

Arkansas Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control

CHAPTER 4: MINOR SOURCE REVIEW

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CHAPTER 4: MINOR SOURCE REVIEW

Reg. 19.401 General Applicability

No person shall cause or permit the operation, construction, or modification of a stationary source, whose actual emissions are:

40 tons per year or more of carbon monoxide;

25 tons per year or more of nitrogen oxides;

25 tons per year or more of sulfur dioxide;

25 tons per year or more of volatile organic compounds;

10 tons per year or more of PM₁₀;

0.5 tons per year or more of lead;

1.0 ton per year or more of any single hazardous air pollutant; or

3.0 tons per year or more of any combination of hazardous air pollutants

without first obtaining a permit from the Department pursuant to the provisions of this chapter.

Reg. 19.402 Approval Criteria

No permit shall be granted or modified under this chapter unless the owner/operator demonstrates to the reasonable satisfaction of the Department that the stationary source will be constructed or modified to operate without resulting in a violation of applicable portions of this regulation or without interfering with the attainment or maintenance of a national ambient air quality standard.

Reg. 19.403 Owner/Operator's Responsibilities

Issuance of a permit by the Department does not affect the responsibility of the owner/operator to comply with applicable portions of this regulation.

Reg. 19.404 Required Information

(A) General

Application for a permit shall be made on such forms and contain such information as the Department may reasonably require, including but not limited to:

- (1) information on the nature and amounts of federally regulated air pollutants to be emitted by the stationary source; and

- (2) such information on the location, design, and operation of stationary source as the Department may reasonably require.

(B) Duty to Supplement Submittal

If, while processing an application that has been determined to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, the Department may request such information in writing and set a reasonable deadline for a response.

(C) Duty to Correct Submittal

Any owner/operator who fails to submit any relevant facts or who has submitted incorrect information, shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any relevant requirements that become applicable to the stationary source before final action is taken on its application.

Reg. 19.405 Action on Application

(A) Technical Review

The Department will review the application submitted under this chapter in order to ensure to their reasonable satisfaction that:

- (1) the stationary source will be constructed or modified to operate without interfering with attainment or maintenance of a national ambient air quality standard;
- (2) the stationary source will be constructed or modified to operate without violating any applicable regulation adopted by the U.S. Environmental Protection Agency pursuant to §§111, 112, and 114 of the Clean Air Act as amended;
- (3) the stationary source will be constructed or modified to operate without resulting in a violation of any applicable provisions of this regulation;
- (4) the emission rate calculations are complete and accurate; and
- (5) if the facility wishes to measure and/or monitor operating parameters rather than actual emissions, the application describes a process which will be used to ensure that the calculations are translated into enforceable limits on operational parameters rather than emissions.

(B) Proposed Action

- (1) If the Department initially determines the requirements of §19.405(A) are met, they shall prepare a draft permit which:

- (a) contains such conditions as are necessary to comply with this Regulation;
 - (b) addresses all recognized federally regulated air pollutant emissions and all federally regulated air pollutant emitting equipment at the stationary source except pollutants or equipment specifically exempt.
- (2) If the Department initially determines the requirements of this chapter are not met, they shall prepare a notice of intent to deny. This notice will state the reasons for the Department's denial of the stationary source's submittal.
 - (3) Except as provided in §19.407, the public shall have an opportunity to comment on the Department's proposed permit decision in accordance with §19.406.
 - (4) Within 90 days of receipt by the Department of an initial permit application, or an application for a major modification which contains such information as required by the Department (unless said period is extended by mutual agreement between the Department and the applicant), the Department shall notify the applicant in writing of its draft permitting decision. If the Department fails to take action of the application within the prescribed time frames, the aggrieved applicant may petition the Commission for relief from Department inaction. The Commission shall either grant or deny the petition within 45 days of its submittal.

(C) Final Action

The Department shall take final action on a permit application after the close of the public comment period. The Department shall notify in writing the owner/operator and any person that submitted a written comment, of the Department's final action and the Department's reasons for its final action.

