

May 7, 2019

PROPOSED REVOCATIONS-KDHE, PCB FACILITY CONSTRUCTION STANDARDS AND REGULATIONS

The following regulations are proposed for revocation by the Kansas Department of Health and Environment (KDHE) related to polychlorinated biphenyl (PCB) facilities.

Reference	Title	Text
KAR 28-55-1	Applicability and definitions.	<p>(a) Substances that are regulated by these regulations include dielectric fluids, contaminated solvents, oils, waste oils, heat transfer fluids, hydraulic fluids, paints, sludges, slurries, dredge spoils, soils, materials contaminated as a result of spills, and any other chemical substances or combination of substances which contain a total PCB concentration of 50 parts per million (ppm) or more.</p> <p>(b) "Material or substantial alteration or addition" means an increase in storage, treatment or disposal capacity by a factor of 50 percent or an increase in facility investment by a factor of 50 percent excluding inflation.</p> <p>(c) "Minor permit modification" means any modification which does not expand or enlarge a facility beyond the boundaries established by an existing permit and is not a material or substantial alteration or addition.</p>
KAR 28-55-2	PCB facility construction permit application.	<p>(a) New facility application. After July 1, 1986 all applications to construct a PCB facility, which does not have an existing permit from the secretary, shall provide information which documents compliance with K.A.R. 28-55-5 and includes a business concern disclosure statement. The business concern disclosure statement shall include the following information: the name of the corporation, past corporate names, the place or places of incorporation, the names of officers, the names of former officers and directors, partnership or joint venture information, ownership and debt liability, subsidiaries and stock holdings, employee data, experience and credentials, licenses and permits, environmental violations history, environmental judgments and litigation, and criminal proceedings. This information shall be submitted on forms provided by the department.</p> <p>(b) Permit modification application. An expansion, enlargement or modification of a facility beyond the specified areas indicated in the existing permit constitutes a new proposal for which a new construction permit application is required.</p> <p>(c) Minor permit modifications. Minor modifications to permitted PCB facilities shall not require submittal of an amended permit application. The permittee shall submit a written notice to the department describing the modifications and all data justifying the designation as a minor permit modification. Upon written approval from the department the permittee may initiate the modification. Minor permit modifications are not required to meet the public notice, hearing and inspection procedures specified in K.A.R. 28-55-3(b), (c) and (g).</p>

Reference	Title	Text
KAR 28-55-3	Procedures for review of polychlorinated biphenyl (PCB) facility permit applications.	<p>(a) Approval or denial of permit application. When an application to construct or modify a PCB facility is complete, a draft permit shall be prepared by the secretary or the application shall be denied by the secretary.</p> <p>(1) If the secretary denies the permit application, the applicant shall receive a written notification from the secretary stating the reasons for denial.</p> <p>(2) If the secretary decides to prepare a draft permit, the draft permit shall contain all conditions and requirements necessary for construction or modification of the facility. The permit may include any special conditions or procedures that the applicant shall meet or follow to be in compliance with these or other state or federal regulations.</p> <p>(b) Public notice and public comment period. After the secretary completes the draft permit, a public notice shall be prepared by the secretary. The public notice shall be published in a daily or weekly local newspaper of general circulation and the <i>Kansas Register</i>. The public notice shall contain the following information:</p> <p>(1) Name and address of the agency processing the permit application;</p> <p>(2) name and address of the permittee or permit applicant;</p> <p>(3) a brief description of the PCB treatment, storage, or disposal facility;</p> <p>(4) name, address, and telephone number of a person from whom any interested persons may obtain further information, including copies of the draft permit; and</p> <p>(5) date, time, and place of the public hearing, including a brief description of the nature and purpose of the hearing.</p> <p>(c) Public hearings.</p> <p>(1) The notice of the public hearing shall be published at least 60 days before the hearing.</p> <p>(2) The public hearing shall be conducted at a location near the facility.</p> <p>(3) A hearing officer shall be designated by the secretary.</p> <p>(4) Any person may submit oral or written comments and data concerning the draft permit application. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.</p> <p>(5) A tape recording or written transcript of the hearing shall be made available to the public upon request.</p> <p>(6) A report to the secretary shall be submitted by the hearing officer. The report shall include all written and oral comments submitted during the public comment period. The report may also recommend findings and determinations.</p> <p>(d) Approval or denial of the draft permit. After the close of the public comment period, a decision to approve or deny the draft permit shall be made by the secretary.</p> <p>(1) If the secretary denies the draft permit, a written notification of the reasons for denial shall be provided to the applicant by the secretary.</p> <p>(2) The applicant and each person who has submitted written comments shall be notified of the decision by the secretary.</p> <p>(3) Notice of the final decision shall be published in the <i>Kansas Register</i>.</p> <p>(e) Monitoring required. As a condition for issuing the permit, the permittee may be required by the secretary to install and operate an approved environmental quality monitoring system. Approval of the monitoring system shall be based on the following factors used to measure environmental quality:</p> <p>(1) The location of groundwater monitoring wells, air monitoring stations, and other required sampling points;</p> <p>(2) plans and specifications for the construction of the monitoring systems;</p> <p>(3) the constituents being monitored and their concentration limits;</p> <p>(4) frequency of sampling; and</p> <p>(5) analyses to be performed.</p> <p>[continued below]</p>

Reference	Title	Text
KAR 28-55-3 (continued)	Procedures for review of polychlorinated biphenyl (PCB) facility permit applications.	<p>(f) Notation on the deed. Within 60 days of receiving a permit, the owner or operator shall record, in accordance with state law, a notation with the county register of deeds where the property is located that the land has been used to treat, store, or dispose of PCB, and that copies of all permits are available at the offices of the department.</p> <p>(g) Final inspection of construction. Upon completing construction of the facility or modifications to the facility, the permittee shall notify the secretary in writing. An inspection of the facility to assure that construction was completed in accordance with the approved permit application and permit shall be conducted by the department. The permittee shall not begin operation until the secretary approves of the construction in writing.</p>
KAR 28-55-4	Modification or transfer of permits.	<p>(a) Modification of permits. The department may, at any time, modify a permit or any term or condition of a permit to include the following:</p> <ul style="list-style-type: none"> (1) Special conditions required to comply with the requirements of these regulations; (2) conditions to avoid hazards to public health or the environment; (3) conditions to abate a public nuisance; or (4) modifications proposed by the permittee and approved by the department. <p>Modifications to the permit shall follow the public notice, and hearing procedures contained in K.A.R. 28-55-3(b) and (c).</p> <p>(b) Transfer of permits. Before any assignment, sale, conveyance, or transfer of all or any part of the property upon which a PCB facility is located, and before any change in the responsibility for operation of a facility is made, the permittee shall notify the department, in writing, of the intent to transfer title or operating responsibility, at least 30 days in advance of the date of transfer. The person to whom transfer is made shall submit a disclosure statement as required by K.A.R. 28-55-2(a) and any other information required by the secretary. If no reason exists to deny the permit, the secretary shall issue a permit to the new permittee.</p>
KAR 28-55-5	Standards for PCB facilities.	Each PCB treatment, storage, and disposal facility shall comply with all applicable requirements of 40 CFR part 761, subpart D, as in effect on July 1, 2000 and 40 CFR part 264, subparts B, C, D, G, and H, as in effect on July 1, 2000, which are hereby adopted by reference.