

CHAPTER 4: MINOR SOURCE REVIEW

Rule 19.401 General Applicability

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

Seventy-five (75) tons per year or more of carbon monoxide;

Forty (40) tons per year or more of nitrogen oxides;

Forty (40) tons per year or more of sulfur dioxide;

Forty (40) tons per year or more of volatile organic compounds;

Ten (10) tons per year or more of direct PM_{2.5};

Fifteen (15) tons per year or more of PM₁₀;

One-half (0.5) ton per year or more of lead;

Two (2) tons per year or more of any single hazardous air pollutant; or

Five (5) tons per year or more of any combination of hazardous air pollutants

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

Rule 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 Division that the stationary source will be constructed or modified to operate without resulting in a violation of applicable portions of this rule or without interfering with the attainment or maintenance of a national ambient air quality standard.

Rule 19.403 Owner/Operator's Responsibilities

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

Rule 19.404 Required Information

(A) General

Application for a permit shall be made on such forms and contain such information as the Division 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 Division may reasonably require.

(B) Duty to Supplement Submittal

If, while processing an application that has been determined to be complete, the Division determines that additional information is necessary to evaluate or take final action on that application, the Division 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.

Rule 19.405 Action on Application

(A) Technical Review

The Division 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 EPA 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 rule;

- (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 that 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 Division initially determines the requirements of Rule 19.405(A) are met, they shall prepare a draft permit that:
 - (a) contains such conditions as are necessary to comply with this Rule; and
 - (b) addresses all 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 Division 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 Division's denial of the stationary source's submittal.
- (3) Except as provided in Rule 19.407, the public shall have an opportunity to comment on the Division's proposed permit decision in accordance with Rule 19.406.
- (4) Within ninety (90) days of receipt by the Division of an initial permit application, or an application for a major modification that contains such information as required by the Division (unless said period is extended by mutual agreement between the Division and the applicant), the Division shall notify the applicant in writing of its draft permitting decision. If the Division fails to take action of the application within the prescribed time frames, the aggrieved applicant may petition the Commission for relief from Division inaction. The Commission shall either grant or deny the petition within forty-five (45) days of its submittal.

(C) Final Action

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

Rule 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 Division's analysis, as demonstrated by the permit record, of the effect of construction or modification on ambient air quality, including the Division'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 Division's central offices of the Division's draft decision, information submitted by the owner/operator, and any information developed by the Division in support of its draft permit decision;
- (2) A thirty-day period for submittal of public comment (beginning on the date of the latest newspaper notice, ending on the date thirty [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 Division'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 EPA;
 - (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 Division'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 Division prior to taking final action on the permit application.

Rule 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 facility's insignificant activities list.
- (2) The Division 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 rule shall remain freely transferable, provided the applicant for the transfer:
 - (a) 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 by the Division.

- (i) The disclosure statement shall include but not be limited to the following information:
 - (aa) The full name, business address, and social security number or tax i.d. 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) 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 as defined by law. 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;
 - (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 or any other person or entity the Commission may by rule exempt from the submission of a disclosure statement.
 - (cc) Nothing in this section, including the exemptions listed herein, 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.
 - (dd) Any applicant that 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, 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 Commission 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 or she finds, based upon the disclosure statement and other investigation that he or she deems appropriate, that:
- (a) The applicant has a history of non-compliance with the environmental laws or rules of this state or any other jurisdiction;

- (b) An applicant who 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 rules of this state; or
 - (c) A person with a history of non-compliance with environmental laws or rules 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 that could have an impact upon the environment.
- (3) Public notice requirements shall not apply to changes in ownership or changes in name.
 - (4) Denial of a permit transfer shall constitute a final permitting decision of the Director and may be appealed to the Commission.

(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 emission increase, based on the differences between the sum of the proposed permitted rates for all emissions units and the sum of previously permitted emission rates for all units will either:
 - (a) be less than the following amounts:
 - i. Seventy-five (75) tons per year of carbon monoxide;
 - ii. Forty (40) tons per year of nitrogen dioxides, sulfur dioxides, or volatile organic compounds;
 - iii. Twenty-five (25) tons per year of particulate matter emissions;
 - iv. Ten (10) tons per year of direct PM_{2.5};
 - v. Fifteen (15) tons per year of PM₁₀ emissions; and

vi. 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	Five hundred (500) micrograms per cubic meter	Eight-hour
nitrogen dioxide	Ten (10) micrograms per cubic meter	Annual
PM _{2.5}	Two (2) micrograms per cubic meter	Twenty-four-hour
PM ₁₀	Eight (8) micrograms per cubic meter	Twenty-four-hour
sulfur dioxide	Eighteen (18) micrograms per cubic meter	Twenty-four-hour
lead	One-tenth (0.1) micrograms per cubic meter	Three-month

(3) [RESERVED]

(4) 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 that 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 Best Available Control Technology, §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 rule;

- (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 that requires more than minimal judgment to determine eligibility.
- (5) 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 Division 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.
- (6) The applicant may implement *De Minimis* changes immediately upon approval by the Division.
- (7) The Division 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 Division.

Rule 19.408 Exemption from Permitting

(A) Insignificant Activities

Stationary sources and activities listed in Appendix A of this rule 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 that have not been modified since, will not be required to obtain a permit under this chapter.

Rule 19.409 [RESERVED]

Rule 19.410 Permit Revocation and Cancellation

(A) Revocation

Any permit issued under this rule 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 rule 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 eighteen (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 eighteen (18) months or more.