Reg. 19.406 Public Participation

(A) General

No permit shall be issued, denied, or modified unless the public has first had an opportunity to comment on the information submitted by the owner/operator and the Department's analysis, as demonstrated by the permit record, of the effect of construction or modification on ambient air quality, including the Department's proposed approval or disapproval of the permit.

(B) Public Availability of Information

For purposes of this section, opportunity to comment shall include, at a minimum:

- (1) Availability for the public inspection in at least one location in the area where the source is located, or proposes to locate, and in the Department's central offices of the Department's draft decision, information submitted by the owner/operator, and any information developed by the Department in support of its draft permit decision;

- (2) A 30-day period for submittal of public comment (beginning on the date of the latest newspaper notice, ending on the date 30 days later);
- (3) A publication in a newspaper of general circulation in the area where the source is located or proposes to locate, and in a State publication designed to give general public notice. Such notice shall, as a minimum, describe the locations at which the information submitted by the owner/operator and the Department's analysis of this information, may be inspected and the procedure for submitting public comment;
- (4) A copy of the notice, required pursuant to this subsection, shall be sent to the owner/operator and to the:
 - (a) Regional Administrator of the United States Environmental Protection Agency;
 - (b) mayor of the community where the stationary source is proposed to be constructed or modified;
 - (c) county judge of the county where the equipment is proposed to be constructed or modified; and
 - (d) appropriate air pollution control agencies of adjoining states if the construction or modification of the source will impact air quality in adjoining states.
- (5) Public comments addressing the technical merits of the permit application and the Department's analysis of the effect of the proposed emissions on air quality submitted in accordance with procedures in the public notice shall be considered by the Department prior to taking final action on the permit application.

Reg. 19.407 Permit Amendments

(A) Administrative Permit Amendments

- (1) An administrative permit amendment is a permit revision that:
 - (a) corrects a typographical error;
 - (b) identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change in the source;
 - (c) requires more frequent monitoring or reporting by the permittee;
 - (d) incorporates a change in the permit involving the retiring of equipment or emission units, or the decrease of permitted emissions from equipment or emission units; or

- (e) incorporates a change to the facilities' insignificant activities list.
 - (2) The Department shall revise the permit as expeditiously as practicable and may incorporate such revisions without providing notice to the public.
 - (3) The applicant may implement the changes addressed in the request for an administrative amendment immediately upon approval.
- (B) Change in Ownership
- (1) Permits issued under this regulation shall remain freely transferable provided:
 - (a) the applicant for the transfer notifies the Director at least thirty (30) days in advance of the proposed transfer date on such forms as the Director may reasonably require, and
 - (b) submits a disclosure statement or other such documents as required.
 - (i) "Disclosure statement" means a written statement by the applicant which contains:
 - (aa) The full name, business address, and social security number of the applicant and all affiliated persons;
 - (bb) The full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or which is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact operations within the state;
 - (cc) A description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation;
 - (dd) A listing and explanation of any civil or criminal legal actions by government agencies involving environmental protection laws or regulations against the applicant and affiliated persons in the ten (10) years immediately preceding the filing of the application, including administrative enforcement actions resulting in the imposition of sanctions, permit or license revocations or denials issued by any state or federal authority, actions that have resulted in a finding or a settlement of a violation, and actions that are pending;

- (ee) A listing of any federal environmental agency and any other environmental agency outside this state that has or has had regulatory responsibility over the applicant;
 - (ff) Any other information the director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.
- (ii) Deliberate falsification or omission of relevant information from disclosure statements shall be grounds for civil or criminal enforcement action or administrative denial of a permit, license, certification, or operational authorization. The following persons or entities are not required to file a disclosure statement:
- (aa) Governmental entities, consisting only of subdivisions or agencies of the federal government, agencies of the state government, counties, municipalities, or duly authorized regional solid waste authorities. This exemption shall not extend to improvement districts or any other subdivision of government which is not specifically instituted by an act of the General Assembly; and
 - (bb) Applicants for a general permit to be issued by the Department pursuant to its authority to implement the National Pollutant Discharge Elimination System for storm water discharge.
- (iii) Nothing in this sub-paragraph, including the exemptions in supporting paragraph (ii) of this sub-paragraph, shall be construed as a limitation upon the authority of the director to deny a permit based upon a history of noncompliance to any applicant or for other just cause.
- (iv) If the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange which provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other information as the director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.
- (2) The director may deny the issuance or transfer of any permit, license, certification, or operational authority if he finds, based upon the disclosure statement and other investigation which he deems appropriate, that:

- (a) The applicant has a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction;
- (b) An applicant which owns or operates other facilities in the state is not in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, the environmental laws or regulations of this state; or
- (c) A person with a history of noncompliance with environmental laws or regulations of this state or any other jurisdiction is affiliated with the applicant to the extent of being capable of significantly influencing the practices or operations of the applicant which could have an impact upon the environment.

