must be sufficient to evaluate the source and its application and to determine all applicable requirements,
- 3.2.2 A responsible official shall certify the submitted information pursuant to section 3.5.11,
- 3.2.3 Unless the District determines that an application is not complete within 60 days of receipt of the application as shown on the District tracking log, the application shall be deemed to be complete except as otherwise provided in Section 5. If, while processing an application determined to be complete, the District determines that additional information is necessary, it may request the information in writing and set a reasonable deadline for response. If the source fails to respond to the request for additional information within a reasonable time frame, the source loses the permit shield, if applicable,
- 3.2.4 The District shall maintain a checklist to be utilized in the completeness determination process. A copy of the checklist identifying the deficiencies in the application shall be provided to the applicant with the Notice of Incompleteness,
- 3.2.5 The source's ability to operate without a permit, as set forth in Section 5, shall be in effect from the date the application is deemed complete until the final permit is issued, if, and only if, the applicant submits all requested additional information by the specified deadline,
- 3.2.6 The source must include an action plan for compliance with the Act Section 112(r), and
- 3.2.7 A completeness determination shall not be required for permit revisions processed through minor permit revision procedures pursuant to Section 5.
- 3.3 Confidential information
A source that submits to the District information for a federally enforceable permit in a claim of confidentiality shall submit a copy of the information directly to EPA.
- 3.4 Duty to supplement or correct application
An applicant who fails to submit relevant facts or who has submitted incorrect information in a permit application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information. The applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it submitted a complete permit application but prior to release of a draft permit.
- 3.4.1 Failure to supplement or correct the application shall be a violation of this regulation and shall cause the source to be subject to applicable penalties including, but not limited to, the termination, revocation and reissuance, or revision of the permit, or denial of the permit application.
- 3.5 Standard application form and required information
- 3.5.1 Applications for permits shall be made on forms prepared by the District, except for Title IV portions of the application which shall be on permit application forms required by regulations promulgated under the Act Title IV.
- 3.5.2 An application shall include all information needed to determine the applicability of or to impose an applicable requirement. The District shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source and other information necessary to collect any permit fees owed under the fee schedules approved pursuant to Regulation 2.08.

- 3.5.3 Permit application forms and attachments shall include the company name and address or, if different, the plant name and address; owner's and agent's name; telephone number and name of plant site manager or contact; a description of the source's processes and products by SIC Code, including any associated with alternate scenarios identified by the source.
- 3.5.4 The application must contain the following information:
 - 3.5.4.1 A description of all emissions of regulated air pollutants and GHGs subject to regulation emitted from an emissions unit, unless the units are exempted in this section.
 - 3.5.4.1.1 For major sources, the applicable requirements for all emission points shall be included in the permit application,
 - 3.5.4.1.2 For minor sources, all applicable requirements for the emissions point that cause the source to be subject to this regulation shall be included in the permit application,
 - 3.5.4.1.3 Fugitive emissions from a source subject to this regulation shall be included in the permit application in the same manner as stack emissions,
 - 3.5.4.1.4 Insignificant activities shall be identified in the application, although they may be grouped by affected facility category. The application may exclude information that is not needed to determine which applicable requirements apply, whether the insignificant activity is in compliance with applicable requirements, and whether the stationary source is major. However, if the insignificant activity category is subject to a restriction on the size or production rate of the affected facility, then information regarding the size or production rate shall be included in the application, and
 - 3.5.4.1.5 Trivial activities need not be listed in the application.
 - 3.5.4.2 The District may require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source.
 - 3.5.4.3 Identification and description of all points of emissions described in section 3.5.4.1 in sufficient detail to establish the applicability of District regulations and to establish the basis for fees,
 - 3.5.4.4 Emissions rates in tons per year, to the extent necessary to determine applicable requirements, and in terms necessary to establish compliance consistent with the applicable standard reference tests method. The test methods are referenced in Regulation 1.04 and part 7 of the District's regulations,
 - 3.5.4.5 Fuels, fuel use, raw materials, production rates, and operating schedules to determine or regulate emissions,
 - 3.5.4.6 Identification and description of air pollution control equipment and compliance monitoring devices or activities,
 - 3.5.4.7 Limitations on source operation affecting emissions or any work practice standards, if applicable, for all regulated pollutants at the source,
 - 3.5.4.8 Other information required by an applicable requirement, including information related to stack height limitations developed pursuant to EPA's Stack Height Regulation in 40 CFR Part 51, and
 - 3.5.4.9 Complete calculations on which the information in sections 3.5.4.1 through 3.5.4.7 is determined to enable the District to evaluate compliance.
- 3.5.5 The application shall identify the following air pollution control requirements:

