

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 provides that the Air Pollution Control Board may make and enforce all needful orders, rules, and regulations necessary or proper to accomplish the purposes of KRS Chapter 77. This regulation sets forth the procedures used to enforce source compliance and provides for public involvement in the decision process.

SECTION 1 Public Hearings

- 1.1 A public hearing shall be held by the Air Pollution Control Board:
 - 1.1.1 Before adoption of any order for any source or person,
 - 1.1.2 Before issuance of a compliance plan and schedule to any source,
 - 1.1.3 Before adoption of a new regulation,
 - 1.1.4 Before adoption of any amendment to a regulation, and
 - 1.1.5 Before adoption of an alternate emission standard pursuant to Regulation 2.12.
- 1.2 A public hearing may also be held by the Board for any source in Regulation 2.07 which is not in section 1.1.
- 1.3 Compliance schedules adopted pursuant to the Act Title V, or pursuant to Title I, Title III, or any other Act Title for the purpose of inclusion in a Title V permit, are exempt from this regulation but are subject to Regulation 2.07.

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 any regulation unless an approved compliance schedule has been issued by the District and is currently in effect.
- 2.2 Application for compliance schedules required under this section shall contain:
 - 2.2.1 The reason for requesting a compliance schedule,
 - 2.2.2 A schedule and timetable 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,
 - 2.2.6 Such information as the District may deem necessary to determine whether the compliance schedule should be issued, and

- 2.2.7 Compliance plans or schedules that are inconsistent with any provision of the Kentucky *Implementation Plan for the Attainment and Maintenance of the National Ambient Air Quality Standards* (SIP) must be submitted to and approved by EPA as a revision to the SIP.
- 2.3 Applications for compliance 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 source owner or operator; or, in the case of political subdivisions, by an appropriate elected official. Such signature shall constitute personal affirmation that the statements made in the application are true and complete.
- 2.4 The information submitted in the application shall, when specifically requested by the District, 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 to enable it to act upon the compliance schedule application shall result in disapproval of the compliance schedule application.
- 2.5 If, for any reason, the District and the owner of the affected facility are unable to negotiate a mutually acceptable schedule, the District will propose a compliance schedule to the Board. After a public hearing, the Board will 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, a compliance schedule, including all increments of progress, shall be legally enforceable.
- 2.6 Compliance schedules issued hereunder shall be subject to such terms and conditions set forth and embodied in the compliance schedule as the District shall deem necessary to insure compliance with its standards. Such terms and conditions may include maintenance and availability of records relating to operations which may cause or contribute to air pollution, including periodic sampling of the affected facilities.
- 2.7 Acceptance of a compliance schedule conditioned as described herein shall denote agreement to the restrictions embodied in the compliance schedule and shall thenceforth be binding upon the holder of the permit or compliance schedule.
- 2.8 An application for a compliance schedule shall be submitted to the District 40 days prior to the proposed hearing date, unless the District finds either of the following:
- 2.8.1 That the late request was beyond the control of the applicant, or
- 2.8.2 The failure to hold the hearing as requested 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 votes to set another date. At any public hearing:
- 3.1.1 The staff recommendation will first be made by a representative of the District,

- 3.1.2 The petitioner, 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 in support of the petition or regulation may then make a statement,
- 3.1.4 Any person who wishes to present evidence in opposition to the petition or regulation may then make a statement,
- 3.1.5 The petitioner shall then be given an opportunity to rebut any of the opposition statements,
- 3.1.6 Further opportunity for comment may be granted at the discretion of the Chairman, and
- 3.1.7 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, unless the subject of the hearing was on a construction permit to be ruled on first by the Air Pollution Control Officer. The ruling on the construction permit will appear on the Board's agenda unless an appeal is filed.

SECTION 4 Enforcement Orders

- 4.1 An enforcement order shall be issued to any source that has been granted a compliance schedule pursuant to this regulation. The order shall contain the conditions imposed upon the source by the Board. Failure of the source to comply with any condition or other provision 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 its regulations by any person. Any aggrieved party may appeal the order to Jefferson Circuit Court.

SECTION 5 Noncompliance Penalties

When a source fails to comply with the statutory attainment date established by the Act Section 113, the source shall be subject to noncompliance penalties for the period during which it violates any emission standard. The compliance penalty shall be equal to the economic value which the delay in compliance may have for the owner of the source. The penalty shall be calculated pursuant to the Act Section 120 or any regulations that have been adopted pursuant to this section.

