

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on January 31st, 2008 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Jason Thompson, Revisor of Statutes
Matt Todd, Revisor of Statutes
Adrienne Halpin, Committee Assistant

Conferees appearing before the committee:

Ron Hammerschmidt, Director, Division of Environment, Kansas Department of Health and Environment

Others attending:

See attached list.

The meeting commenced with a bill introduction by Mike Beam of the Kansas Livestock Association dealing with the protection of farmland and ranches. Senator Francisco made the motion to introduce the bill, seconded by Senator Taddiken. The motion carried.

Ron Hammerschmidt, Director of the Division of Environment, Kansas Department of Health and Environment (KDHE), addressed the Committee to review the air permitting process (Attachment 1). The KDHE Bureau of Air and Radiation (BAR) is responsible for the permitting process which is two-fold and involves both construction and operation permits. The evaluation standard used during this process is a sliding scale of control referred to as Best Available Control Technology (BACT). The purpose of the permitting process is the specification for emission requirements for a specific facility. Permits vary by the size of the project involved and include the following categories: (1.) Prevention of Significant Deterioration (PSD) for large power plants in accordance with the Federal Clean Air Act requirements and National Ambient Air Quality Standards (NAAQS), (2.) Non-PSD for middle-sized projects, and (3.) small projects which are not taken through the full permitting process but, instead, have an approval process to guarantee control structures are in place. After a construction permit is obtained, there is an eighteen month window by which construction must commence or an extension be sought. The BACT determination and modeling takes place in between this review process and final authorization. Within sixty days of the application's completion and drafting, a public hearing is held. A normal timeline for this process varies according to the type and size of the proposed project and may range from 140 days to 600 days.

Director Hammerschmidt stood for questions during which time Sheri Albrecht of KDHE also answered questions.

The meeting adjourned at 9:30.

SENATE NATURAL RESOURCES COMMITTEE

2008 Session

Guest Roster—Please Sign and Pass On

January 30th, 2008
(Date)

Doug Smith	Pinegar, Smith & Associates
Mark Schreiber	Westar
Whitney Damm	Empire District Electric Co
CU Cotsoradis	KDH
Steve Adams	KDWP
Brend Koops	KDWP
Sam Gleason	KUE
Wayne Arwood	Sunflower
John Beaman	Pinegar, Smith & Assoc.
Tom Gross	KDHE
Mervin Massak	KDHE
Shari Albrecht	KDHE
Mary Ann Hankewicz	KGFA
Tom Hammer & Schmitt	KDHE - DUE
Susan Kang	KDHE
Mike Beam	Ks. Switlock Assn.
SEAN MILLER	CAPITOL STRATEGIES
Woody Moses	Ks. Comant Council

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Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

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Review of KDHE Air Permitting Process and Timeline

**Presented to
Senate Natural Resources Committee**

**By
Ronald F. Hammerschmidt
Director, Division of Environment**

January 31, 2008

Chairperson McGinn and members of the Committee, I am Ron Hammerschmidt, Director of KDHE's Division of Environment. I am pleased to appear before you today to provide a review of the Kansas Department of Health and Environment's (KDHE) air permitting process.

KDHE's Bureau of Air and Radiation (BAR) is responsible for preparing air permits and approvals regulating major and minor facilities based on emissions. BAR issues two categories of air permits and approvals: construction and operating. BAR also issues general permits, a type of operating permit, that entitle some minor sources to operate by rule, i.e., reciprocating engines, organic solvent evaporative sources, hot mix asphalt facilities, sources with actual emissions less than 50% of major source thresholds. The general permit program offers an alternative to regular permits and simplifies the process for authorizing operation.

The Department of Air Quality of the Unified Government of Wyandotte County assists in the permitting process in Wyandotte County.

Permits are issued for major stationary sources of air pollutants and approvals are issued for minor stationary sources. The distinction between a major and minor source depends on whether a source meets or exceeds a specified level of emissions. The purpose of a permit or approval is to specify emission limits and requirements for construction and operation of the source subject to the permit or approval. Permit/approval conditions also specify the emission testing and monitoring requirements applicable to each source. These requirements are the primary means for demonstrating compliance with the emission limits.