- 3.5.5.1 Citation and, to the extent necessary to establish applicability, a description of all applicable requirements, and
- 3.5.5.2 Description of, or reference to, any applicable test method for determining compliance with each applicable requirement.
- 3.5.6 The application must supply other specific information that may be necessary to implement and enforce other applicable requirements of District regulations or to determine the applicability of these requirements.
- 3.5.7 The application must supply an explanation of proposed exemptions from otherwise applicable requirements.
- 3.5.8 The application must provide any additional information required by the District to define alternative operating scenarios identified by the source pursuant to Section 4 or to define permit terms and conditions implementing Section 4. The additional information must include all items listed in section 3.5.
- 3.5.9 The application must provide a compliance plan for sources that contains the following:
 - 3.5.9.1 A description of the compliance status of the source with respect to all applicable requirements,
 - 3.5.9.2 For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with those requirements,
 - 3.5.9.3 For all applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements in a timely manner,
 - 3.5.9.4 A narrative description of how the source will achieve compliance with the requirements and a time table thereof for all requirements for which the source is not in compliance at the time of permit issuance,
 - 3.5.9.5 A compliance schedule that contains the following:
 - 3.5.9.5.1 A statement that the source will continue to comply with all the requirements for which the source is in compliance,
 - 3.5.9.5.2 A statement that the source will meet the requirements on a timely basis for applicable requirements that will become effective during the permit term,
 - 3.5.9.5.3 A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement,
 - 3.5.9.5.4 A schedule of compliance for each facility that is not in compliance with all applicable requirements at the time of permit issuance. The schedule shall include:
 - 3.5.9.5.4.1 A list of remedial measures,
 - 3.5.9.5.4.2 An enforceable sequence of actions, including:
 - 3.5.9.5.4.2.1 Milestones leading to compliance with all applicable requirements for which the facility will be in noncompliance at the time of permit issuance,
 - 3.5.9.5.4.2.2 The compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree, administrative order or Board order to which the source is subject, and
 - 3.5.9.5.4.2.3 The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based,

- 3.5.9.6 A schedule for submission of certified progress reports pursuant to Section 4 no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation or noncompliance,
- 3.5.9.7 In the Acid Rain program, the compliance plan content requirements specified in this section shall apply and be included in the Acid Rain portion of a compliance plan for an affected source, except as provided in the Acid Rain program for the schedule and method the source will use to achieve compliance with the Acid Rain emissions limitations. Nationally standardized forms shall be used as required by regulations promulgated under the Act Title IV.
- 3.5.10 The application must identify the requirements for compliance certification, including the following:
 - 3.5.10.1 A certification of compliance with all applicable requirements by a responsible official pursuant to this section,
 - 3.5.10.2 A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods. Notwithstanding any other provision in the Jefferson County portion of the Kentucky SIP approved by EPA, for the purpose of submission of compliance certifications an owner or operator is not prohibited from using monitoring as required under 40 CFR 70.6(a)(3) and incorporated into a federally enforceable operating permit in addition to any specified compliance methods,
 - 3.5.10.3 A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the District, and
 - 3.5.10.4 A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring and compliance certification requirements.
- 3.5.11 Certification by a Responsible Official

Application forms, reports, and compliance certifications submitted to the District shall contain certification by a responsible official, as defined in Section 1, of the truth, accuracy, and completeness of the documents. This, and other certifications required in this regulation, shall state that:

"Based on information and belief formed after reasonable inquiry, I certify that the statements and information in this document are true, accurate, and complete."

SECTION 4 Permit Content

- 4.1 Standard Permit Requirements

A permit issued pursuant to this regulation must include the following elements:

 - 4.1.1 Specify emission limitations and standards applicable to the source and must include operational requirements and limitations that assure compliance with applicable requirements at the time of issuance,
 - 4.1.2 Specify and reference the origin of and authority for each term or condition and any variation from the applicable requirements upon which the term or condition is based. Where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by EPA,
 - 4.1.3 A statement that the source shall comply with all applicable requirements,
 - 4.1.4 If the SIP allows the determination of an alternative emission limit at a source subject to this regulation and equivalent to that contained in the plan to be made in the permit

- issuance, renewal, or significant permit revision process, then a permit containing the equivalency determination must contain conditions to ensure that the resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicative procedures,
- 4.1.5 For major sources, all applicable requirements for emission units,
 - 4.1.6 For minor sources, all applicable requirements for emission units that cause the source to be subject to this regulation,
 - 4.1.7 Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, even if the source is not included in the list of sources in section 1.24.2,
 - 4.1.8 Permit duration
 - 4.1.8.1 Initially, one-fifth of the permits issued on the basis of applications received pursuant to Section 3 shall expire during each 12 month period beginning November 15, 1999, so that all permits have expired by November 14, 2004. Expiration dates shall be assigned by the District based on the District's initial requests for application submittals.
 - 4.1.8.2 A statement shall be included that provides that the permit shall expire on a specific date. It shall also state that this permit may only be renewed pursuant to section 5.3.
 - 4.1.8.3 Permits shall remain in effect for a fixed term of five years. The permit shall commence on the date of issuance,
 - 4.1.9 Monitoring and related recordkeeping and reporting requirements
 - 4.1.9.1 The permit must contain the following monitoring requirements:
 - 4.1.9.1.1 All required emissions monitoring and analysis procedures or test methods,
 - 4.1.9.1.2 If the applicable requirement does not require periodic testing, instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit shall be reported pursuant to section 4.1.9.3. Such monitoring requirements must assure use of terms, test methods, units, averaging periods, and other statistical conventions pursuant to the applicable requirement. Recordkeeping provisions shall be sufficient to meet the requirements of this section, and
 - 4.1.9.1.3 Requirements covering the use, maintenance, and installation of monitoring equipment or methods, as necessary and appropriate,
 - 4.1.9.2 Each permit shall incorporate the following recordkeeping requirements, if applicable:
 - 4.1.9.2.1 Records of required monitoring information that include the following:
 - 4.1.9.2.1.1 The date, place as defined in the permit, and time of sampling or measurements,
 - 4.1.9.2.1.2 The date analyses were performed,
 - 4.1.9.2.1.3 The company or entity that performed the analyses,
 - 4.1.9.2.1.4 The analytical techniques or methods used,
 - 4.1.9.2.1.5 The results of analyses, and
 - 4.1.9.2.1.6 The operating conditions as existing at the time of sampling or measurement,

