

RULE 201 DISCUSSION

Rule Requirements and History

Rule 201(4) requires the voiding of a permit to install if installation, reconstruction, or relocation has not commenced within, or has been interrupted for, 18 months after permit issuance unless a delay is a condition of the permit.

A version of Rule 201 was first adopted in 1967, and was revised in 1973, 1979, 1992, 1996, 2003, and 2008.

ORR Recommendation A-20

Rule 201(4) should be amended to provide for a hold on the 18 month timeframe if a permit decision has been appealed.

Analysis

The 18 month limit on beginning construction is related to a reasonable assurance that analyses of control technology will remain reflective of current state of the art. However, both at the state and federal level, extensions of the 18 month window have been granted.

The appeal of a permit decision by a party other than the permit holder has resulted in the commencement of construction being delayed beyond the 18 month window, and extensions granted by the AQD have been subjected to litigation. A rule change could extend the construction window in appeal situations. Ohio has a provision to allow for a hold on the 18-month window under similar circumstances.

Recommendation

Amend Rule 201(4).

R 336.1201 Permits to install.

Rule 201. (1) Except as allowed in R 336.1202, R 336.1277 to R 336.1290, or R 336.2823(15) a person shall not install, construct, reconstruct, relocate, or modify any process or process equipment, including control equipment pertaining thereto, which may emit any of the following, unless a permit to install which authorizes such action is issued by the department:

(a) Any air pollutant regulated by title I of the clean air act and its associated rules, including 40 C.F.R. §§51.165 and 51.166, adopted by reference in R 336.1299.

(b) Any air contaminant.

A person who plans to install, construct, reconstruct, relocate, or modify any such process or process equipment shall apply to the department for a permit to install on an application form approved by the department and shall provide the information required in R 336.1203.

(2) The department may issue a permit to install for any of the following reasons:

(a) To authorize a person to install, construct, reconstruct, relocate, or modify a process or process equipment pursuant to subrule (1)(a) of this rule.

(b) To establish limits on potential to emit. The limits shall comply with the provisions of R 336.1205(1)(a).

(c) To consolidate terms and conditions from existing permits to install within a renewable operating permit pursuant to R 336.1214a.

(d) To authorize a person to install, construct, reconstruct, relocate, or modify process or process equipment solely pursuant to subrule (1)(b) of this rule or to consolidate state-only enforceable conditions within a renewable operating permit when the renewable operating permit is issued pursuant to R 336.1214. This permit may establish terms and conditions that are legally enforceable solely pursuant to R 336.1224 to R 336.1232, R 336.1901, or other regulations that are not federally enforceable. Each condition in a permit issued pursuant to this subrule shall be identified as state-only enforceable.

(3) A permit to install may be approved subject to any condition, specified in writing, that is reasonably necessary to assure compliance with all applicable requirements.

(4) If a person decides not to install, construct, reconstruct, relocate, or modify the process or process equipment as authorized by a permit to install, then the person, or the authorized agent pursuant to R 336.1204, shall notify the department, in writing, and upon receipt of the notification by the department, the permit to install shall become void. If the installation, reconstruction, or relocation of the equipment, for which a permit has been issued, has not commenced within, or has been interrupted for, 18 months, then the permit to install shall become void, unless (a) otherwise authorized by the department as a condition of the permit to install, or (b) the installation permit is the subject of

an appeal by a party other than the owner or operator of the air contaminant source that is the subject of the installation permit, in which case the date of termination of the permit is not later than eighteen months after the effective date of the permit plus the number of days between the date on which the permit was appealed and the date on which all appeals concerning the permit have been resolved.

(5) Upon issuance of a permit to install, the emissions from the process or process equipment allowed by the permit to install shall be included in the potential to emit of the stationary source. Upon the physical removal of the process or process equipment, or upon a determination by the department that the process or process equipment has been permanently shut down, the permit to install shall become void and the emissions allowed by the permit to install shall no longer be included in the potential to emit of the stationary source.

(6) Except as provided in subrule (8) of this rule and R 336.1216, operation of the process or process equipment is allowed by the permit to install. The department may void a permit to install upon any of the following actions:

(a) A new permit to install authorizing the action is approved by the department in accordance with subrule (2)(a), (b), or (d) of this rule, and the new permit to install renders all portions of the old permit obsolete.

(b) All terms and conditions of the permit to install are incorporated into a renewable operating permit, in accordance with the provisions of R 336.1212(5) and R 336.1213, and a source-wide permit to install is issued pursuant to R 336.1214a.

(c) All of the emission units, processes, or process equipment covered by the permit to install are physically removed from the stationary source or the department makes a determination that the emission units, processes, or process equipment covered by the permit to install have been permanently shut down.

(7) The department may require 1 or both of the following notification requirements as a condition of a permit to install:

(a) Not more than 30 days after completion of the installation, construction, reconstruction, relocation, or modification authorized by the permit to install, unless a different period is specified in the permit to install, the person to whom the permit to install was issued, or the authorized agent pursuant to R 336.1204, shall notify the department, in writing, of the completion of the activity. Completion of the installation, construction, reconstruction, relocation, or modification is considered to occur not later than commencement of trial operation of the process or process equipment.

(b) Within 12 months after completion of the installation, construction, reconstruction, relocation, or modification authorized by the permit to install, or 18 months after the effective date of this rule, whichever is later, unless a different period is specified in the permit to install, the person to whom the permit to install was issued, or the authorized agent pursuant to R 336.1204, shall notify the

department, in writing, of the status of compliance of the process or process equipment with the terms and conditions of the permit to install. The notification shall include all of the following:

(i) The results of all testing, monitoring, and recordkeeping performed by the stationary source to determine the actual emissions from the process or process equipment and to demonstrate compliance with the terms and conditions of the permit to install.

(ii) A schedule of compliance for the process or process equipment.

(iii) A statement, signed by the person owning or operating the process or process equipment, that, based on information and belief formed after reasonable inquiry, the statements and information in the notification are true, accurate, and complete.

(8) If evidence indicates that the process or process equipment is not performing in accordance with the terms and conditions of the permit to install, the department, after notice and opportunity for a hearing, may revoke the permit to install consistent with section 5510 of the act. Upon revocation of the permit to install, operation of the process or process equipment shall be terminated. Revocation of a permit to install is without prejudice and a person may file a new application for a permit to install that addresses the reasons for the revocation.

History: 1979 ACS 1, Eff. Jan. 19, 1980; 1992 MR 4, Eff. Apr. 17, 1992; 1995 MR 7, Eff. July 26, 1995; 1996 MR 11, Eff. Dec. 12, 1996 ; 2003 MR 12, Eff. July 1, 2003; 2008 MR 12, Eff. June 20, 2008.