

455B.134 Director duties limitations.

The director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.
2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II and chapter 459, subchapter II.
3. Grant, modify, suspend, terminate, revoke, reissue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment, and conditional permits for electric power generating facilities subject to chapter 476A and other major stationary sources, subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.
 - a. No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction or conditional permit has been issued for the source.
 - b. The condition of expected performance shall be reasonably detailed in the construction or conditional permit.
 - c. All applications for permits other than conditional permits for electric generating facilities shall be subject to such notice and public participation as may be provided by rule by the commission. Upon denial or limitation of a permit other than a conditional permit for an electric generating facility, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a hearing before the commission.
 - d. All applications for conditional permits for electric power generating facilities shall be subject to such notice and opportunity for public participation as may be consistent with chapter 476A or any agreement pursuant thereto under chapter 28E. The applicant or intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the director or by the commission upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the commission. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawings and an application for a construction permit for control equipment that will meet the emission limitations established in the conditional permit.
 - e. A regulated air contaminant source for which a construction permit or conditional permit has been issued shall not be operated unless an operating permit also has been issued for the source. However, if the facility was in compliance with permit conditions prior to the requirement for an operating permit and has made timely application for an operating permit, the facility may continue operation until the operating permit is issued or denied. Operating permits shall contain the requisite conditions and compliance schedules to ensure conformance with state and federal requirements including emission allowances for sulfur dioxide emissions for sources subject to Title IV of the federal Clean Air Act Amendments of 1990. If construction of a new air contaminant source is proposed, the department may issue an operating permit concurrently with the construction permit, if possible and appropriate.
 - f. (1) Notwithstanding any other provision of division II of this chapter or chapter 459, subchapter II, the following siting requirements shall apply to anaerobic lagoons and earthen waste slurry storage basins:

Anaerobic lagoons, constructed or expanded on or after June 20, 1979, but prior to May 31, 1995, or earthen waste slurry storage basins, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995,

which are used in connection with animal feeding operations containing less than six hundred twenty-five thousand pounds live animal weight capacity of animal species other than beef cattle or containing less than one million six hundred thousand pounds live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. Anaerobic lagoons or earthen waste slurry storage basins, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the determination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation.

Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is one hundred thousand gallons per day or less shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is greater than one hundred thousand gallons per day shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. These separation distances apply to the construction of new facilities and the expansion of existing facilities.

(2) A person may build or expand an anaerobic lagoon or an earthen waste slurry storage basin closer to a residence not owned by the owner of the anaerobic lagoon or to a public use area than is otherwise permitted by subparagraph (1) of this paragraph, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive the separation distances under such terms the parties negotiate. The written agreement becomes effective only upon recording in the office of the recorder of deeds of the county in which the residence is located.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

7. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement, prevention, and control.

8. Consider complaints of conditions reported to, or considered likely to, constitute air pollution, and investigate such complaints upon receipt of the written petition of any state agency, the governing body of a political subdivision, a local board of health, or twenty-five affected residents of the state.

9. Issue orders consistent with rules to cause the abatement or control of air pollution, or to secure compliance with permit conditions. In making the orders, the director shall consider the facts and circumstances bearing upon the reasonableness of the emissions involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical property of the public, the practicability of reducing or limiting the emissions from the air pollution source, and the suitability or unsuitability of the air pollution source to the area where it is located. An order may include advisory recommendations for the control of emissions from an air contaminant source and the reduction of the emission of air contaminants.

10. Encourage voluntary co-operation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

11. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions.

12. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether the programs are consistent with the provisions of division II of this chapter and chapter 459, subchapter II, and rules adopted by the commission.

13. Hold public hearings, except when the evidence to be received is confidential pursuant to section 455B.137, necessary to accomplish the purposes of division II of this chapter and chapter 459, subchapter II. The director may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as in civil actions.

[C71, § 136B.4, 136B.5; C73, 75, 77, 79, § 455B.12, 455B.13; C81, § 455B.13; 82 Acts, ch 1124, § 2, 3]

C83, § 455B.134

86 Acts, ch 1245, § 1899; 90 Acts, ch 1153, § 2, 3; 91 Acts, ch 255, §1113; 93 Acts, ch 137, §4; 95 Acts, ch 195, §14

Footnotes

For regulations establishing separation distances between anaerobic lagoons or earthen manure storage structures constructed or expanded on or after May 31, 1995, and various locations and objects, see chapter 459

For regulations governing the construction of earthen storage structures within agricultural drainage well areas, see chapter 460