Rule 19.411 General Permits

(A) General Authority

The Division 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 rule. To sources that qualify, the Division 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 Division for coverage under the terms of the general permit or must apply for permit consistent with this chapter. The Division 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 Division, the Division 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 Rule 19.411(B)(1) shall advise that any interested person may request a public hearing on the permit application by giving the Division a written request within ten (10) days of the publication of the notice.
- (3) Should a hearing be deemed necessary by the Division, or in the event the Division desires such a hearing, the Division 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.

Rule 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 C.F.R. Part 51 (Guideline on Air Quality Models).

(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 EPA must be obtained for any modification or substitution.

Rule 19.413 Confidentiality

Information that constitutes a trade secret shall be held confidential and segregated from the public files of the Division 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 Division that is subject to public scrutiny that 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 Rule 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 Division'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 Rule 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 Division determines whether the requirements of Rule 19.413(B) are satisfied. The Division shall make such determination prior to the issuance of any permit or publication of any draft permit. In the event the Division 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 Division provides its written determination concerning the claim, the Division shall not release such information before notifying the applicant of the request. The Division shall notify the applicant of the request and the Division's determination on the confidentiality claim at least two (2) 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 (2) copies of the application; one (1) prominently marked as confidential and another that is subject to public review with confidential information excised. The Division will not accept applications that are deemed totally confidential except under

extraordinary circumstances guaranteeing future disclosure at a meaningful time for public review.

Rule 19.414 Operational Flexibility-Applicant's Duty to Apply for Alternative Scenarios

The permit applicant shall apply for any reasonably anticipated alternative stationary source operating scenarios at the time of permit application. The Division shall include approved alternative operating scenarios in the permit. The permittee may implement any operating scenario allowed in the permit without the need for a permit revision or notification to the Division.

Rule 19.415 Changes Resulting in No Emissions Increases

- (A) A permittee may make a change to a stationary source that contravenes permit terms without a permit revision if the change:
 - (1) Is not a Title I modification;
 - (2) Does not exceed emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions);
 - (3) Does not violate applicable requirements; and
 - (4) Does not violate federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
- (B) The permittee shall provide written notice to the Division at least seven (7) days prior to implementing the proposed changes allowed under Rule 19.415(A), or such shorter time frame that the Division allows for emergencies.
- (C) The permittee and the Division shall attach each such notice pursuant to Rule 19.415(B) to their copy of the relevant permit. For each such change, the written notice shall include:
 - (1) A brief description of the change to the permitted stationary source;
 - (2) The date the change will occur;
 - (3) Any change in emissions; and

- (4) Any permit term or condition that is no longer applicable as a result of the change.

Rule 19.416 Permit Flexibility

(A) The Division may grant an extension to any testing, compliance, or other date in the permit. No extensions shall be authorized until the permittee of the stationary source receives written approval from the Division. The Division may grant such a request, at its discretion, in the following circumstances:

- (1) The permittee of the stationary source makes such a request in writing at least fifteen (15) days in advance of the deadline specified in the stationary source's permit;
- (2) The extension does not violate a federal requirement;
- (3) The permittee of the stationary source demonstrates the need for the extension; and
- (4) The permittee of the stationary source documents that all reasonable measures have been taken to meet the current deadline and documents reasons the current deadline cannot be met.

(B) The Division may grant a request to allow temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement, or other limit in a stationary source's permit. No such activities shall be authorized until the permittee of the stationary source receives written approval from the Division. The Division may grant such a request, at its discretion, in the following circumstances:

- (1) The permittee of the stationary source makes such a request in writing at least thirty (30) days in advance of the date that temporary emissions and/or testing would otherwise exceed a permitted emission rate, throughput requirement, or other limit in a stationary source's permit;
- (2) Such a request does not violate a federal requirement;
- (3) Such a request is temporary in nature;

- (4) Such a request will not result in a condition of air pollution as defined in Chapter 2 of Rule 18;
 - (5) The request contains such information necessary for the Division to evaluate the request, including without limitation, quantification of such emissions and the date and time such emission will occur;
 - (6) Such a request will result in increased emissions less than five (5) tons of any individual criteria pollutant, one (1) ton of any single hazardous air pollutant and two and one-half (2.5) tons of total hazardous air pollutants; and
 - (7) The permittee of the stationary source maintains records of the dates and results of such temporary emissions and/or testing.
- (C) The Division may grant a request to allow an alternative to the monitoring specified in a stationary source's permit. No such activities shall be authorized until the permittee of the stationary source receives written approval from the Division. The Division may grant such a request, at its discretion, in the following circumstances:
- (1) The permittee operator of the stationary source makes such a request in writing at least thirty (30) days in advance of the first date that the monitoring alternative will be used;
 - (2) Such a request does not violate a federal requirement;
 - (3) The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the stationary source's permit; and
 - (4) Any such request for an alternative monitoring method, if approved by the Division, is incorporated into the next permit modification application by the permittee of the stationary source.

Rule 19.417 Registration

- (A) Sources currently holding permits issued pursuant to Rule 19 but whose emissions are below the permitting thresholds of Rule 19.401, and above the registration thresholds of Rule 18.315 may elect to continue to operate under their existing Rule 19 permit or they may submit a registration under Rule 18.315 and request their Rule 19 permit to be

terminated. The Rule 19 permit shall remain in effect until terminated. If a source takes no action, the Rule 19 permit shall remain in effect.

- (B) A source otherwise subject to registration under Rule 18.315 may elect to instead operate under a permit issued in accordance with Rule 19.402.