Kansas Administrative Regulations

Department of Health and Environment

Article 16.—Water Pollution Control—State Grants to Municipalities for the Construction of Water Pollution Control Projects Benefiting from Federal Grants

28-16-62. Terms and conditions of permits.

(a) Prohibitions. A permit shall not be issued:

(1) By the director when the regional administrator has objected to issuance of the permit under 40 CFR Section 123.44, as in effect on July 1, 1985;

(2) when comments, if any, received from neighboring states, indicate that such discharge will violate the water quality of such states. The neighboring states shall be notified in advance, pursuant to K.A.R. 28-16-61;

(3) when, in the judgment of the secretary of the army, acting through the chief of engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(4) for the discharge of any radiological, chemical, or biological warfare agent or high level radioactive waste;

(5) for any discharge inconsistent with a plan or plan amendment approved under 33 U.S.C. Section 1288(b), and amendments thereto; or

(6) to a new source or new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards.

(b) Minimum standards of design, construction and maintenance for owners and operators of water pollution control facilities. (1) Each owner or operator of a sewage system, industrial facility, commercial establishment, or agricultural activity discharging or having a potential to discharge sewage to waters of the state shall have approved water pollution control facilities. In approving and issuing permits to each existing or proposed facility, the director shall ensure that such facility conforms to published

minimum standards of design, construction, and maintenance. In approving and publishing minimum standards of design, construction and maintenance, the director shall ensure that such standards are at least as stringent as the requirements of 33 U.S.C. Sections 1311, 1312, 1316, 1317, 1318, and 1343, and amendments thereto.

(2) Treatment over and above minimum standards shall be required to comply with applicable water quality standards. When minimum standards do not provide compliance with the applicable water quality standards, a waste-loading allocation shall be prepared to ensure that the discharge authorized is consistent with the applicable water quality standards.

(3) Each permit shall also include a schedule of compliance for any facility which is not in full compliance with minimum standards of design, construction, and maintenance and other requirements. If the discharger fails or refuses to comply with the specified schedule of compliance, the regional administrator shall be notified by the director within 30 days of such failure or refusal. If a schedule of compliance exceeds nine months, one or more interim reporting dates shall be required. No more than nine months shall elapse between interim dates contained in a schedule of compliance.

(4) Upon request of the applicant or permittee, a schedule of compliance may be modified by the director if good and valid cause exists for such revision, and if within 30 days following receipt of notice, the regional administrator does not object in writing.

(5) No later than 14 days following each interim date, the discharger shall be required to provide the director with a written notice of progress toward compliance with interim or final permit requirements.

(A) On the last day of the months of February, May, August, and November, a list of all instances, as of 30 days prior to the date of the report, of failure or refusal of a permittee to comply with interim or final requirements or to notify the director of compliance or noncompliance with each interim or final requirement shall be transmitted to the regional administrator by the director. The list shall be available to the public for inspection and copying and shall contain at least the following information with respect

to each instance of noncompliance:

(i) The name and address of each noncomplying permittee;

(ii) a short description of each instance of noncompliance;

(iii) a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirements; and

(iv) any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement.

(B) A permit may be revoked for failure to comply with any provision of an applicable schedule of compliance in conformance with K.S.A. 65-165. Nothing in this regulation shall be construed to limit the applicability of civil or criminal penalties as provided by law.

(c) Other terms and conditions of permit.

(1) Each permit for a publicly-owned treatment facility shall contain a requirement that the operating agency must notify the director of:

(A) A sewer extension or other means whereby a new introduction of pollutants is discharged to the treatment works; or

(B) a change in the volume or character or pollutants being introduced into such works by a source introducing pollutants into such works at the time the permit was issued.