(3) Public notice requirements shall not apply to changes in ownership.

(C) *De Minimis* Changes

(1) A proposed change to a facility will be considered *De Minimis* if:

- (a) minimal judgment is required to establish the permit requirements for the change; and
- (b) the change will result in a trivial environmental impact.

(2) The environmental impact of a proposed change generally will be considered trivial if the potential emissions from the change alone, without taking into account any corresponding emission reductions, will:

- (a) be less than the following amounts:
 - (i) five (5) tons per year of carbon monoxide, nitrogen dioxide, PM₁₀, and sulfur dioxide;
 - (ii) twenty (20) tons per year of volatile organic compounds; and
 - (iii) one-half (0.5) a ton per year of lead;
- (b) or, result in an air quality impact less than:

pollutant	<i>De Minimis</i> Concentration	Averaging time
carbon monoxide	500 $\mu\text{g}/\text{m}^3$	8-hour
nitrogen dioxide	10 $\mu\text{g}/\text{m}^3$	annual
PM ₁₀	8 $\mu\text{g}/\text{m}^3$	24-hour
sulfur dioxide	18 $\mu\text{g}/\text{m}^3$	24-hour
lead	0.1 $\mu\text{g}/\text{m}^3$	3-month

- (3) The following changes will not be considered *De Minimis* changes:
- (a) any increase in the permitted emission rate at a stationary source without a corresponding physical change or change in the method of operation at the source;
 - (b) any change which would result in a violation of the Clean Air Act;
 - (c) any change seeking to change a case-by-case determination of an emission limitation established pursuant to BACT, §112(g), §112(i)(5), §112(j), or §111(d) of the Clean Air Act;
 - (d) a change that would result in a violation of any provision of this regulation;
 - (e) any change in a permit term, condition, or limit that a source has assumed to avoid an applicable requirement to which the source would otherwise be subject;
 - (f) any significant change or relaxation to existing testing, monitoring, reporting, or recordkeeping requirements; or
 - (g) any proposed change which requires more than minimal judgment to determine eligibility.
- (4) A source may not submit multiple applications for *De Minimis* changes that are designed to conceal a larger modification that would not be considered a *De Minimis* change. The Department will require such multiple applications be processed as a permit modification with public notice and reconstruction requirements. Deliberate misrepresentation may be grounds for permit revocation.

- (5) The applicant may implement *De Minimis* changes immediately upon approval by the Department.
- (6) The Department shall revise the permit as expeditiously as practicable and may incorporate *De Minimis* changes without providing notice to the public. The applicant may implement *De Minimis* changes immediately upon approval by the Department.

Reg. 19.408 Exemption from Permitting

(A) Insignificant Activities

Stationary sources and activities listed in Appendix A of this regulation shall be considered to be insignificant and will not require a permit under this chapter or be included in a source's permit.

(B) Grandfathering

Stationary sources operating prior to June 30, 1975, and which have not been modified since, will not be required to obtain a permit under this chapter.

Reg. 19.409 Transition

Facilities which are now subject to this regulation which were not previously subject to this regulation shall be in full compliance within 180 days of the effective date of this regulation. Facilities which are now subject to permitting under this regulation which were not previously subject to permitting under this regulation shall submit a complete application within 180 days of the effective date of this regulation. The Director may extend this compliance period on a case-by-case basis provided that the total compliance period does not exceed one year.