- 4.1.9.2.2 Retention of records of all required monitoring data and support information for a period of five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all records required by the permit. Where appropriate, the permit may specify that records be maintained in a computerized form that is readily accessible during reasonable hours,
- 4.1.9.2.3 Unless otherwise mandated by applicable requirements or regulations, a permit may require that records be maintained of representative or periodic samples of monitoring data where such data are, in the judgment of the District, sufficient to demonstrate continued compliance with the terms and conditions of the permit,
- 4.1.9.3 Each permit shall incorporate all applicable reporting requirements and shall require the following, if applicable:
 - 4.1.9.3.1 Submittal of required monitoring reports at least every six months. All deviations from permit requirements shall be clearly identified in the reports, and all reports shall be certified by a responsible official pursuant to Section 3,
 - 4.1.9.3.2 Identification and prompt reporting of deviations from permit requirements, including those caused by upset conditions as defined in the permit, the probable cause of the deviations, and corrective actions or preventive measures taken. Reporting shall be as defined in Regulation 1.07 and
- 4.1.9.4 Unless determined by the District to be appropriate, the permit need not contain monitoring, recordkeeping, and reporting requirements for insignificant activities other than those contained in generally applicable requirements to which the insignificant activity is subject,
- 4.1.10 A permit condition prohibiting emissions exceeding allowances that the source lawfully holds in the Acid Rain program,
- 4.1.11 A permit revision shall not be required for increases in emissions authorized by allowances acquired pursuant to the Acid Rain program if the increases do not require a permit revision in another applicable requirement,
 - 4.1.11.1 A limit shall not be placed on the number of allowances held by the source. The source may not, however, use allowances in defense of noncompliance with other applicable requirements, and
 - 4.1.11.2 Allowances shall be accounted for according to the procedures established in 40 CFR Part 73,
- 4.1.12 A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to portions of the permit,
- 4.1.13 Provisions stating the following:
 - 4.1.13.1 The permittee shall comply with all terms and conditions of the permit. Any noncompliance shall constitute a violation of the Act and of this regulation and shall cause the source to be subject to enforcement actions including, but not limited to, the termination, revocation and reissuance, or revision of a permit, or denial of a permit renewal application,
 - 4.1.13.2 It shall not be a defense for a permittee in an enforcement action that it would have been necessary for the permittee to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit,

- 4.1.13.3 The permittee's failure to halt or reduce activity may be a mitigating factor in assessing penalties for noncompliance if the health, safety or environmental impacts of halting or reducing operations would be more serious than the impacts of continued operation,
- 4.1.13.4 The permit may be revised, revoked, reopened and reissued, or terminated for cause. 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,
- 4.1.13.5 The permit shall not convey property rights of any sort or grant exclusive privileges,
- 4.1.13.6 The permittee shall furnish to the District within a reasonable time information that the District may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the District upon request copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish the records directly to EPA with a claim of confidentiality should such records be required by EPA, and
- 4.1.13.7 Notwithstanding any other provision in the Jefferson County portion of the Kentucky SIP approved by EPA, any credible evidence may be used for the purpose of establishing whether a person is in compliance with, has violated, or is in violation of any such plan.
 - 4.1.13.7.1 Information from the use of the following methods is presumptively credible evidence of compliance or whether a violation has occurred at the source:
 - 4.1.13.7.1.1 Monitoring as required under 40 CFR 70.6(a)(3) and incorporated in a federally enforceable operating permit, and
 - 4.1.13.7.1.2 Compliance methods specified in the Jefferson County portion of the Kentucky SIP.
 - 4.1.13.7.2 The following testing, monitoring, or information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:
 - 4.1.13.7.2.1 Any federally enforceable monitoring or testing methods, including those in 40 CFR Parts 51, 60, 61, and 75, and
 - 4.1.13.7.2.2 Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in sections 4.1.13.7.1 or 4.1.13.7.2.1,
- 4.1.14 A provision to ensure that a source subject to this regulation shall pay fees to the District pursuant to the fee schedule in Regulation 2.08,
- 4.1.15 A provision that failure to pay emission fees within 60 days of the due date may result in the suspension of the source's permit to operate until the fee is paid, except in extenuating circumstances according to Regulation 2.08,
- 4.1.16 Emissions Trading. A permit revision shall not be required in approved economic incentives, emissions trading and other similar programs or processes for changes that are provided for in the permit,
- 4.1.17 Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the District which:
 - 4.1.17.1 Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario in which it is operating,

