

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
Division or Section of APCD/Stationary Sources Program

INTER-OFFICE COMMUNICATION

PS Memo 09-01

TO: Stationary Sources Staff, Local Agencies, Regulated Community

FROM: Matthew Burgett, Supervisor, Operating Permit Unit

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Revision 1 - March 18, 2014

RE: Title V Operating Permit Application Due Dates

Colorado Regulation No. 3, Part C, Section III.B.2, specifies the due date for the submittal of Title 5 operating permit applications as follows:

Reg 3, Part C, III.B.2

Each source required to obtain an operating permit pursuant to section III. of this Part C, for the first time, *shall submit an application for such a permit no later than twelve months after the source becomes subject to the operating permit requirement.* A source that becomes subject to the operating permit program by operation of law, such as the adoption of new legal requirements, shall submit an application for an operating permit within twelve months of the effective date of such new legal requirements unless otherwise specified by the requirements. *A new source or an existing source that modifies in a way that renders it newly subject to the operating permit requirements, shall submit a complete application for an operating permit within twelve months of commencing operation, except as otherwise provided herein.* Modifications made to a source with an operating permit, through a permit issued under Part B of this regulation shall apply for a modification to their operating permit within twelve months of startup. A new source (including any significant modification), shall meet the applicable requirements of Part B.

While it may appear that the italicized text in the above paragraph specifies when Operating Permit applications are due, it is not always clear. Therefore, the purpose of this memo is to provide guidance in order to determine when an Operating Permit application is due.

In regard to what the term “shall submit” means, the Division discussed this in PS Memo OPS94-15:

For the purpose of granting an application shield, a timely application submittal will be any application logged in by the Division on or before the due date assigned to the particular source. Any application logged in after their due date will not be eligible for an application shield.

The Operating Permit program applies to sources that meet or exceed certain thresholds (100 tons/year of a single criteria pollutant or 10 tons/year of an individual hazardous pollutant or 25 tons/year of the aggregated hazardous pollutants at the site) or are otherwise specifically required to obtain a permit such as some landfills. These thresholds are based on the phrase “Directly emits, or has the potential to emit” (see Regulation No. 3, Part A, Section I.B.23).

Based on the above, a source “becomes subject” to the operating permit program when the Potential to Emit of the source exceeds any of the operating permit tons/year applicability thresholds.

Regulation No. 3, Part A, Section I.B.35 defines Potential to Emit (PTE) as:

The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state enforceable and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

In practical terms, this means that the PTE of a facility is the sum of the permitted emission limits contained in any construction permits issued to the source plus any permit for portable equipment located at the source. Lacking any federally enforceable limits, the PTE of a grandfathered (pre-1972) piece of equipment would be calculated at the maximum design capacity running 8760 hours per year and not taking into account the effect of any add-on control devices.

In regard to the phrase “within twelve months of commencing operation”, Regulation No. 3, Part A, Section I.B.11. defines Commencement of Operation as follows:

A new source commences operation when it first conducts the activity that it was designed and permitted for (i.e., producing cement or generating electricity).

Considering all of the above, the following is the official Division guidance on determining when an Operating Permit application is due. Failure to meet the appropriate deadline will result

in the source not receiving the Application Shield as provided for in Regulation No. 3, Part C, Section II.B.

Scenario #1: Entirely new Greenfield major source

The application is due within one year of commencing operation of the first piece of equipment (not to include site preparation and construction activities).

Scenario #2: Existing minor source, adding a new emission unit which results in the source exceeding a Title V applicability threshold

The application is due within one year of commencing operation of the equipment covered by the permit for the new emission unit.

Scenario #3: Existing minor source, modification to an existing emission unit which results in the source exceeding a Title V applicability threshold

Scenario #3a. modification to an existing emission point that doesn't require a physical modification (e.g. increase in permitted production rate or fuel use)

The application is due within one year of the issuance date of the modified construction permit.

Scenario #3b. modification to an existing emission point that requires a physical modification (e.g. convert a turbine from simple cycle to combined cycle operation)

The application is due within one year of commencing operation of the modified equipment.

Scenario #4: Source already has an operating permit and adds a new emission point via a construction permit

The application for the modification to the Operating Permit is due within one year of commencing operation of the equipment covered by the construction permit.

Scenario #5: Source already has an operating permit and modifies an existing emission point via a construction permit

Scenario #5a. modification to an existing emission point that doesn't require a physical modification (e.g. increase in permitted production rate or fuel use)

The application for the modification to the Operating Permit is due within one year of the issue date of the modified construction permit.

Scenario #5b. modification to an existing emission point that requires require a physical modification (e.g. convert a turbine from simple cycle to combined cycle)

The application is due within one year of commencing operation of the modified equipment.

Scenario #6: A construction permit (new or modified) is issued to a source which is subject to Title V and has submitted a Title V application but the Title V permit is not yet issued.

