

Kansas Administrative Regulations

Mined-Land Conservation and Reclamation (KDHE)

Article 3.—Application for Mining Permit

47-3-42. Application for mining permit; adoption by reference.

(a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except for the additions and deletions specified:

(1) Applicability, 30 C.F.R. 701.11 subsections (d) and (e) only. Subsections (a), (b), (c), and (f) shall be deleted, and the word "Act" shall be replaced by "state act";

(2) public participation in permit processing, 30 C.F.R. 773.6. The phrase "developed in accordance with section 503(a)(6) or section 504(h) of the Act, or §773.5" in 30 C.F.R. 773.6(a)(3)(ii) and the sentence "The requirements of section 5 of the administrative procedure act, as amended (5 U.S.C. 554), shall not apply to the conduct of the informal conference." in 30 C.F.R. 773.6(c)(2)(iv) shall be deleted;

(3) review of permit applications, 30 C.F.R. 773.7, except that the 60-day period for decision shall be replaced by a 30-day period;

(4) general provisions for review of permit application information and entry of information into AVS, 30 C.F.R. 773.8;

(5) review of applicant and operator information, 30 C.F.R. 773.9;

(6) review of permit history, 30 C.F.R. 773.10;

(7) review of compliance history, 30 C.F.R. 773.11, except that the word "Act" shall be replaced by "state act";

(8) permit eligibility determination, 30 C.F.R. 773.12;

(9) unanticipated events or conditions at remining sites, 30 C.F.R. 773.13;

(10) eligibility for provisionally issued permits, 30 C.F.R. 773.14;

(11) written findings for permit application approval, 30 C.F.R. 773.15. In subsections (a) and (b), the word "Act" shall be replaced by "state act." The phrases "parts 764 and 769 of this chapter" and "parts 762 and 764 or 769 of this chapter" shall be replaced by "K.A.R. 47-12-4";

(12) performance bond submittal, 30 C.F.R. 773.16;

(13) permit issuance and right of renewal, 30 C.F.R. 773.19. The clause "unless the requirements of 778.17 of this chapter are met" shall be deleted;

(14) initial review and finding requirements for improvidently issued permits, 30 C.F.R. 773.21;

(15) notice requirements for improvidently issued permits, 30 C.F.R. 773.22;

(16) suspension or rescission requirements for improvidently issued permits, 30 C.F.R. 773.23;

(17) who may challenge ownership or control listings and findings, 30 C.F.R. 773.25;

(18) how to challenge an ownership or control listing or finding, 30 C.F.R. 773.26, except that in subsection (a), the phrase "as identified in the following table" and the table shall be deleted. The word "Act" shall be replaced by "state act";

(19) burden of proof for ownership or control challenges, 30 C.F.R. 773.27;

(20) written agency decision on challenges to ownership or control listings or findings, 30 C.F.R. 773.28;

(21) Certifying and updating existing permit application information, 30 C.F.R. 778.9;

(22) providing applicant and operator information, 30 C.F.R. 778.11;

(23) providing permit history information, 30 C.F.R. 778.12;

(24) providing property interest information, 30 C.F.R. 778.13;

(25) providing violation information, 30 C.F.R. 778.14;

(26) right-of-entry information, 30 C.F.R. 778.15;

(27) status of unsuitability claims, 30 C.F.R. 778.16, except that the phrase "parts 762, 764, and 769 of this chapter" shall be replaced by "K.A.R. 47-12-4";

(28) permit term, 30 C.F.R. 778.17;

(29) insurance, 30 C.F.R. 778.18;

(30) proof of publication, 30 C.F.R. 778.21;

(31) facilities or structures used in common, 30 C.F.R. 778.22;

(32) responsibilities, 30 C.F.R. 779.4. The phrase "this part" shall be replaced by "K.A.R. 47-3-42(a)(32) through (39)";

(33) general requirements, 30 C.F.R. 779.11;

(34) general environmental resources information, 30 C.F.R. 779.12;

(35) climatological information, 30 C.F.R. 779.18;