- 4.1.17.2 May extend the permit shield described in section 4.6 to all terms and conditions in each operating scenario, and
- 4.1.17.3 Shall ensure that the terms and conditions of each alternative scenario meet all applicable requirements of all District regulations and 40 CFR Part 70,
- 4.1.18 Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for the trading increases and decreases without a case-by-case approval of each emissions trade which:
 - 4.1.18.1 Shall include all terms required in sections 4.1 and 4.3 to determine compliance,
 - 4.1.18.2 May extend the permit shield described in section 4.6 to all terms and conditions that allow increases and decreases in emissions, and
 - 4.1.18.3 Shall meet all applicable requirements, and
- 4.1.19 Where another applicable requirement is more stringent than a requirement of the Acid Rain Program, both requirements shall be in the permit and both shall be federally enforceable.
- 4.2 Federally Enforceable Requirements
 - 4.2.1 The District shall include a notification in the permit that all terms and conditions in a permit, including provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act. This is applicable except for the provisions that are specifically designated as District origin permit conditions.
 - 4.2.2 Notwithstanding section 4.2.1, the District shall specifically designate as not being federally enforceable terms any conditions included in the permit that are not required by the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to any other requirements of this regulation.
- 4.3 Compliance Requirements

All permits shall contain the following elements for compliance:

 - 4.3.1 Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Documents, including reports, shall be certified by a responsible official pursuant to section 3.5.11.
 - 4.3.2 Requirements that the permittee shall allow the District or an authorized representative to perform the following:
 - 4.3.2.1 Enter the premises of a source to inspect any emissions-related activity or records required in the permit,
 - 4.3.2.2 Have access to and copy records required under the permit during reasonable hours,
 - 4.3.2.3 Inspect facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required in the permit during reasonable hours, and
 - 4.3.2.4 Sample or monitor substances or parameters to assure compliance with the permit or any applicable requirements during reasonable hours.
 - 4.3.3 A schedule of compliance as required in section 3.5.9.
 - 4.3.4 Progress reports on the schedule of compliance required in section 4.3.3 shall be submitted at least semiannually, or at a more frequent period if specified in an applicable requirement or by the District. Progress reports shall contain:

- 4.3.4.1 Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when activities, milestones, or compliance were achieved, and
- 4.3.4.2 An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.
- 4.3.5 Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits must include the following:
 - 4.3.5.1 The frequency, as specified in an applicable requirement or by the District but not less than annually, of submissions of compliance certification,
 - 4.3.5.2 A means for monitoring the compliance of the source with its emissions limitations, standards, and work practices,
 - 4.3.5.3 A requirement that the compliance certification include the following:
 - 4.3.5.3.1 The identification of each term or condition of the permit that is the basis of the certification,
 - 4.3.5.3.2 The compliance status,
 - 4.3.5.3.3 Whether compliance was continuous or intermittent,
 - 4.3.5.3.4 The method used for determining the compliance status of the source currently and over the reporting period pursuant to this section,
 - 4.3.5.3.5 Other facts as the District may require to determine the compliance status of the source, and
 - 4.3.5.3.6 A current list of insignificant activities, including an identification of the additions and removals of insignificant activities that occurred during the preceding year,
 - 4.3.5.4 A requirement that all compliance certifications be submitted to EPA as well as to the District,
 - 4.3.5.5 Additional specified requirements for monitoring and compliance certification,
 - 4.3.5.6 A specific condition that the source shall not be allowed to operate unless it has demonstrated compliance pursuant to Regulation 1.05 or is operating in accordance with the compliance plan that has met the review requirements of this regulation and Regulation 2.07, and
 - 4.3.5.7 Other provisions required by the District.
- 4.4 General Permits
 - 4.4.1 The District may, after notice and opportunity for the public participation provided in Regulation 2.07, issue a general permit covering numerous similar sources. A general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the District shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions in this section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources except as provided in the Acid Rain program.
 - 4.4.2 Sources subject to this regulation that qualify for general permit shall apply to the District for coverage in the terms of the general permit or shall apply for a permit pursuant to Section 3. The District may provide in the general permit for applications which deviate from the requirements of Section 3 if the applications meet the requirements of Regulation 2.07, and include all information necessary to determine

qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures in Regulation 2.07, the District may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

4.4.3 A source operating under a general permit is subject to enforcement action for operating without a permit if the District determines that the source is not to be qualified for the general permit.

4.5 Temporary Sources

The District may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one change of location during the term of the permit. An affected source shall not be permitted as a temporary source. Permits for temporary sources shall include:

4.5.1 Conditions that will assure compliance with all applicable requirements at all authorized locations,

4.5.2 Requirements that the owner or operator notify the District at least 30 days in advance of each change in location,

4.5.3 Conditions that assure compliance with provisions of this regulation, and

4.5.4 No Acid Rain source may be permitted as a temporary source.

4.6 Permit Shield

4.6.1 Except as provided in this Regulation, the District may expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with applicable requirements as of the date of permit issuance if:

4.6.1.1 The applicable requirements are included and are specifically identified in the permit, or

4.6.1.2 The District, in acting on the permit application or permit revision application, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

4.6.2 A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

4.6.3 Nothing in this paragraph or in a permit shall alter or affect the following:

4.6.3.1 The Act Section 303 Emergency powers including the authority of EPA in that Section,

4.6.3.2 The liability of an owner or operator of a source for a violation of applicable requirements prior to or at the time of permit issuance,

4.6.3.3 The applicable requirements of the Acid Rain program, or

4.6.3.4 The ability of EPA to obtain information from a source pursuant to the Act Section 114.

4.7 Emergency Provision

4.7.1 Effect of an emergency.

The District shall include in each permit a provision stating that:

"An emergency shall constitute an affirmative defense to an enforcement action brought for noncompliance with the technology-based emission limitations if the conditions in Regulation 2.16 are met."