(2) Each permit shall contain a requirement that the operator of the publicly-owned treatment works ensure that each industrial user:

(A) Pays a charge for the user's fair share of the operating and maintenance cost of treatment and a fair share of the federal grant portion of the cost of construction of the treatment plant in accordance with any applicable provisions of the act and the federal grant agreement; and

(B) complies with applicable toxic and pretreatment guidelines as contained in the minimum standards of design, construction and maintenance.

(3) Each permit shall contain a condition which states that the discharge of any

pollutant not identified and authorized by the permit or the discharge of any pollutant in a manner or quantity which differs from that stated in the application is prohibited.

(4) Each permit shall contain a condition that the discharger shall maintain in good working order and operate as efficiently as possible any facility or control system installed by the discharger to achieve compliance with the permit.

(d) Duration of permits. Each permit shall be issued for a fixed term not to exceed ten years.

(e) Modification or revocation and reissuance of permits. When the director receives any information regarding a permittee, receives a request for modification or revocation and reissuance of a permit, or conducts a review of the permit file, the director may determine whether or not one or more of the causes listed in paragraphs (1) or (2) of this subsection for modification or revocation and reissuance or both exist. If cause exists, the permit may be modified or revoked and reissued accordingly and an updated application may be requested, if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.

(1) Causes for modification. The following are causes for modification of a permit. However, these causes shall not be a basis for revocation and reissuance of permits except when the permittee requests or agrees to such an action.

(A) Alterations. Material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance may be the basis for modification of a permit, if those alterations or additions justify application or permit conditions that are different or absent in the existing permit.

(B) Information. If the director has received new information regarding a permittee's facility or activities, the permit may be modified during its term only if the information received was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance.

(C) New regulations. If the standards or regulations upon which a permit was based have been changed by promulgation of amended standards or regulations after the permit was issued, the permit may be modified during its term only when:

(i) The permit condition requested to be modified was based on a promulgated effluent limitations guideline, EPA-approved or promulgated water quality standards, or secondary treatment regulations;

(ii) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based or has approved KDHE action with regard to a water quality standard on which the permit condition was based; and

(iii) a permittee requests modification in accordance with subsection (g) of this regulation within 90 days after notice of action on which the request is based.

(D) Judicial Decisions. Any permit may be modified if:

(i) a court of competent jurisdiction has remanded and stayed EPA-promulgated regulations or effluent limitation guidelines;

(ii) the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based; and

(iii) a request is filed by the permittee in accordance with subsection (g) of this regulation within 90 days of judicial remand.

(E) Compliance Schedules. Any permit may be modified if the director determines good cause exists for modification of a compliance schedule, including such causes as an act of God, a strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonable available remedy. However, in no case may a compliance schedule be modified to extend beyond a statutory deadline.

(F) Any permit may be modified when the permittee has filed a request for a variance under 33 U.S.C. Sections 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), or 1326(a), and amendments thereto or for "fundamentally different factors" within the time

specified in 40 CFR Section 122.21 or 125.27(a), as in effect on July 1, 1985.

(G) 33 U.S.C. Section 1317(a) toxics. Any permit may be modified when required to incorporate an applicable 33 U.S.C. Section 1317(a), and amendments thereto, toxic effluent standard or prohibition.

(H) Reopener. Any permit may be modified when required by "reopener" conditions in a permit that are established for toxic effluent limitations or pretreatment programs.

(I) Net Limits.

(i) Incorporation. 40 CFR Section 122.45(h), as in effect on July 1, 1985, is adopted by reference.

(ii) Any permit may be modified upon request of a permittee who qualifies for effluent limitations on a net basis under 40 CFR Section 122.45(h), as in effect on July 1, 1985.

(iii) A permit may be modified when a discharge is no longer eligible for net limitations, as provided in 40 CFR Section 122.45(h), as in effect on July 1, 1985.

(J) Pretreatment. Any permit may be modified as necessary under the compliance schedule for development of a publicly-owned treatment works pretreatment program.

(K) Failure to notify. A permit may be modified upon failure of the department to notify another state whose waters may be affected by a discharge from this state.