(36) vegetation information, 30 C.F.R. 779.19, except that the phrase "if required by the regulatory authority" shall be deleted;

(37) soil resources information, 30 C.F.R. 779.21;

(38) maps: general requirements, 30 C.F.R. 779.24;

(39) cross sections, maps, and plans, 30 C.F.R. 779.25;

(40) responsibilities, 30 C.F.R. 780.4. The phrase "this part" shall be replaced by "K.A.R. 47-3-42(a)(40) through (59)";

(41) operation plan: general requirements, 30 C.F.R. 780.11;

(42) operation plan: existing structures, 30 C.F.R. 780.12;

(43) operation plan: blasting, 30 C.F.R. 780.13;

(44) operation plan: maps and plans, 30 C.F.R. 780.14;

(45) air pollution control plan, 30 C.F.R. 780.15, except that the phrase "if required by the regulatory authority" shall be deleted;

(46) fish and wildlife information, 30 C.F.R. 780.16;

(47) reclamation plan: general requirements, 30 C.F.R. 780.18;

(48) hydrologic information, 30 C.F.R. 780.21;

(49) geologic information, 30 C.F.R. 780.22;

(50) reclamation plan: land use information, 30 C.F.R. 780.23;

(51) reclamation plan: siltation structures, impoundments, and refuse piles, 30 C.F.R. 780.25;

(52) reclamation plan: surface mining near underground mining, 30 C.F.R. 780.27;

(53) activities in or adjacent to perennial or intermittent streams, 30 C.F.R. 780.28;

(54) diversions, 30 C.F.R. 780.29;

(55) protection of publicly owned parks and historic places, 30 C.F.R. 780.31, except that the word "may" shall be changed to "shall";

(56) relocation or use of public roads, 30 C.F.R. 780.33;

(57) disposal of excess spoil, 30 C.F.R. 780.35;

(58) road systems, 30 C.F.R. 780.37;

(59) support facilities, 30 C.F.R. 780.38;

(60) experimental practices mining, 30 C.F.R. 785.13, except that the word "Act" shall be replaced by "state act";

(61) prime farmland, 30 C.F.R. 785.17. The last sentence in 30 C.F.R. 785.17(c)(1)(i) shall be deleted;

(62) variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities, 30 C.F.R. 785.18, except that in subsections (b)(3) and (7), the word "Act" shall be replaced by "state act";

(63) augering, 30 C.F.R. 785.20;

(64) coal preparation plants not located within the permit area of a mine, 30 C.F.R. 785.21, except that subsections (d) and (e) shall be deleted;

(65) in situ processing activities, 30 C.F.R. 785.22; and

(66) lands eligible for remining, 30 C.F.R. 785.25.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation.

(1)(A) "Act" shall be replaced by "state act."

(B) "By a reviewing administrative or judicial tribunal" shall be replaced by "by an administrative or a judicial review of an agency action concerning the aforementioned Kansas department of health and environment determination."

(C) "Central office of the applicable state regulatory authority, if any" shall be replaced by "the Kansas department of health and environment, surface mining section."

(D) "Office of hearings and appeals or its state counterpart" shall be replaced by "office of administrative hearings."

(E) "Rule 4 of the federal rules of civil procedure, or its state regulatory program counterparts" shall be replaced by "K.A.R. 47-4-14a."

(F) "Subchapter B (Interim Program Standards) of this chapter" and "subchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."

(G) "Subchapter B or K of this chapter" shall be replaced by "K.A.R. 47-9-4 or K.A.R. 47-9-1."

(H) "Subchapter J of this chapter," "subchapter J," and "part 800 of this chapter" shall be replaced by "article 8 of these regulations."

(I) "Subchapter K (Permanent Program Standards) of this chapter," "subchapter K," and "subchapter K of this chapter" shall be replaced by "K.A.R. 47-9-1."

(J) "Subchapter R of this chapter" shall be replaced by "the office."

(K) "The procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority)" shall be replaced by "K.A.R. 47-4-14a."

(L) "This chapter," "this subchapter," "this part," and "subchapter G of this chapter" shall be replaced by "these regulations."