4.7.2 The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

- 4.7.2.1 An emergency occurred and that the permittee can identify the cause of the emergency,
- 4.7.2.2 The permitted facility was at the time being properly operated,
- 4.7.2.3 During the period of the emergency the permittee expeditiously took all reasonable steps, consistent with safe operating practices, to minimize levels of emissions that exceeded the emission standards or other requirements in the permit, and
- 4.7.2.4 The permittee submitted notice meeting the requirements of Regulation 1.07 of the time when emissions limitations were exceeded because of the emergency. This notice must fulfill the requirement of this section, and must contain a description of the emergency, steps taken to mitigate emissions, and corrective actions taken.
- 4.7.3 In an enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
- 4.7.4 This provision is in addition to any emergency or upset provision contained in an applicable requirement.

SECTION 5 Permit Issuance, Renewal, Reopenings, and Revisions

An owner or operator shall not construct, reconstruct, modify or operate a source unless a permit has been issued pursuant to Regulation 2 or this regulation, whichever is applicable.

5.1 Action On Application

- 5.1.1 A permit, permit revision, or permit renewal may be issued only if all of the following conditions have been met:
 - 5.1.1.1 The District has received a complete application pursuant to Section 3 for a permit, permit revision, or permit renewal,
 - 5.1.1.2 Except for permit changes qualifying for administrative permit revisions, changes qualifying for minor permit revision procedures, and District origin permits, the District has complied with the requirements for public participation in Regulation 2.07,
 - 5.1.1.3 The District has complied with the requirements for notifying and responding to affected states in Regulation 2.07,
 - 5.1.1.4 The conditions of the permit provide for compliance with all applicable requirements, and
 - 5.1.1.5 EPA has received a copy of the proposed permit and notices required in Regulation 2.07 and has not objected to issuance of the permit within the time period in Regulation 2.07.
- 5.1.2 Except as provided in the Acid Rain program for the permitting of affected sources, the District shall take final action on each permit application, including a request for permit revision or renewal, within 18 months after receiving a complete application.
- 5.1.3 To the extent feasible, permit applications shall be acted upon in the order of receipt of complete permit applications.
- 5.1.4 The District shall promptly provide notice to the applicant as to whether the permit application is complete. Unless the District requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of a permit application, the permit application shall be deemed complete.
 - 5.1.4.1 The District shall not require a completeness determination for permit applications submitted through minor permit revision procedures.

- 5.1.5 The District shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The District shall provide this statement to EPA and to any other person who requests it.
- 5.1.6 Final permit action by the District may be reviewed in Jefferson Circuit Court by the applicant, any person who participated in the public-participation process provided pursuant to this regulation, the Act, and 40 CFR 70.7(h), or any other person who could obtain judicial review under Kentucky law. Any requirement in this regulation limiting access to judicial review shall not exceed the corresponding limits on judicial review imposed by the standing requirements of the United States Constitution Article III.
- 5.1.7 The opportunity for judicial review of a final permit action in Jefferson Circuit Court described in section 5.1.6 is the exclusive means for obtaining judicial review of the terms and conditions of permits. Petitions for judicial review must be filed no later than 30 days after the petitioner has had actual notice of the determination or could reasonably have had notice after the final permit action. Where petitions for judicial review are based solely on grounds arising after the 30-day deadline for judicial review, the petitions may be filed no later than 30 days after the new grounds for review arise. If the final permit action being challenged is the District's failure to take final action, a petition for judicial review may be filed at any time before the District denies that permit or issues the final permit.
- 5.1.8 The submittal of a complete application shall not affect the requirement that a source have a construction permit pursuant to Regulation 2.03.
- 5.1.9 Coordination of the permit to construct with the permit to operate
 - 5.1.9.1 A source which is operating to demonstrate compliance shall not be considered to have commenced operation under the context of this regulation.
 - 5.1.9.2 A source that proposes construction or modifications which are not a major source construction or major modification as defined in Regulation 2 but which will cause the source to become major shall also submit a complete operating permit application pursuant to Section 3 within 12 months of commencing operation.
 - 5.1.9.3 For a proposed source that is subject to District regulations only, permitting procedures shall be as defined in Regulations 2.01 and 2.02.
- 5.2 Requirement For An Operating Permit
 - Except as provided in sections 5.3 and 5.5, a source subject to this regulation shall not operate after the time that it is required to submit a timely and complete application except in compliance with a permit issued pursuant to this regulation.
 - 5.2.1 Action on the application. The District may issue an operating permit, a significant permit revision or permit renewal if, and only if, the following conditions have been met:
 - 5.2.1.1 If a source submits a timely and complete application for permit issuance, significant revision, or renewal, then the source's failure to have a permit is not a violation until the District takes final action on the permit application. This protection shall cease to apply if, subsequent to completeness determination and as required by Section 3, the applicant fails to submit by the deadline specified in writing by the District additional information required to process the application,
 - 5.2.1.2 The District has complied with the requirements for notifying and responding to affected states,