Reg. 19.410 Permit Revocation and Cancellation

(A) Revocation

Any permit issued under this regulation is subject to revocation, suspension, or modification in whole or in part, for cause, including without limitation:

- (1) Violation of any condition of the permit;
- (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
- (3) Change in any applicable regulation or change in any pre-existing condition affecting the nature of the emission that requires either a temporary or permanent reduction or elimination of the permitted emission.

(B) Cancellation

The Director may cancel a permit if the construction or modification is not begun within 18 months from the date of the permit issuance or if the work involved in the construction or modification is suspended for a total of 18 months or more.

Reg. 19.411 General Permits

(A) General Authority

The Department may, after notice and opportunity for public participation provided under this chapter, issue a general permit covering numerous similar sources. The criteria for the review and approval of permits under this chapter shall be used for general permits as well. Any general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. They shall also include enforceable emission limitations or other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this regulation. To sources that qualify, the Department shall grant the conditions and terms of the general permit. 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.

(B) Application

Sources that would qualify for a general permit must apply to the Department for coverage under the terms of the general permit or must apply for permit consistent with this chapter. The Department 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.

- (1) When any application for the issuance of a new permit or a modification of an existing permit is filed with the Department, the Department shall cause notice of the application to be published in a newspaper of general circulation in the county in which the proposed facility is to be located.
- (2) The notice required by 19.411(B)(1) shall advise that any interested person may request a public hearing on the permit application by giving the Department a written request within ten (10) days of the publication of the notice.
- (3) Should a hearing be deemed necessary by the Department, or in the event the Department desires such a hearing, the Department shall schedule a public hearing and shall, by first class mail, notify the applicant and all persons who have submitted comments of the date, time, and place thereof.

Reg. 19.412 Dispersion Modeling

The following shall apply when dispersion or other air quality modeling is used to meet the requirements of this chapter.

(A) General

All applications of air quality modeling involved in this chapter shall be based on the applicable models, data bases, and other requirements specified in appendix W of 40 CFR Part 51 (Guideline on Air Quality Models) as of August 12, 1996.

(B) Substitution

Where an air quality model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific pollutant or type of stationary source. Written approval of the Administrator of the US EPA must be obtained for any modification or substitution.

Reg. 19.413 Confidentiality

Information which constitutes a trade secret shall be held confidential and segregated from the public files of the Department if requested in writing by the permit applicant in accordance with this subsection.

(A) For purposes of this subsection, "Trade Secret" means any information, including formula, pattern, compilation, program, device, method, technique, process, or rate of production that:

- (1) Derives independent economic value (actual or potential) from not being generally known to, and not being readily ascertainable through, proper means by other persons who can obtain economic value from its disclosure or use, and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(B) In order to establish entitlement to confidentiality, the applicant must submit a sworn affidavit to the Department that is subject to public scrutiny which describes in a manner that does not reveal trade secrets, the processes or market conditions that supports the applicant's confidentiality claim in the terms of 19.413(A)(1) and (2). This affidavit must also recite the following:

"The applicant agrees to act as an indispensable party and to exercise extraordinary diligence in any legal action arising from the Department's denial of public access to the documents or information claimed herein to be a trade secret."

If an applicant anticipates numerous permit modifications that may involve regulatory review of trade secrets, it may submit an omnibus affidavit establishing the prerequisites of 19.413(A)(1) and (2) and reference this document in future confidentiality claims.

(C) Confidentiality claims shall be afforded interim protected status until the Department determines whether the requirements of 19.413(B) are satisfied. The Department shall

make such determination prior to the issuance of any permit or publication of any draft permit. In the event the Department does not make such determination prior to permit issuance, the information shall be deemed confidential until a request is made. If a third party request to review information claimed as confidential is received before the Department provides its written determination concerning the claim, the Department shall not release such information before notifying the applicant of the request. The Department shall notify the applicant of the request and the Department's determination on the confidentiality claim at least two business days before releasing the information, at which time the applicant may choose to supplement its affidavit supporting confidentiality or seek legal recourse.

- (D) For any permit application submitted subject to a claim of trade secret, the applicant shall provide two copies of the application; one prominently marked as confidential and another that is subject to public review with confidential information excised. The Department will not accept applications that are deemed totally confidential except under extraordinary circumstances guaranteeing future disclosure at a meaningful time for public review.