(2)(A) "Part 775 of this chapter" and "part 775 of this subchapter" shall be replaced by "K.S.A. 49-407(d), 49-416a, and 49-422a, and amendments thereto, and article 4 of these regulations."

(B) "Part 785 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(60) through (66)."

(C) "Part 816" and "part 816 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)."

(D) "Part 823 of this chapter" and "30 CFR part 823" shall be replaced by "K.A.R. 47-9-1(f)."

(E) "Part 827 of this chapter" shall be replaced by "K.A.R. 47-9-1(g)."

(F) "Section 508 of the Act" shall be replaced by "K.S.A. 49-406, and amendments thereto."

(G) "Section 510(c) of the Act" shall be replaced by "K.S.A. 49-407(b), and amendments thereto."

(H) "Section 515 of the Act," "section 515(b) of the Act," "section 515 (b)(22) of the Act," and "sections 515 and 516 of the Act" shall be replaced by "K.S.A. 49-405a, 49-408 through 49-413, and 49-429, and amendments thereto."

(I) "Section 515(b)(16) of the Act" shall be replaced by "K.S.A. 49-429, and amendments thereto."

(3)(A) "30 CFR 773.15" and "§773.15 of this part" shall be replaced by "K.A.R. 47-3-42 (a)(11)."

(B) "30 CFR 779.24 through 779.25" shall be replaced by "K.A.R. 47-3-42(a)(38) through (39)."

(C) "30 CFR 780.12 or 784.12" shall be replaced by "K.A.R. 47-3-42(a)(42) or K.A.R. 47-10-1(a)(2)(C)."

(D) "30 CFR 780.16" shall be replaced by "K.A.R. 47-3-42(a)(46)."

(E) "30 CFR 780.18 through 780.37" shall be replaced by "K.A.R. 47-3-42(a)(47) through (58)."

(F) "30 CFR 816.13 through 816.15" shall be replaced by "K.A.R. 47-9-1(c)(2) through (4)."

(G) "30 CFR 816.22," "§816.22 of this chapter," and "§816.22(b) of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(5)."

(H) "30 CFR 816.43 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(8)."

(I) "30 CFR 816.59" and "§816.59 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(15)."

(J) "30 CFR 816.71-816.74" and "§§816.71 through 816.74 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(22) through (23)."

(K) "30 CFR 816.79" and "§816.79 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(24)."

(L) "30 CFR 816.89 through 816.102" shall be replaced by "K.A.R. 47-9-1(c)(29) through (35)."

(M) "30 CFR 816.95" shall be replaced by "K.A.R. 47-9-1(c)(30)."

(N) "30 CFR 816.102 through 816.107" shall be replaced by "K.A.R. 47-9-1(c)(35) through (38)."

(O) "30 CFR 816.111 through 816.116" shall be replaced by "K.A.R. 47-9-1(c)(39) through (42)."

(P) "30 CFR 816.116" shall be replaced by "K.A.R. 47-9-1(c)(42)."

(Q) "30 CFR part 819" shall be replaced by "K.A.R. 47-9-1(e)."

(R) "30 CFR part 828" shall be replaced by "K.A.R. 47-9-1(h)."

(S) "30 CFR parts 817 and 828" shall be replaced by "K.A.R. 47-9-1(d) and (h)."

(T) "43 CFR 4.1360 through 4.1369" shall be replaced by "K.A.R. 47-4-14a."

(U) "43 CFR 4.1376 or the State regulatory program equivalent" shall be replaced by "K.A.R. 47-4-14a."

(V) "43 CFR 4.1380 through 4.1387 or, when a state is the regulatory authority, the state regulatory program counterparts" shall be replaced by "K.A.R. 47-4-14a and K.S.A. 49-416a, and amendments thereto."

(4)(A) "§701.5 of this chapter" shall be replaced by "K.A.R. 47-2-75(b)."

(B) "§701.11(d)" shall be replaced by "K.A.R. 47-3-42 (a)(1)."

(C) "§761.11 of this chapter" shall be replaced by "K.A.R. 47-12-4(a)(2)."

