

CHAPTER 79  
SENATE BILL No. 361

AN ACT amending the Kansas air quality act; providing judicial review of agency action to court of appeals; when; amending K.S.A. 65-3008a and 65-3013 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 65-3008a is hereby amended to read as follows: 65-3008a. (a) No permit shall be issued, modified, renewed or reopened without first providing the public an opportunity to comment and request a public hearing on the proposed permit action. The request for a public hearing on the issuance of a permit shall set forth the basis for the request and a public hearing shall be held if, in the judgment of the secretary, there is sufficient reason.

(b) The secretary shall affirm, modify or reverse the decision on such permit after the public comment period or public hearing. Any person, ~~other than the applicant for or holder of the permit,~~ who participated in the public comment process or the public hearing *who otherwise would have standing under K.S.A. 77-611, and amendments thereto,* shall have standing to obtain judicial review of the secretary's final action on the permit pursuant to the act for judicial review and civil enforcement of agency actions ~~and in the court of appeals.~~ *Any such person other than the applicant for or holder of the permit shall not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action.* The record before the court ~~shall of appeals shall be confined to the agency record for judicial review and~~ consist of the documentation ~~relied upon~~ *submitted to or developed* by the secretary in making the final permit decision, including the permit application and any addenda or amendments thereto, the permit summary, the draft permit, all written comments properly submitted to the secretary, all testimony presented at any public hearing held on the permit application, *all responses by the applicant or permit holder to any written comments or testimony,* the secretary's response to the public comments and testimony and the final permit.

(c) When determined appropriate by the secretary, the procedures set out ~~above~~ *in subsection (a)* may be required prior to the issuance, modification, renewal or reopening of an approval.

Sec. 2. K.S.A. 65-3013 is hereby amended to read as follows: 65-3013. (a) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the secretary for a variance from rules and regulations governing the quality, nature, duration or extent of emissions. The application shall be accompanied by such information and data as the secretary may reasonably require. The secretary may grant such variance if the secretary finds that:

(1) The emissions occurring or proposed to occur do not endanger or tend significantly to endanger human health or safety; and

(2) Compliance with the rules and regulations from which variance is sought would produce serious hardships without equal or greater benefits to the public.

(b) No variance shall be granted pursuant to this section except after public hearing on due notice and until the secretary has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available and subject to the taking of any substitute or alternate measures that the secretary may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a

period not to exceed such reasonable time as the secretary finds is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (c)(1) and (2), it shall be for not more than one year.

(d) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the secretary on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the secretary finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least 60 days prior to the expiration of the variance. Immediately upon receipt of an application for renewal the secretary shall give public notice of such application in accordance with rules and regulations of the secretary.

(e) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the secretary. ~~However, any person adversely affected by any action of the secretary pursuant to this section may obtain review of such action in accordance with the act for judicial review and civil enforcement of agency actions~~ *Within 15 days after the secretary's written decision to grant or deny a variance or renewal thereof, the applicant or holder of a variance or renewal may file a request for a hearing with the secretary. Such hearing shall be conducted in accordance with the Kansas administrative procedure act. However, any person who participated in the public comment process or the public hearing or who otherwise would have standing under K.S.A. 77-611, and amendments thereto, and is adversely affected by any final action of the secretary pursuant to this section shall have standing to obtain judicial review of the secretary's final action on the variance or renewal in the court of appeals. Any such person other than the applicant for or holder of the permit shall not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action. The record before the court of appeals shall be confined to the agency record for judicial review and consist of the documentation submitted to or developed by the secretary in making the final variance or renewal decision, including the variance or renewal application and any addenda or amendments thereto, the variance or renewal summary, the draft variance or renewal, all written comments properly submitted to the secretary, all testimony presented at any public hearing held on the variance or renewal application, all responses by the applicant or holder of a variance or renewal to any written comments or testimony, the secretary's response to the public comments and testimony and the final variance or renewal.*

(f) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of K.S.A. 65-3012, and amendments thereto, to any person or any person's property.

~~(g) Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.~~

Sec. 3. K.S.A. 65-3008a and 65-3013 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 3, 2006.

Published in the *Kansas Register* April 13, 2006.

---