SECTION 6 Confidentiality and Open Records Policy

6.1 Definitions

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

- 6.1.1 "Emission data" means measured or calculated concentrations or weights of air contaminants emitted into the ambient air. Raw data used to calculate emission data are not emission data.
- 6.1.2 "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, or other documentary materials regardless of physical form or characteristics, which are prepared, owned, used, in the possession of, or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a private person or corporation that are not related to functions, activities, programs or operations funded by federal, state or local authority.
- 6.2 General Rule
The District shall permit free and open examination of public records by any person with the least possible delay and expense.
- 6.3 Exemptions
The following public records are exceptions to the general rule and shall be subject to inspection only under order of a court of competent jurisdiction. The exemptions shall be strictly construed even though the examination of records not included in the exemptions may cause inconvenience or embarrassment to the District or others.
- 6.3.1 Public records containing information of a personal nature where public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy,
- 6.3.2 Records confidentially disclosed to the District and compiled and maintained in conjunction with one or more of the following: scientific research; an application for a loan; the regulation of a commercial enterprise including mineral exploration records; unpatented, secret, commercially valuable plans, appliances, formulae, or processes which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities, when the records are acknowledged by both the agency and the enterprise as confidential; or, the grant or review of a license to do business if open disclosure would permit an unfair advantage to competitors of the subject enterprise. This exemption shall not apply to emission data or to other records the disclosure or publication of which is directed by another statute, including the Act section 114(c),
- 6.3.3 Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within, or expanding within the state. This exemption shall not include those records pertaining to applications for permits or licenses necessary to do business or to expand business operations within the state unless the applications contain trade secrets,
- 6.3.4 The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made by or for a public agency relative to acquisition of property as acquired,

- 6.3.5 Test questions, scoring keys, and other examination data used to administer an examination before the exam is given or if it is to be given again,
- 6.3.6 Public records compiled in process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. These records shall be open after enforcement action is completed or a decision is made to take no action,
- 6.3.7 Preliminary drafts, notes or correspondence with individuals, other than correspondence which is intended to give notice of final action of a public agency,
- 6.3.8 Preliminary recommendations and preliminary memoranda in which opinions are expressed or policies formulated or recommended, and
- 6.3.9 All public records or information the disclosure of which is prohibited by federal law or regulation or enactment of the general assembly.
- 6.4 The exemption shall not apply to:
 - 6.4.1 Statistical information which is not descriptive of any readily identifiable person.
 - 6.4.2 Sharing information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.
 - 6.4.3 The disclosure of a public record to any person, upon presentation of appropriate identification, if the public record relates to the person or mentions the person by name.
- 6.5 Obtaining an Exemption
 - 6.5.1 All public records shall be available for inspection by the public unless the records or portions of the records are clearly marked as confidential. Confidential records may be designated only after the individual or company furnishing the records has requested in writing an exemption from the open records policy and the request has been approved by the District. The request shall include a statement of the specific exemption which would authorize the District to withhold the record and a brief explanation of how the exemption applies to the record. The burden of showing the applicability of the exemption rests with the person requesting the exemption.
 - 6.5.2 Any applicant for an exemption under section 6.3 shall provide (1) a copy of the required forms or records completely filled out and (2) a copy filled out but omitting that data requested to be held confidential. The second copy will be available for public examination.
 - 6.5.3 The staff attorney and at least one section supervisor shall review all requests for exemptions and recommend to the Secretary-Treasurer that the exemption be either granted or denied. The Secretary-Treasurer shall notify the person requesting the exemption in writing of the decision concerning the confidentiality of the public record.

The decision of the Secretary-Treasurer may be appealed to the Air Pollution Control Board.

6.6 Separation of Exempt and Non-Exempt Materials

6.6.1 All exempt materials shall be placed in a separate file folder. This folder shall be of a different color and this color shall be used only for the storage of exempt (confidential) company supplied data. The request for the exemption shall be attached to the left side of the confidential file folder.

6.7 Requests to Inspect Public Records

6.7.1 All requests to inspect public records shall be in writing, directed to the attention of the Secretary-Treasurer of the District, and shall describe the general subject matter of the records with sufficient specificity to enable the District to identify and locate the information sought.

6.7.2 Within three working days after the receipt of a request, the District shall notify the individual or company furnishing the record that the request has been made, and the District shall determine whether to comply with the request and shall give written notice of that determination to the person making the request with a copy to the affected source.

6.7.3 If the request is granted, the non-exempt section of the record shall be made available for inspection. If, however, the record is in active use, in storage, or not otherwise available, the Secretary-Treasurer shall immediately so notify the applicant and shall designate a place, time, and date for inspection of the public record. If the record will not be available for inspection within three days from receipt of the application, the time, place, and earliest date on which the record will be available for inspection and a detailed explanation of the cause of the delay shall be given in the notice.

6.7.4 If the request is denied, in whole or in part, the Secretary-Treasurer shall send a written notice stating the reason or reasons for the denial to the person making the request.

6.7.5 A request may be denied for one or more of the following reasons:

6.7.5.1 The records cannot be identified from the information given in the request,

6.7.5.2 The records do not exist,

6.7.5.3 The records are not in the custody of the District,

6.7.5.4 The records are exempt from disclosure, or

6.7.5.5 The request places an unreasonable burden on the agency in producing voluminous public records or the Secretary-Treasurer has reason to believe that repeated requests are intended to disrupt other essential functions of the agency. Refusal under this section must be sustained by clear and convincing evidence.

6.7.6 If the request is denied because the public records are exempt from disclosure, the notice of denial shall include a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. If the request is denied because the material is exempt from disclosure, a copy of the written denial shall also be sent to the person requesting the exemption.