*Senate Natural Resources
January 31, 2008
Attachment 1*

Construction Permits/Approvals

PSD Permits – K.A.R. 28-19-350:

The department issues prevention of significant deterioration (PSD) permits for new major stationary sources and for significant modifications at existing major stationary sources. The purpose of the PSD program is to implement the Federal Clean Air Act requirements for the prevention of significant deterioration of air quality. These requirements ensure that the permitting of proposed industrial facilities is consistent with the preservation of clean air resources. The PSD program provides special emphasis on implementation of best available control technology (BACT), air quality analysis, protection of scenic areas such as national parks, and informed public participation.

PSD is a preconstruction permitting program that requires a major stationary source to obtain a permit before it can begin construction or make a major modification if the construction or modification will increase emissions by an amount large enough to trigger PSD requirements. Under Part C of Title I of the Clean Air Act, states have the primary responsibility for developing a state implementation plan and issuing permits subject to the emission limits and other control measures developed in the plan, which is approved by the USEPA.

As part of the PSD permitting process, BAR staff reviews the applicant's consideration of BACT - whether all available control systems for the source, including the most stringent, have been considered. BACT is a top-down process; the applicant must consider the most effective control technology first. The most effective alternative is established as the BACT unless the applicant demonstrates it is not achievable due to technical, energy, environmental, or economic issues. Economic impact is based on \$ /ton of pollutant reduced. KDHE generally uses \$5,000/ton as a cutoff.

BAR staff completes required air quality modeling analysis of the project to ensure the project maintains compliance with the National Ambient Air Quality Standards (NAAQS). Kansas also tracks and controls the emission of air pollutants by calculating the maximum increase in concentration allowed to occur above an established background level, known as a PSD increment.

National Ambient Air Quality Standards

Pollutant	Primary Stds.	Averaging Times	Secondary Stds.
Carbon Monoxide	9 ppm (10 mg/m ³)	8-hour ⁽¹⁾	None
	35 ppm (40 mg/m ³)	1-hour ⁽¹⁾	None
Lead	1.5 µg/m ³	Quarterly Average	Same as Primary
Nitrogen Dioxide	0.053 ppm (100 µg/m ³)	Annual (Arithmetic Mean)	Same as Primary
Particulate Matter (PM ₁₀)	Revoked ⁽²⁾	Annual ⁽²⁾ (Arith. Mean)	Revoked ⁽²⁾
	150 µg/m ³	24-hour ⁽³⁾	Same as Primary
Particulate Matter (PM _{2.5})	15.0 µg/m ³	Annual ⁽⁴⁾ (Arith. Mean)	Same as Primary
	35 µg/m ³	24-hour ⁽⁵⁾	Same as Primary
Ozone	0.08 ppm	8-hour ⁽⁶⁾	Same as Primary
	0.12 ppm	1-hour ⁽⁷⁾ (Applies only in limited areas)	Same as Primary
Sulfur Oxides	0.03 ppm	Annual (Arith. Mean)	-----
	0.14 ppm	24-hour ⁽¹⁾	-----
	-----	3-hour ⁽¹⁾	0.5 ppm (1300 µg/m ³)

¹⁾ Not to be exceeded more than once per year.

²⁾ Due to a lack of evidence linking health problems to long-term exposure to coarse particle pollution, the agency revoked the annual PM₁₀ standard in 2006 (effective December 17, 2006).

³⁾ Not to be exceeded more than once per year on average over 3 years.

⁴⁾ To attain this standard, the 3-year average of the weighted annual mean PM_{2.5} concentrations from single or multiple community-oriented monitors must not exceed 15.0 µg/m³.

⁵⁾ To attain this standard, the 3-year average of the 98th percentile of 24-hour concentrations at each population-oriented monitor within an area must not exceed 35 µg/m³ (effective December 17, 2006).

⁶⁾ To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm.

⁷⁾ (a) The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is ≤ 1, as determined by appendix H.

(b) As of June 15, 2005 EPA revoked the 1-hour ozone standard in all areas except the fourteen 8-hour ozone nonattainment Early Action Compact (EAC) Areas.

Source: <http://epa.gov/air/criteria.html>

For the purposes of PSD, a stationary source is major if it:

- emits or has the potential to emit 100 tons per year of any regulated pollutant and is one of 28 source categories, including fossil fuel-fired steam electric plants (>250 Mmbtu/hour

heat input), Portland cement plants, petroleum refineries, chemical process plants, glass fiber plants; or

- emits or has the potential to emit 250 tons per year of any regulated pollutant.