- 5.2.1.3 EPA has received a copy of the proposed permit and required notices and has not objected to issuance of the permit within the prescribed time limit,
- 5.2.1.4 The District provides notice to the applicant as to whether the application is complete. Unless the District requests additional information or otherwise notifies the applicant that the application is complete within 60 days of posted receipt of the application, the application shall be deemed complete,
- 5.2.1.5 The District provides to EPA and to any requester a statement that sets forth the legal and factual basis for the draft permit conditions including references to the applicable statutory or regulatory provisions,
- 5.2.1.6 A source which has submitted a complete application for an operating permit may operate from the date the application is deemed complete until the final permit is issued if the applicant submits all requested additional information by the specified deadlines, and
- 5.2.1.7 Except as provided in the Acid Rain program for permitting affected sources, the District takes final action on each permit application, including permit revisions or renewal, within 18 months after receiving the complete application.
- 5.2.2 For permit applications submitted pursuant to Section 3, final action shall be taken on the initial group of District selected sources' applications during each 12 month period beginning 12 months after the effective date of this regulation and ending 48 months after the effective date of this regulation or 12 months after the approval or partial approval of the program by EPA and ending 48 months after that date whichever is later.
- 5.3 Permit Renewal, Expiration and Application
 - 5.3.1 Permits being renewed shall be subject to the same procedural requirements, including those for public participation, and for affected state and EPA review, that apply to initial permit issuance.
 - 5.3.2 Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted pursuant to this regulation.
 - 5.3.3 If a timely and complete application for permit renewal is submitted to the District and the District fails to take final action on issuing or denying the renewal permit on or before the end of the previous permit's date of expiration, the source shall continue to operate under the previous permit. The shield shall be in effect until the renewal permit is issued or denied.
 - 5.3.4 The District shall notify affected sources in writing between 18 months and 12 months of the permit's expiration of the requirement to submit a new and complete operating permit application.
- 5.4 Administrative Permit Revisions
 - 5.4.1 Administrative permit revisions for the purposes of the Acid Rain portion of the permit shall be governed by regulations of the Acid Rain program.
 - 5.4.2 An administrative permit revision may be made by the District pursuant to the following:
 - 5.4.2.1 The District shall take no more than 60 days from the receipt of a request for an administrative permit revision to take final action on the request. It may incorporate the changes without providing notice to the public or affected states provided that it designates that the permit amendments were made pursuant to this Section, and
 - 5.4.2.2 The District shall submit a copy of the amended permit to EPA.

- 5.4.3 The District may, upon taking final action granting a request for an administrative permit revision, allow coverage by the permit shield pursuant to Section 4.
- 5.4.4 The source may make the requested change addressed in the administrative permit revision immediately upon submittal of the request.
- 5.5 Minor Permit Revision Procedures
 - Except as provided in the Acid Rain Program, the procedures for revising a permit are as follows:
 - 5.5.1 Minor permit revision procedures may be used only for those permit revisions that:
 - 5.5.1.1 Do not violate an applicable requirement,
 - 5.5.1.2 Do not involve significant changes to existing monitoring, reporting, or record-keeping requirements in the permit,
 - 5.5.1.3 Do not require or have not changed any case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis, and
 - 5.5.1.4 Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions include:
 - 5.5.1.4.1 A federally enforceable emission cap assumed to avoid classification as a modification in a provision of the SIP, and
 - 5.5.1.4.2 An alternative emissions limit approved pursuant to the Act Section 112(I)(5).
 - 5.5.1.5 Are not modifications in the regulations promulgated by the District and do not constitute modifications under any provision of the Act Title I, and
 - 5.5.1.6 Are not required to be processed as significant permit revisions.
 - 5.5.2 Notwithstanding this section, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, emissions trading, and other similar approaches, to the extent that minor permit revision procedures are explicitly provided in the SIP or in applicable requirements.
 - 5.5.3 Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3 and shall include:
 - 5.5.3.1 A description of the proposed change, the emissions resulting from the change, and new applicable requirements that apply if the change occurs,
 - 5.5.3.2 The source's suggested draft permit,
 - 5.5.3.3 Certification by a responsible official, pursuant to section 3.5.11, that the proposed revision meets the criteria for use of minor revision procedures and a request that these procedures be used, and
 - 5.5.3.4 Completed forms for the District to use to notify EPA and affected states as required in Regulation 2.07.
 - 5.5.4 Public participation requirements of Regulation 2.07 are not applicable to minor permit revisions.
 - 5.5.5 EPA and affected state notification. Within five working days of receipt of a complete permit revision application, the District shall provide notice to EPA and affected states, pursuant to Regulation 2.07, of the requested permit revision.
 - 5.5.6 Timetable for issuance. The District shall not issue a final permit revision until after EPA's 45 day review period or until EPA has notified the District that EPA will not object to issuance of the permit revision, whichever comes first. However, the District may approve the permit revision prior to that time. Within 90 days of the