(D) "§761.12(d) of this chapter" shall be replaced by "K.A.R. 47-12-4(a)(3)."

(E) "§761.14(c) of this chapter" shall be replaced by "K.A.R. 47-12-4(a)(4)."

(F) "§761.14 or §761.15 of this chapter" shall be replaced by "K.A.R. 47-12-4(a)(4) or (5)."

(G) "§761.16 of this chapter" shall be replaced by "K.A.R. 47-12-4(a)(6)."

(H) "§761.17(d) of this chapter" shall be replaced by "K.A.R. 47-12-4(a)(7)."

(I) "§762.13(c) of this chapter" shall be replaced by "K.A.R. 47-12-4(a)(12)."

(J) "§773.6(d)(3)(ii) of this chapter," "§773.6(a)(1) of this chapter," and "§773.6 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(2)."

(K) "§773.12 of this part" and "§773.12" shall be replaced by "K.A.R. 47-3-42(a)(8)."

(L) "§773.13" and "§773.13(c)" shall be replaced by "K.A.R. 47-3-42(a)(9)."

(M) "§773.14(b) of this part" and "§§773.14(c)(1) through (4)" shall be replaced by "K.A.R. 47-3-42(a)(10)."

(N) "§773.19 of this part" shall be replaced by "K.A.R. 47-3-42(a)(13)."

(O) "§773.21(d) of this part" and "paragraphs (a) and (b) §773.21 of this part" shall be replaced by "K.A.R. 47-3-42(a)(14)."

(P) "§773.22(b) or (c) of this part" and "§773.22(e) of this part" shall be replaced by "K.A.R. 47-3-42(a)(15)."

(Q) "§773.23 of this part" shall be replaced by "K.A.R. 47-3-42(a)(16)."

(R) "§773.26(a) of this part" shall be replaced by "K.A.R. 47-3-42(a)(18)."

(S) "§773.27(b) of this part" shall be replaced by "K.A.R. 47-3-42(a)(19)."

(T) "§774.11(c) of this subchapter," "§774.11(f) of this subchapter," and "§774.11(g) of this subchapter" shall be replaced by "K.A.R. 47-6-11(a)(1)."

(U) "§774.13 of this chapter" and "§774.13" shall be replaced by "K.A.R. 47-6-2."

(V) "§774.15" shall be replaced by "K.A.R. 47-6-3."

(W) "§778.9(d) of this subchapter" shall be replaced by "K.A.R. 47-3-42(a)(21)."

(X) "§778.11 of this subchapter," "§§778.11(c)(5) and 778.11(d) of this subchapter," and "§778.11(c)(5) of this subchapter" shall be replaced by "K.A.R. 47-3-42(a)(22)."

(Y) "§778.12 of this subchapter" shall be replaced by "K.A.R. 47-3-42(a)(23)."

(Z) "§778.14 of this subchapter" shall be replaced by "K.A.R. 47-3-42(a)(25)."

(AA) "§778.15(b) of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(26)."

(BB) "§779.25 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(39)."

(CC) "§780.16(b) and 816.97(a) of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(46) and K.A.R. 47-9-1(c)(31)."

(DD) "§780.21(h) and 816.41(d)(1) of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(48) and K.A.R. 47-9-1(c)(6)."

(EE) "§780.25 of this part" shall be replaced by "K.A.R. 47-3-42(a)(51)."

(FF) "§780.29 of this part and §816.43" shall be replaced by "K.A.R. 47-3-42(a)(54) and K.A.R. 47-9-1(c)(8)."

(GG) "§780.35 of this part" shall be replaced by "K.A.R. 47-3-42(a)(57)."

(HH) "§785.13" shall be replaced by "K.A.R. 47-3-42(a)(60)."

(II) "§785.21 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(64)."

(JJ) "§785.25 of this subchapter" and "§785.25 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(66)."

(KK) "§800.60 of this chapter" shall be replaced by "K.A.R. 47-8-9(a)(15)."

(LL) "§816.46 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(10)."