(L) Non-limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by technology-based treatment requirements appropriate to the permittee, the permit may be modified.

(M) Notification Level.

(i) Incorporation. 40 CFR Section 122.44(f), as in effect on July 1, 1985, is adopted by reference.

(ii) A permit may be modified to establish a "notification level" as provided in 40 CFR Section 122.44(f), as in effect on July 1, 1985.

(N) Compliance Schedule. A permit may be modified to change a schedule of compliance to reflect time lost during construction of an innovative or alternate facility.

(O) When the permittee's effluent limitations were imposed under 33 U.S.C. Section 1342(a)(1), and amendments thereto, and the permittee demonstrates operation and maintenance costs that are totally disproportionate from the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline, the permit may be modified. However, the limitations shall not be less stringent than the subsequent guideline.

(P) Any permit may be modified to correct technical mistakes, including errors in calculation or mistaken interpretations of law made in determining permit conditions.

(Q) When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under 33 U.S.C. Section 1342(a)(1), and amendments thereto, and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations, the permit may be modified. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline.

(2) Causes for modification or revocation and reissuance. Any permit may be modified, or alternatively, may be revoked and reissued when:

(A) Cause exists for termination under subsection (f) of this regulation, and the director determines that modification or revocation and reissuance is appropriate; or

(B) the director has received notification of a proposed transfer of the permit.

(f) Termination of permits.

(1) A permit may be terminated during its term or a permit may be denied for:

(A) Noncompliance by the permittee with any condition of the permit;

(B) the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(C) a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(D) a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit.

(2) The applicable procedures in subsection (g) of this regulation shall be followed for termination of any permit.

(g) Procedures for modifications, revocation and reissuance, or termination of permits.

(1) Any permit may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the director's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the director decides that the request is not justified, the requester shall be provided with a brief written response giving a reason for the decision. Denial of requests for modification, revocation and reissuance, or termination shall not be subject to public notice, comment, or hearings. Denials by the director may be informally appealed to the secretary by a letter briefly setting forth the relevant facts. The secretary may direct the director to begin modification, revocation and reissuance, or termination proceedings under paragraph (3) of this subsection. The appeal shall be considered denied if the secretary takes no action on the letter within 60 days after receiving it. This informal appeal shall be a prerequisite to seeking judicial review of agency action in denying a request for modification, revocation and reissuance, or termination.

(3)(A) If the director tentatively decides to modify or revoke and reissue a permit under subsection (e) of this regulation, the director may prepare a draft permit under K.A.R. 28-16-60 incorporating the proposed changes. The director may request additional information, and in the case of a modified permit, may require the submission of an updated application. A new application for a permit shall be submitted for the

reissuance of a revoked permit.

(B) In a permit modification under this regulation, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit shall be reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(4) If the director tentatively decides to terminate a permit under subsection (f) of this regulation, the director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under K.A.R. 28-16-60.

(h) Transmission to regional administrator of permits. Upon issuance of any permit, a copy of the permit shall be forwarded to the regional administrator by the director.

(i) Reissuance of permits.

(1) At least 180 days prior to expiration of a permit, a permit holder wishing to renew the permit shall file an application, as required by the director.

(2) Permits shall not be reissued unless:

(A) The discharger is in compliance with or has complied with all the terms, conditions, requirements and schedules of compliance contained in the existing permit;

(B) The discharger files an application and other necessary data as required by the director; and

(C) The discharge is consistent with applicable minimum standards of design, construction, and maintenance and water quality standards.

(3) The notice and hearing procedure for reissuance shall be the same as for the issuance of new permits.

(Authorized by K.S.A. 65-171d; implementing K.S.A. 65-165, 65-166; effective, E-74-32, June 14, 1974; effective May 1, 1975; amended May 1, 1987; amended Oct. 30, 2026.)

***** Authenticated Kansas Administrative Regulation *****