A regulated pollutant for PSD is any pollutant:

- for which a National Ambient Air Quality Standard (NAAQS) has been promulgated;
- subject to any standard under CAA Section 111 (New Source Performance Standards);
- that is a Class I or II substance subject to any standard under CAA, Title VI (Stratospheric Ozone Protection);
- otherwise subject to regulation under the CAA (except hazardous air pollutants, CAA Section 112)

Construction Permits – K.A.R. 28-19-300(a):

The department issues a construction permit for non-PSD stationary sources or emissions units that have the potential-to-emit or, for modifications at existing sources, the increase in the potential-to-emit resulting from the modification, equals or exceeds the following major source thresholds:

- either 25 tons per year of particulate matter or 15 tons per year of PM10, except for any agricultural-related activity, in which case the emission level is 100 tons per year of particulate matter, including but not limited to PM10;
- 40 tons per year of sulfur dioxide or sulfur trioxide or a combination thereof;
- 100 tons per year of carbon monoxide;
- 40 tons per year of volatile organic compounds;
- 40 tons per year of oxides of nitrogen; or
- 0.6 tons per year of lead or lead compound

Or for:

- an affected source (subject to the acid rain rules, CAA Title IV);
- a major source of hazardous air pollutants;
- an incinerator used to dispose of refuse by burning or pyrolysis or used for the processing of salvageable materials, except incinerators installed on residential premises that contain less than six dwelling units and that are used to burn waste materials associated with normal habitation of those dwelling units; or
- as required by the secretary based on air emissions from the emissions unit or stationary source.

Construction Approvals – K.A.R. 28-19-300(b):

The BAR issues a construction approval for stationary sources or emissions units that have the potential-to-emit or, for modifications at existing sources, the increase in the potential-to-emit resulting from the modification, equals or exceeds the following:

- either 5 pounds per hour of particulate matter or 2 pounds per hour of PM10, except for any agricultural-related activity in which case the emission level is 5 pounds per hour of particulate matter, including but not limited to PM10;
- 2 pounds per hour of sulfur dioxide or sulfur trioxide or a combination thereof;
- 50 pounds per 24 hour period of carbon monoxide;
- 50 pounds per 24 hour period of volatile organic compounds, except when the stationary source or emissions unit is located in an area designated as a nonattainment area at 40 CFR 81.317 as in effect on July 1, 1989 in which case approval is required if the emission level exceeds either 15 pounds per 24 hour period or 3 pounds per hour;
- 50 pounds per 24 hour period of oxides of nitrogen calculated as nitrogen dioxide; or
- 0.1 pounds per hour of lead or lead compound;
- as required by the secretary based on air emissions from the emissions unit or stationary source.

Construction approvals are also issued to emissions units or stationary sources not otherwise required to have a construction permit but that are subject to the following:

- an emissions limitation or standard pursuant to K.A.R. 28-19-720, new source performance standards, except the standards of performance for new residential wood heaters, 40 CFR part 60, subpart AAA;
- K.A.R. 28-19-735, national emission standards for hazardous air pollutants, except the national emissions standard for asbestos, standard for demolition and renovation, 40 CFR 61.145; or
- K.A.R. 28-19-750 et seq., hazardous air pollutants; or
- the source is seeking an approval with operational restrictions

Examples of projects for which construction approvals are issued include boilers, painting operations, petroleum storage tanks, natural gas reciprocating engines.

Operating Permits/Approvals

Class I (Title V) Operating Permits – K.A.R. 28-19-500:

The 1990 Clean Air Act Amendments (CAAA) established a comprehensive operating permit program under Title V. KDHE's Class I Operating Permits are for sources of air