Colorado Regulation No. 3, Part C, Section IV.B.3 specifies that “A source shall supplement its permit application to correct or update information provided in its initial submission as soon as it becomes aware of any omissions or incorrect information submitted or to address changes made to the source after submission of the application, but prior to public notice as provided in Section VI. of this Part C”.

In addition, Colorado Regulation No. 3, Part C, Section IV.B.4 specifies that “A source shall supplement its permit application to address any requirements that become applicable to the source after the date the source submitted its application, but prior to issuance of a draft permit”.

The Division guidance is that the revision to the Title V application is due within 30 days of the issuance date of the construction permit unless prior approval for a longer time period is obtained.

Scenario #7: A new emission unit is to be installed at a source which is required to have an operating permit, and the unit does not trigger construction permit requirements, but is not considered an insignificant activity under Regulation No. 3, Part C (i.e. new unit must be addressed in the Title V permit).

These are typically emission units with very low emissions that do not trigger the requirement to obtain a Construction Permit, and may or may not be required to submit an APEN. A common example is a small generator that is subject to a federal rule (e.g. New Source Performance Standard (NSPS) Subpart JJJJ), but emissions are low enough to be exempt from construction permit requirements. All applicable federal NSPS and Maximum Achievable Control Technology (MACT) requirements must be included in Title V permits, despite not having to obtain a construction permit.

The Division finds that the operating permits for facilities in this situation do not need to be revised immediately via either the Significant Modification, or Minor Modification provisions of Regulation No. 3, Part C to include the new emission unit(s). However, the Division will require that written notice of the new emission unit(s) be submitted within 30 days of commencing construction. The written notice shall describe the new emission unit(s), including the date the emission unit(s) commenced construction, anticipated date of commencing operation, Potential-to-Emit (PTE) emissions from the new emission unit(s), and all applicable requirements that apply to the new emission unit(s). Detailed equipment information should be submitted on the appropriate Title V application form (e.g. Form 2000-302 for engines), but no other application forms are needed.

Please be aware that PTE must typically be calculated at 8760 hours of operation per year at the units’ maximum design rate. Emission units being installed at a Major Stationary Source (Reg. 3, Part D, II.A.24) can’t be processed under this scenario if the PTE of the new emission unit(s) exceeds the significant emission rates identified in Regulation No. 3, Part D, II.A.42. In this situation, sources must either obtain a construction permit to limit the PTE (i.e. a synthetic minor emission limit), or go through the major stationary source permitting process (e.g. PSD review).

Any Title V operating permit revisions necessary for the addition of new emission units made under this scenario will be incorporated into the operating permit at the time of permit renewal, or next significant modification permit issuance.

For sources that have submitted an initial application for an operating permit (and the permit is not yet issued), or have submitted either an application to renew or modify (significant modification) an existing operating permit, the Division guidance is that the revision to the Title V application should be submitted no later than 30 days after commencing construction of the new emission unit(s).

Title IV (Acid Rain) Issues

Note that any emissions unit subject to Title IV of the 1990 Federal Clean Air Act Amendments (Acid Rain) is also subject to Title V, *regardless of the emission levels*. In general, a source subject to Acid Rain is any equipment serving a generator with nameplate capacity of 25 megawatts (MW) or greater that generates electricity for sale. There are exemptions for cogeneration units and small (≤ 25 MW) new units that burn clean fuel (≤ 0.05 weight percent sulfur). If a single piece of equipment at a site is subject to Title IV, then the entire site is subject to Title V.

Portable Source Issues

Colorado Regulation No. 3, Part A, Section I.B.34. defines a portable source as

A source such as, but not limited to, asphalt batch plants and aggregate crushers that commonly and by practice are moved from one site to another. A source will not be considered portable if it remains on one site for more than two years.

The Division has traditionally allowed industry to permit certain sources as portable sources to allow flexibility in moving sources to meet temporary operational needs. Once a portable source is located at a site for more than two years, it loses its status as a portable source and becomes part of that stationary source.

If a source is minor for Title V and they relocate portable equipment to the source which results in the source exceeding a Title V applicability threshold, then an operating permit application is due within one year after the arrival of the portable source at the site whether or not it has been/is actually operating.

If the source is certain that the portable equipment will be moved off site before an Operating Permit is issued and the PTE of the facility would then drop below major source levels, they could submit a Transitional Operating Permit Application within one year of the arrival of the portable source. Please contact the Division for additional information regarding a Transitional Application.

Note that if the portable source is moved offsite and then it or another portable source performing the same function is moved back onsite at a later date in an apparent effort to avoid Title V applicability that there may be circumvention issues resulting in enforcement action.

Non road Engine (NRE) Issues

In the case of Internal Combustion engines, an engine that meets the definition of a NRE is not classified as a stationary source if it operates at a site for less than one year. Once the one year is up, it becomes classified as a stationary source and should be treated under the above guidance as if it were a portable source, i.e. if a source is minor for Title V and they relocate a NRE to the source which results in the source exceeding a Title V applicability threshold, then an operating permit application is due within one year after the arrival of the NRE at the site whether or not it has been/is actually operating.