

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

**SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE
REVIEW (NSR) SOURCES**

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-4. Requirements for construction and operating permits

(a) Construction permits.

(1) **Construction permit required.** No person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit under Part 5 of OAC 252:100-8. A construction permit is also required prior to reconstruction of a major affected source under 40 CFR Part 63, reconstruction of a major source if it would then become a major affected source under 40 CFR 63, or for any physical change or change in method of operation that would be a minor modification under OAC 252:100-8-7.2(b)(1) or a significant modification under OAC 252:100-8-7.2(b)(2). In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this Subchapter must also meet the applicable requirements contained therein.

(2) **Requirement for case-by-case MACT determinations.**

(A) **Applicability.** The requirement for case-by-case MACT determinations apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998, unless the source has been specifically regulated or exempted from regulation under a subpart of 40 CFR Part 63, or the owner or operator has received all necessary air quality permits for such construction or reconstruction before June 29, 1998.

(B) **Exclusions.** The following sources are not subject to this subsection.

(i) Electric utility steam generating units unless and until these units are added to the source category list.

(ii) Stationary sources that are within a source category that has been deleted from the source category list.

(iii) Research and development activities as defined in 40 CFR § 63.41.

(C) **MACT determinations.** If subject to this subsection, an owner or operator may not begin actual construction or reconstruction of a major source of HAP until obtaining from the DEQ an approved MACT determination in accordance with the following regulations: 40 CFR 63.41, 40 CFR 63.43 and 40 CFR 63.44, which are hereby incorporated by reference as they exist on July 1, 2000.

(b) Operating permits.

(1) **Operating permits required.** Except as provided in subparagraphs (A) and (B) of this paragraph, no Part 70 source subject to this Chapter may operate after the time that it is required to file a timely application with the DEQ, except in compliance with a DEQ-issued permit.

(A) If the owner or operator of a source subject to the requirement to obtain a Part 70 permit submits a timely application for Part 70 permit issuance or renewal, that source's failure to have a Part 70 permit shall not be a violation of the requirement to have such a permit until the DEQ takes final action on the application. This protection shall cease to apply if the applicant fails to submit, by the deadline specified in writing by the DEQ or

OAC 252:100-8-4, any additional information identified as being reasonably required to process the application.

(B) If the owner or operator of a source subject to this Subchapter files a timely application that the DEQ determines to be administratively incomplete due to the applicant's failure to timely provide additional information requested by the DEQ, the applicant loses the protection granted under paragraph (A) of this Section. The source's failure to have a Part 70 permit shall be deemed a violation of this Subchapter.

(C) Filing an operating permit application shall not affect the requirement, if any, that a source have a construction permit.

(2) **Duty to apply.** For each Part 70 source, the owner or operator shall submit a timely and complete permit application on forms supplied by the DEQ in accordance with this section.

(3) **Timely application.** Sources that are subject to the operating permit program established by this Chapter as of March 6, 1996, shall file applications on the following schedules outlined in OAC 252:100-8-4(b)(4). A timely application is one that is postmarked on or before the relevant date listed in OAC 252:100-8-4(b). In the event a major source consists of operations under multiple SIC codes, the primary activity shall form the basis for the initial permit application.

(4) **Application submittal schedule.** The following sources are subject to the operating permit program and shall submit initial permit applications according to the following schedule.

(A) No later than September 5, 1996:

(i) Affected sources under the acid rain provisions of the Act shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file an application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the DEQ no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides, pursuant to the Act, § 407.

(ii) Any owner or operator shall submit no less than one-third of their total applications for Part 70 sources located at sources classified by the following Source Standard Industrial Classification Codes and which belong to a single major industrial grouping other than 28 (Chemicals and allied products) or 29 (Petroleum refining and related industries):

(I) Petroleum and Natural Gas, 1311;

(II) Natural Gas Liquids, 1321;

(III) Electric Services, 4911, 4961;

(IV) Natural Gas Transmission, 4922;

(V) Natural Gas Transmission and Distribution, 4923; and

(VI) Petroleum Bulk Stations and Terminals, 5171.

(B) All remaining Part 70 sources identified in (b)(4)(A)(ii) of this Subsection shall be subject to the operating permit program and shall submit initial permit applications no later than March 5, 1997.

(C) No later than March 5, 1997, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

(i) Metals, 3312, 3315, 3321, 3341, 3351, 3411, 3412, 3432, 3466,

(ii) Brick Plants, 3251, 3297,

- (iii) Commercial Printing, 2752, 2761.
- (D) No later than July 5, 1998, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:
 - (i) Refineries, 2911;
 - (ii) Cement Plants, 3241;
 - (iii) Chemical/Carbon, 2819, 2821, 2851, 2861, 2869, 2891, 2895, 2899, 2999, 3053, 3086, 3089;
 - (iv) Petroleum Transportation/Terminals/Storage, 4612, 4613;
 - (v) Food Products, 2013, 2074, 2095.
- (E) All remaining Part 70 sources shall be subject to the operating permit program and shall submit initial permit applications no later than March 6, 1999.
- (5) **Newly regulated sources.** A source that becomes subject to the Part 70 operating permit program at any time on or after March 6, 1996, shall file an administratively complete operating permit application in accordance with the following schedule.
 - (A) A new source shall file an administratively complete operating permit application within 180 days of commencement of operation.
 - (B) An existing source that becomes subject to the Part 70 operating permit program due to modification shall file an administratively complete operating permit application within 180 days of commencement of operation of the modification.
 - (C) An existing source that becomes subject to the Part 70 operating permit program without undergoing physical or operational changes resulting in an increase in the emission of any air pollutant subject to regulation shall file an administratively complete operating permit application within 12 months after the date the source first becomes subject to the Part 70 operating permit program.
- (6) **Application acceptability.** Notwithstanding the deadlines established in paragraph (4) of this subsection, an application filed prior to the above deadlines following submission of the state program to EPA for approval shall be accepted for processing.
- (7) **112(g) applications.** A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of such Act, shall file an application to obtain an operating permit or permit amendment or modification within twelve months of commencing operation. Where an existing Part 70 operating permit would prohibit such construction or change in operation, the source must obtain a construction permit before commencing construction.
- (8) **Application for renewal.** Sources subject to this Chapter shall file an application for renewal of an operating permit at least 180 days before the date of permit expiration, unless a longer period (not to exceed 540 days) is specified in the permit. Renewal periods greater than 180 days are subject to negotiation on a case-by-case basis.
- (9) **Phase II acid rain permits.** Sources required to submit applications under the Acid Rain Program shall submit these applications as required by 40 CFR 72.30(b)(2)(i) through (viii).
- (10) **Application completeness.** See Environmental Permit Process, OAC 252:4-7-7 and the definition of "administratively complete" in OAC 252:100-8-2.