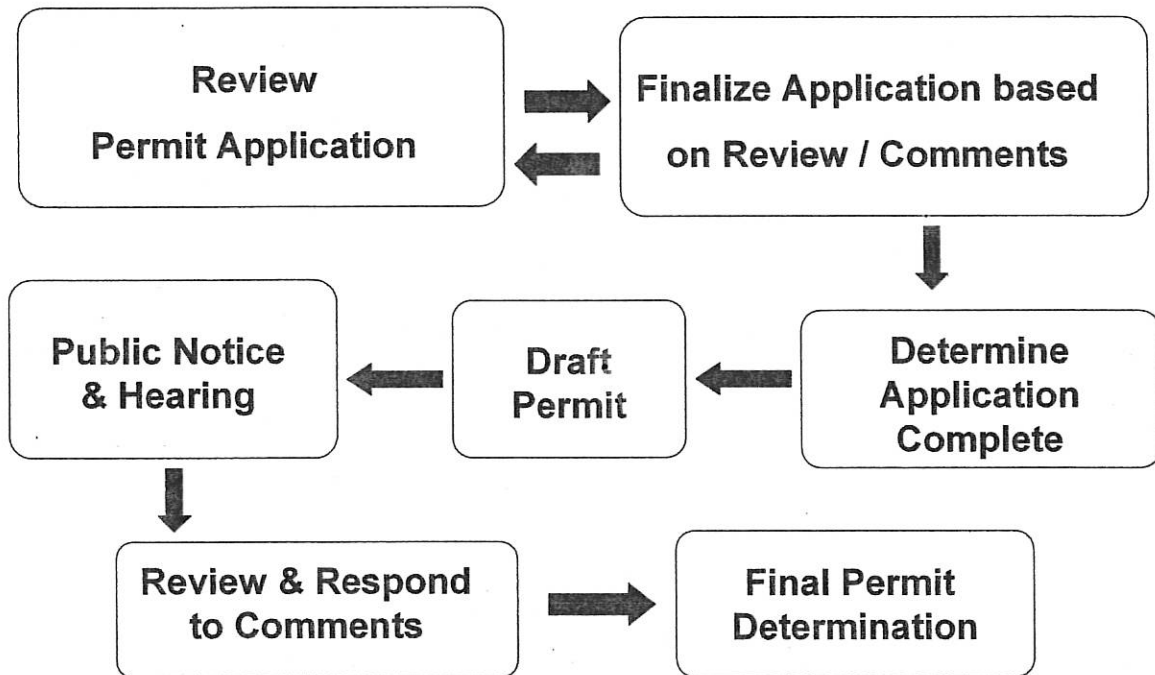
pollution regulated by the Title V of the Federal Clean Air Act. These sources include those that are subject to acid rain rules, and those that emit pollutants in excess of 100 tons/year. The Title V program also features a unique fee system. Sources calculate and pay annual fees based on their air pollution for the previous calendar year.

The Kansas Class I operating permit program satisfies the requirements of the federal Title V program and closely parallels the requirements of 40 CFR Part 70. A Class I operating permit is required for major sources of air pollution and provides a complete listing of all air quality regulatory requirements in one document.

Class II Operating Permits – K.A.R. 28-19-540:

The Kansas Class II operating permit program provides a method to reduce the potential-to-emit of a source below the major source thresholds and thereby allows the source to operate without a Class I operating permit.

Air Permitting Process



Air Permitting Timelines

Legal Requirements:

K.S.A. 3008b(h)(3) requires the Secretary of KDHE to issue or deny air permits within 18 months after receiving a complete application. Once construction permits and approvals have been issued, the permit holder has 18 months in which to commence construction or to seek an extension. 40 CFR 52.21(i)(1)(ii)(c) and K.A.R. 28-19-16 for PSD and 28-19-301(c) for regular construction permits. After initial startup, the permit holder has 12 months in which to apply for an operating permit, if applicable. Class I operating permits are valid for 5 years and a renewal application must be submitted within 6 to 18 months prior to permit expiration date. If the permit holder submits the renewal application within this time frame, the source may continue to operate if the current permit expires before the expiration date in the initial Class I permit. Class II approvals have no expiration date.

Timeliness Considerations:

- Pre-application meetings with KDHE
- Completeness and quality of application
- Timely response to agency's comments during review
- Minimal changes to application
- Applicant-hosted public information meetings
- Concurrent notices for public notice and public hearing
- Environmental Protection Agency enforcement issues
- Staffing of permit program

Permit Streamlining Initiatives:

- Applicant provides electronic copy of permit application and a proposed draft permit
- Public notice for the draft permit and tentative public hearing is published concurrently
- Informational meeting with the proposed facility to discuss project details requirements
- Development of standard expedited permits/approvals for common projects (i.e., emergency generators, small natural gas compressor stations, etc.)

Thank you for the opportunity to appear before the Senate Natural Resources Committee. I will gladly stand for questions the committee may have on this topic.