(MM) "§816.49 of this chapter" and "§816.49(a)(4)(ii) of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(12)."

(NN) "§816.57(a)(1) of this chapter," "paragraphs (b) and (c) of §816.57 of this chapter," "paragraphs (b)(2) through (b)(4) of §816.57 of this chapter," and "§816.57(a)(2) of this chapter," shall be replaced by "K.A.R. 47-9-1(c)(14)."

(OO) "§816.67" shall be replaced by "K.A.R. 47-9-1(c)(20)."

(PP) "§816.71(d) of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(22)."

(QQ) "§816.74 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(23)."

(RR) "§816.97 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(31)."

(SS) "§816.100 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(33)."

(TT) "§816.106 or §817.106 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(38) or (d)(34)."

(UU) "§816.111(d) or §817.111(d)" shall be replaced by "K.A.R. 47-9-1(c)(39) or (d)(35)."

(VV) "§816.133" and "30 CFR 816.133" shall be replaced by "K.A.R. 47-9-1(c)(45)."

(WW) "§816.150(d)(1) of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(46)."

(XX) "§816.151(b) of this chapter," "§816.151(c)(2) of this chapter," "§816.151(d)(5) of this chapter," and "§816.151(d)(6) of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(47)."

(YY) "§816.181 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(49)."

(ZZ) "§827.13 of this chapter" shall be replaced by "K.A.R. 47-9-1(g)(3)."

(AAA) "§842.16 of this chapter (when osm is the regulatory authority) or under §840.14 of this chapter (when a state is the regulatory authority)" shall be replaced by "K.A.R. 47-15-1a(a)(2)."

(BBB) "§843.12 of this chapter or the state regulatory equivalent" shall be replaced by "K.A.R. 47-15-1a(a)(9)."

(CCC) "§843.14 of this chapter, or the state regulatory program equivalent" shall be replaced by "K.A.R. 47-15-1a(a)(11)."

(DDD) "§§773.7 through 773.14 of this part" shall be replaced by "K.A.R. 47-3-42(a)(3) through (10)."

(EEE) "§§773.9 through 773.11 of this part" shall be replaced by "K.A.R. 47-3-42(a)(5) through (7)."

(FFF) "§§773.13 and 773.14 of this part" shall be replaced by "K.A.R. 47-3-42(a)(9) and (10)."

(GGG) "§§773.21 or 774.11(f) of this subchapter" shall be replaced by "K.A.R. 47-3-42(a)(14) and K.A.R. 47-6-11(a)(1)."

(HHH) "§§773.22 and 773.23 of this part" shall be replaced by "K.A.R. 47-3-42(a)(15) and (16)."

(III) "§§773.25 through 773.27 of this part" shall be replaced by "K.A.R. 47-3-42(a)(17) through (19)."

(JJJ) "§§773.26 and 773.27 of this part" shall be replaced by "K.A.R. 47-3-42(a)(18) and (19)."

(KKK) "§§773.27 and 773.28 of this part" shall be replaced by "K.A.R. 47-3-42(a)(19) and (20)."

(LLL) "§§778.11 and 778.12(c) of this subchapter" shall be replaced by "K.A.R. 47-3-42(a)(22) and (23)."

(MMM) "§§778.11 through 778.14 of this part" shall be replaced by "K.A.R. 47-3-42(a)(22) through (25)."

(NNN) "§§780.25(a)(2), 780.25(a)(3), 780.35, 816.73(c), 816.74(c), and 816.81(c) of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(51) and (57) and K.A.R. 47-9-1(c)(23) and (25)."

(OOO) "§§816.41 through 816.43" shall be replaced by "K.A.R. 47-9-1(c)(6) through (8)."

(PPP) "§§816.61 through 816.68 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(16) through (21)."

(QQQ) "§§816.81 and 816.83 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(25) and (26)."

(RRR) "§§816.81 and 816.84 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)(25) and (27)."

(Authorized by K.S.A. 49-405 and 49-427; implementing K.S.A. 49-405, K.S.A. 2018 Supp. 49-406, K.S.A. 49-407 and 49-427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

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