6.8 Inspection

- 6.8.1 Public records may be inspected in the District's offices, 850 Barret Avenue, Louisville, Kentucky, between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday. Suitable facilities shall be made available by the District for the inspection.
- 6.8.2 No person shall remove the District's copy of any public records from the District's offices without the written permission of the Secretary-Treasurer.
- 6.8.3 The District will provide copies of public records at a cost of ten cents per page.
- 6.8.4 The Secretary-Treasurer shall serve as the official custodian of the public records of the District.

SECTION 7 Appeals to the Board

- 7.1 Upon the Air Pollution Control Officer (APCO) issuing any permit or denying the issuance of a permit, any aggrieved person may file a written appeal to the Board within 30 days of such decision. The appeal shall be addressed to the Chairman of the Board c/o the District, 850 Barret Avenue, Louisville, KY 40204-1745 with a copy to the Secretary-Treasurer of the District at the same address. The appellant shall set out in the appeal the grounds on which the appeal is based. If a permit has been issued and the appeal is to the adequacy or stringency of any permit condition, then the appellant shall set out the changes in conditions desired and the reasons why such changed conditions are appropriate. The appeal process does not apply to Title V operating permits.
- 7.2 Upon receiving the appeal, the Board Chairman shall:
 - 7.2.1 Schedule the full Board to hear the appeal,
 - 7.2.2 Appoint a hearing committee of three Board members to hear the appeal. The recommendation of the Hearing Committee is only advisory to the Board, or
 - 7.2.3 Appoint a hearing officer to hear the appeal. The recommendation of the hearing officer is only advisory to the Board.
- 7.3 The hearing authority will conduct an evidentiary hearing to determine the issues raised. The hearing shall be scheduled within 45 days of the filing of the appeal, and the hearing authority shall decide any matter within 40 days of the hearing. The recommendation of the hearing authority shall be submitted to the full Board at its next regularly scheduled meeting for action. Parties at the hearing will be limited to the person who appealed the decision, the APCO or a designee, and those persons who participated in any earlier public hearing on this same application. Parties may present oral argument not to exceed 30 minutes each. Time for all parties of the same side may be held to a total of 30 minutes. Written statements in any volume may be submitted before or at the hearing as part of the record.
- 7.4 If a construction permit condition is appealed by the applicant, such person may proceed to construct not inconsistent with the conditions placed on the permit while the appeal progresses. If a construction permit is appealed by a person other than the applicant, the applicant proceeds with construction at its own risk. In an appropriate case, the Board may

issue a stay if requested, but only if the appellant posts an adequate bond to cover the cost of any delays caused the applicant and if the appellant's grounds are not upheld at a final hearing.

- 7.5 Any order or decision of the APCO on sampling, monitoring, modeling or related matters may be appealed as a permit condition.
- 7.6 The Board may allow other persons to join an appeal if such persons can show a substantive interest. The Board may review briefs or comments from others if it feels such evidence will contribute to an improved decision by the Board.
- 7.7 The permit application, the entire file of the applicant with the District except for confidential material, the public hearing record (if any), and all appropriate laws and regulations will be considered part of the record.
- 7.8 A decision of the Board on an appeal may be appealed to Jefferson Circuit Court.

SECTION 8 Procedures for the Adoption or Amendment of a Regulation

8.1 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 or amendment 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.

- 8.1.1 For the purpose of the regulatory impact assessment required by section 8.1:
 - 8.1.1.1 The estimated costs and savings shall include the following:
 - 8.1.1.1.1 The estimated number of affected facilities,
 - 8.1.1.1.2 A description of the range of affected facilities, and
 - 8.1.1.1.3 The estimated capital and operating costs and savings associated with compliance with the proposed action for affected facilities, and
 - 8.1.1.2 The feasibility of alternatives considered shall include, for each alternative, a description of the following:
 - 8.1.1.2.1 The approach for reducing emissions,

- 8.1.1.2.2 The estimated level of emission reductions,
- 8.1.1.2.3 The available pollution prevention measures, and
- 8.1.1.2.4 The reason that the alternative was chosen or not chosen.
- 8.2 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.
- 8.3 At the time of the legal notice, copies of the proposed action shall be available from the District during normal working hours.
- 8.4 Prior to final action on a regulation:
 - 8.4.1 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,
 - 8.4.2 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
 - 8.4.3 The District shall identify, for Board consideration, unresolved issues raised during the public comment period and the public hearing.
- 8.5 The written record of final action on a regulation shall be made available to the public and shall include the following:
 - 8.5.1 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,
 - 8.5.2 A statement explaining the basis for any substantive amendments made to a proposed action on a regulation after its initial proposal, and
 - 8.5.3 A final regulatory impact assessment, which 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.

Adopted v1/4-19-72; effective 4-19-72; amended v2/9-1-76, v3/6-13-79, v4/11-16-83, v5/2-19-86, v6/1-20-88, v7/5-15-91, v8/12-15-93, v9/6-21-95, v10/9-25-96.

	Date Submitted	Date Approved	Federal Register
09-96		1.08-9	

Original Reg:	06/29/79	01/25/80	45 FR 6092
1st Revision:	02/12/92	10/22/92	58 FR 54516
2 nd Revision:	02/11/99	[insert date]	[insert FR]