

**INTER-OFFICE COMMUNICATION**

PS Memo #: OPS94-15

TO: Operating Permit Unit Staff

FROM: Jim Geier/Jim King

DATE: February 6, 1995

RE: Application Shield Issues

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Administrative Completeness/Application Shield

Regulation No 3, Part C, II.B. states that " A timely and complete application for an operating permit under the provisions of this Part C shall operate as a defense to an enforcement action for the source's failure to have an operating permit until the division or the commission makes a final determination on the permit application."

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. Note that since EPA interim approval is not effective until February 23, 1995 that the date of EPA approval shall be used in determining "timely and complete" for purposes of the Federally-enforceable application shield. The 1/1/95 due date that we set forth would be the date used for purposes of the State-enforceable application shield. Keep this distinction in mind during the following discussion.

For the first round of operating permits (i.e. for those sources which are major as of the start of the program), the actual protection provided to a source by the application shield is minimal. In general, the shield provides protection from State/Federal/Citizen enforcement actions starting at the date when a source is required to have an operating permit. For this first group of (existing) sources, the (required to have an operating permit) date could be up to three years from EPA interim program approval, although the Division is required to issue 1/3 of the permits during each of the three years. Once an operating permit is up for renewal or a new/modified source comes into the program, the application shield has a more immediate effect and can provide a source with significant protection from enforcement action for failure to have an operating permit.

Regulation No 3, Part C, IV.B.2. requires that "An application shall be deemed to be complete when it contains the information required by sections III.B., C and D of this

Part C....".

The Division has 60 days from the receipt of an application (or receipt of additional information requested) to evaluate the submittal. Failure to notify the applicant of an incompleteness determination within 60 days results in the application being automatically deemed complete.

### **Application Received on the Due Date**

For the purpose of granting an application shield, an application received on the application due date will be reviewed by the review engineer. If the source appears to have substantially complied with the informational requirements of the application based on the completeness checklist, the application shall be deemed timely and complete as of the date of receipt by the Division and a certified letter to that effect shall be sent to the source. The letter should state that the source has been granted an application shield and also contain the wording in Part C, IV.D which discusses the Division's authority to require additional information after the application is deemed complete as well as the consequences to the source of not providing the information in a timely fashion (see below).

If the review engineer determines that the source has not substantially complied with the informational requirements of the application based on the completeness checklist, a certified letter shall be sent to the source which 1) notifies it that it has not been (and will not be) granted an application shield, and 2) details the additional information required to complete the application. In general, the letter should set a deadline of 30 calendar days after receipt of the letter for receiving the information. If all of the information is received by the deadline, the application shall be deemed complete as of the date of receipt of the information and a certified letter to that effect sent to the source. The letter should also 1) notify the source that it still has not been granted an application shield, and 2) contain the wording in Part C, IV.D which discusses the Division's authority to require additional information after the application is deemed complete. If all of the information is not received the source should be notified by certified letter that the Division is unable to continue with the processing and issuance of their permit. Make sure that the various steps taken which led up to the letter are well documented. In addition, a memo should be written to enforcement notifying them that the source has not complied with the requirement to submit a timely and complete application and requesting that they take enforcement action against the source.

The review engineer may, of course talk with the source and decide to give them some additional time if the circumstances warrant.

If additional time is granted, a memo to the file should be written justifying the extension and a certified letter with the new deadline sent to the source.

### **Application Received Prior to the Due Date**

For the purpose of granting an application shield, an application received prior to the

application due date will first be reviewed by the review engineer. If the source appears to have substantially complied with the informational requirements of the application based on the completeness checklist, the application shall be deemed complete as of the date of receipt by the Division and a certified letter to that effect will be sent to the source. The letter should state that the source has been granted an application shield and also contain the wording in Part C, IV.D which discusses the Division's authority to require additional information after the application is deemed complete as well as the consequences to the source of not providing the information in a timely fashion (see below).

If the review engineer determines that the source has not substantially complied with the informational requirements of the application based on the completeness checklist, a certified letter shall be sent to the source which details the additional information required to complete the application. In general, the letter should set a deadline of 30 calendar days from the receipt of the letter for receiving the information. Note, however, that for purposes of obtaining an application shield the deadline cannot be later than the application due date assigned to the source since all of the information required for administrative completeness must be received by the due date in order to obtain the application shield. If all of the information is received by the deadline, the review engineer has 60 days to review the information. The application shall be deemed complete as of the date of receipt of the information, and a certified letter to that effect will be sent to the source. The letter should state that the source has been granted an application shield and also contain the wording in Part C, IV.D which discusses the Division's authority to require additional information after the application is deemed complete as well as the consequences to the source of not providing the information in a timely fashion. If all of the information is not received or the information is received after the deadline, the above additional information request procedures may be followed until such time as the application deadline is reached.

#### Additional Information Requests (after administratively complete)

Regulation No 3, Part C, IV.D. allows the Division to request additional information from the source after the application is deemed complete if the information is "...necessary to evaluate or take final action on an application...".

Additional information letters shall be sent to sources if the review engineer determines that additional information is required in order to process the permit. Such letters should, in general, require the source to provide the information within 30 calendar days after receipt of the letter. All letters should be sent via certified mail. The letter should inform sources that failure to provide the information by the date specified could result in the revocation of their application shield and that the Division would be unable to continue with the processing and issuance of their permit. Make sure that the various steps taken which led up to the letter are well documented. In addition, a memo should be written to enforcement notifying them that the source has not complied with the requirement to submit additional information as requested and recommending that they

take enforcement action against the source.

The review engineer may, of course talk with the source and decide to give them some additional time if the circumstances warrant. If additional time is granted, a memo to the file should be written justifying the extension and a certified letter with the new deadline sent to the source.

**NOTE:**

A final reminder that all letters to a source that relate to either due dates or legal issues should be sent certified. Additional guidance on application and permit processing can be found in I:\T5\Policy.