District's receipt of an application for a minor permit revision or 15 days after the end of EPA's 45 day review period as prescribed in Regulation 2.07, whichever is later, the District shall:

- 5.5.6.1 Issue the minor permit revision as proposed,
- 5.5.6.2 Deny the minor permit revision application,
- 5.5.6.3 Determine that the requested permit revision does not meet the minor permit revision criteria and that it shall be reviewed under the significant permit revision procedures, or
- 5.5.6.4 Revise the draft permit revision and transmit to EPA the new proposed permit revision pursuant to Regulation 2.07.
- 5.5.7 The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change allowed, and until the District takes any of the actions specified in this section, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify shall be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.
- 5.5.8 Permit shield. The permit shield described in Section 4 shall not extend to minor permit revisions.

5.6 Group Processing Of Minor Permit Revisions

The District may modify the procedure outlined in section 5.1 to process groups of a source's applications for certain modifications eligible for minor permit revision processing.

- 5.6.1 Criteria. Group processing shall be used only for permit revisions that:
 - 5.6.1.1 Meet the criteria for minor permit revision procedures, and
 - 5.6.1.2 Are collectively below the threshold level. This threshold shall be 10% of the emissions allowed by the permit for the emission unit for which the change is requested, 20% of the applicable definition of major source in Section 2, or 5 tpy, whichever is least.
- 5.6.2 Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3 and shall include the following:
 - 5.6.2.1 A description of the change, the emissions resulting from the change, and new applicable requirements that shall apply if the change occurs,
 - 5.6.2.2 The source's suggested draft permit revision,
 - 5.6.2.3 Certification by a responsible official, consistent with the requirements of section 3.5.11, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used,
 - 5.6.2.4 A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold,
 - 5.6.2.5 Certification by a responsible official, consistent with the requirements of section 3.5.11, that the source has notified EPA of the proposed modification. The notification need only contain a brief description of the requested modification, and

- 5.6.2.6 Completed forms for the District to use to notify EPA and affected states pursuant to Regulation 2.07.
- 5.6.3 EPA and affected state notification. The District shall promptly notify EPA and affected states of the requested permit revisions pursuant to Regulation 2.07 on a quarterly basis or within 5 business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under section 5.6.1.2, whichever is earlier.
- 5.6.4 Timetable for issuance. Section 5.5.6 shall apply to permit revisions eligible for group processing, except that the District shall take one of the actions specified in sections 5.5.6.1 through 5.5.6.4 within 180 days of receipt of the application, or 15 days after the end of EPA's 45 day review period as prescribed in Regulation 2.07, whichever is later.
- 5.6.5 The sources ability to make change. Section 5.5.7 shall apply to permit revisions eligible for group processing.
- 5.6.6 Permit Shield. The permit shield described in Section 4 shall not extend to permit revisions eligible for group processing.
- 5.7 Significant Permit Revision Procedures
 - 5.7.1 Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative revisions. At a minimum, significant changes include:
 - 5.7.1.1 Changes in existing monitoring permit terms or conditions, and
 - 5.7.1.2 Relaxation of reporting or recordkeeping permit terms or conditions.
 - 5.7.2 Nothing herein shall be construed to preclude the permittee from making changes pursuant to this regulation that would render existing permit compliance terms and conditions not applicable.
 - 5.7.3 Significant permit revisions shall meet all the requirements for permit applications, issuance and renewal and all other District regulations providing for public participation and review by affected states and EPA.
 - 5.7.4 The District shall complete the review on the majority of the significant permit revisions within nine months after receipt of a complete application.
- 5.8 Operational Flexibility

The permit shield in this regulation shall not apply to any change made pursuant to this section. Sources may make changes within the permitted source without permit revision (except for sources subject to the Acid Rain regulations) if:

 - 5.8.1 The changes are not modifications pursuant to the Act Title I or subject to any requirements under the Act Title IV,
 - 5.8.2 The changes meet all applicable requirements,
 - 5.8.3 The changes are not subject to minor permit revision requirements,
 - 5.8.4 The changes do not result in an emissions increase that would exceed the allowable emissions rate specified in the permit or require a revision to a permit condition,
 - 5.8.5 The owner or operator notifies the District and EPA, in writing, of the changes at least 10 working days before the changes are made. The written notification shall include:
 - 5.8.5.1 A brief description of the changes within the permitted source,
 - 5.8.5.2 The date on which the changes will occur,
 - 5.8.5.3 Any changes in emissions,
 - 5.8.5.4 Any permit term or condition that is no longer applicable as a result of the change,