252:100-8-7.2. Administrative permit amendments and permit modifications

(a) Administrative permit amendments.

- (1) An administrative permit amendment:
 - (A) Corrects typographical errors;
 - (B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 - (C) Requires more frequent monitoring or reporting by the permittee;
 - (D) Allows for a change in ownership or operational control of a source where no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the DEQ;
 - (E) Incorporates into ~~the~~ an existing Part 70 source operating permit the requirements from preconstruction review permits issued by the DEQ under this Part.
- (2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.
- (3) An administrative permit amendment shall be made by the DEQ in accordance with the following:
 - (A) The DEQ shall take final action on a request for an administrative permit amendment within 60 days from the date of receipt of such a request, and may incorporate the proposed changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.
 - (B) The DEQ shall submit a copy of the revised permit to the Administrator.
 - (C) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.
- (4) The DEQ shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in OAC 252:100-8-6(d) for administrative permit amendments made pursuant to OAC 252:100-8-7.2(a)(1)(E).

(b) **Permit modification.** A permit modification is any revision to a permit that cannot be accomplished under OAC 252:100-8-7.2(a). A permit modification for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.

(1) Minor permit modification procedures.

(A) Criteria.

- (i) Minor permit modification procedures may be used only for those permit modifications that:
 - (I) Do not violate any applicable requirement, or state-only requirements;
 - (II) Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;
 - (III) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
 - (IV) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include federally-enforceable emissions caps assumed to avoid classification as a modification under any provision of Title I and alternative

emissions limits approved pursuant to regulations promulgated under § 112(i)(5) of the Act; and

(V) Are not modifications under any provision of Title I of the Act.

(ii) Notwithstanding OAC 252:100-8-7.2(b)(1)(A)(i) and 252:100-8-7.2(b)(2)(A), minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State's implementation plan or in applicable requirements promulgated by EPA.

(B) **Application.** To use the minor permit modification procedures, a source shall submit an application requesting such use which shall meet the permit application requirements of Tier I under OAC 252:4-7 and shall include the following:

- (i) A description of the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs;
- (ii) The source's suggested modification language;
- (iii) Certification by a responsible official, that the application and the proposed modification meet the criteria for use of minor permit modification procedures; and
- (iv) Completed forms for any notices required by OAC 252:4-7 and OAC 252:100-8-7.2(b)(1)(C).

(C) **EPA and affected state notification.** If the proposed minor modification is of a permit that underwent EPA review in accordance with OAC 252:100-8-8, the provisions of that section shall apply to the minor modification application.

(D) **Timetable for issuance.** Within 90 days of the DEQ's receipt of a complete application under OAC 252:4-7 the DEQ shall:

- (i) Issue the minor permit modification as approved;
- (ii) Deny the minor permit modification application; or
- (iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures or administrative amendment procedures.

(E) **Source's ability to make change.** Immediately after filing an application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application. After the source makes the change and until the DEQ takes any of the actions specified in OAC 252:100-8-7.2(b)(1)(D)(i) through (iii), the source must comply with the applicable requirements and state-only requirements governing the change and the proposed permit terms and conditions. During this period, the source need not comply with the existing terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(F) **Permit shield.** The permit shield under OAC 252:100-8-6(d) will not extend to minor permit modifications.

(G) **Permittee's risk in commencing construction.** The permittee assumes the risk of losing any investment it makes toward implementing a modification prior to receiving a permit amendment authorizing the modification. The DEQ will not consider the possibility of the permittee suffering financial loss due to such investment when deciding whether to approve, deny, or approve in modified form a minor permit amendment.

(2) **Significant modification procedures.**

(A) **Criteria.** Significant modification procedures shall be used for applications requesting permit modifications that:

(i) Involve any significant changes in existing monitoring requirements in the permit;

(ii) Relax any reporting or recordkeeping requirements.

(iii) Change any permit condition that is required to be based on a case-by-case determination of an emission limitation or other standard, on a source-specific determination of ambient impacts, or on a visibility or increment analysis;

(iv) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include:

(I) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I;

(II) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act; and

(v) Are modifications under any provision of Title I of the Act; and,

(vi) Do not qualify as minor permit modifications or administrative amendments.

(B) **Procedures for processing.** Significant permit modifications shall meet all requirements of these rules that are applicable to Tier II applications. The application for the modification shall describe the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs.

(C) **Issuance.** The DEQ shall complete review of significant permit modifications within nine months after receipt of a complete application, but shall be authorized to extend that date by up to three months for cause.