- 5.8.5.5 The pollutant emitted, and
- 5.8.5.6 Any additional requirement that shall apply as a result of the changes.
- 5.8.6 The owner or operator shall maintain a record of all operational flexibility changes made at the source.
 - 5.8.6.1 This record shall itemize those changes that result in the emission of a regulated air pollutant or GHGs subject to regulation and those emission rates that changed as a result of the change, and
 - 5.8.6.2 This record shall also indicate which regulation or requirement applies to this change and any new regulation or requirement that may now apply, and
- 5.8.7 A copy of each written notice of change, subject to this section, shall be attached to the existing permit.
- 5.9 Reopening For Cause
 - 5.9.1 Each issued permit shall include provisions specifying the conditions in which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under the following circumstances:
 - 5.9.1.1 Additional applicable requirements become applicable to a source with a remaining permit term of three or more years,
 - 5.9.1.2 A reopening shall be completed not later than 18 months after promulgation of the applicable requirement,
 - 5.9.1.3 A reopening is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any terms and conditions have been extended,
 - 5.9.1.4 Additional requirements, including excess emissions requirements, become applicable to an affected source in the Acid Rain program. Upon approval by EPA and the District, excess emissions offsets plans shall be incorporated into the permit,
 - 5.9.1.5 The District or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit, or
 - 5.9.1.6 For federally enforceable permits, EPA or the District determines that the permit shall be revised or revoked to assure compliance with applicable requirements.
 - 5.9.2 Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable.
 - 5.9.3 A reopening shall not be initiated before a notice of intent to reopen is provided to the source by the District at least 30 days in advance of the date that the permit is to be reopened, except that the District may provide a shorter time period in an emergency.
- 5.10 Reopening For Cause By EPA
 - 5.10.1 If EPA finds that cause exists to terminate, revise, or revoke and reissue a permit pursuant to section 5.8, EPA will notify the District and the permittee of this finding in writing.
 - 5.10.2 The District shall, within 90 days after receipt of notification, forward to EPA a proposed determination of termination, revision, or revocation and reissuance, as appropriate. EPA may extend this 90 day period for an additional 90 days if it finds that a new or revised permit application is necessary or that the District shall require the permittee to submit additional information.

- 5.10.3 EPA will review the proposed determination from the District within 90 days of receipt.
- 5.10.4 The District shall have 90 days from receipt of an objection by EPA to resolve the objection and to terminate, revise, or revoke and reissue the permit in accordance with the objection.
- 5.10.5 If the District fails to submit a proposed determination pursuant to section 5.9.3 or fails to resolve an objection pursuant to section 5.9.4, EPA will terminate, revise, or revoke and reissue the permit after taking the following actions:
 - 5.10.5.1 Provide at least 30 days notice to the permittee in writing of the reasons for the action. The notice may be given during the procedures in section 5.9, and
 - 5.10.5.2 Provide the permittee an opportunity for comment on EPA's proposed action and an opportunity for a hearing.
- 5.11 Permit Revocation. The Board may revoke a permit for cause pursuant to the procedures in Regulation 2.09. Cause for revocation exists if:
 - 5.11.1 There is a pattern of substantial or unresolved noncompliance with the terms and conditions of the permit,
 - 5.11.2 The permittee has refused to take appropriate action to resolve the noncompliance,
 - 5.11.3 The permittee has failed to disclose material facts relevant to the issuance of the permit or has knowingly submitted false information to the District,
 - 5.11.4 The District has determined that the permitted source endangers public health, safety, or the environment, and that the danger cannot be mitigated by revision of the terms and conditions of the permit,
 - 5.11.5 The permittee has failed to pay a civil or criminal penalty imposed for a violation of its permit within the time frame directed in the enforcement action, or
 - 5.11.6 Any other cause specified in Regulation 2.09 section 2.1
- 5.12 Permit Termination. The District may terminate an operating permit only upon written request of the permittee. The permittee may apply at any time for termination of all or a portion of the permit relating solely to operations, activities, and emissions that have been permanently discontinued. The following provisions shall apply:
 - 5.12.1 The application for termination shall identify with specificity the permit or permit terms that relate to the discontinued operations, activities, and emissions,
 - 5.12.2 The District shall act upon an application for termination within 90 days after receipt and shall grant the application for termination upon finding that the permit terms for which termination is sought relate solely to operations, activities, and emissions that have been permanently discontinued, and
 - 5.12.3 The District may require a final report or other information from the permittee to verify the complete discontinuance of the relevant operations, activities, and emissions. The report shall be signed by a responsible official. This action does not negate the permittee's responsibility to submit a complete permit application for revision if the source remains a major or minor source requiring an operating permit.

SECTION 6 Effect of Stay, Vacatur, or Withdrawal

Pursuant to KRS 77.180, any section or subsection of 40 CFR 70.2 relating to GHGs that is subsequently stayed, vacated, or withdrawn by U.S. EPA or a federal court shall be deemed stayed, vacated or withdrawn by the District.

- 6.1 For any section or subsection of 40 CFR 70.2 relating to GHGs that is subsequently stayed, the effectiveness of the section or subsection shall be delayed until the completion

of the reconsideration process or the resolution of the proceeding for judicial review. The period of delay shall begin and end on the date specified in the notices of stay published in the Federal Register for that section or subsection.

- 6.2 For any section or subsection of 40 CFR 70.2 relating to GHGs that is subsequently vacated or withdrawn, the section or subsection shall be null and void as of the date specified in the notice of vacatur or withdrawal published in the Federal Register for that section or subsection.

Adopted v1/12-15-93; effective 12-15-93; amended v2/6-21-95, v3/9-25-96, v4/12-20-00, v5/6-19-02, v6/11-17-10, v7/5-15-13.