

## RULE 206 DISCUSSION

### Rule Requirements and History

Rule 206 provides for processing deadlines for permits to install. R 206(1) requires an administrative completeness review of a permit application within ten days of receipt. R 206(2) sets a deadline to approve or deny a permit within 60 days of receipt of all information needed to evaluate the permit application. For those permits subject to public comment period requirements the deadline is within 120 days of receipt of all needed information. If the Air Quality Division fails to act within the specified timeframes, this may be considered a final action for the purposes of obtaining judicial review.

A version of Rule 206 was adopted in the original 1967 air rules, revised in 1973 and 1980, and was substantially revised in 2003.

### ORR Recommendation A-4

Rule 206 should be amended to require a determination of administratively complete within ten days of receipt of application, require approval or denial of applications for minor source permits to install within 180 days of receipt, and within 240 days for major source permits to install. The rule should allow for the extension of these deadlines with the mutual consent of both the applicant and the Department.

### Analysis

The process for permit review was reengineered through value stream mapping in 2004. For FY 2010, the average time for an administrative completeness check was within three days. 95% of permit applications that did not require a public comment period were processed within the 60 day deadline. 71% of permit applications that required a public comment period were processed within the 120 day deadline. For FY 2011, 91% were issued within the 60 day deadline and 81% were issued within the 120 day deadline. Large, complex, multifaceted permits that include issues such as enforcement, testing, or significant public comment usually require more time. Rule 206 could be amended to incorporate the 180 and 240 day timelines for permit issuance. Mandating a timeline to act from receipt of an application may lead to additional denials as the technical quality of the permit application is a leading factor in permit issuance time. Too often incomplete or inaccurate applications are submitted. Inclusion of a provision to extend the permit processing time with a formal agreement between the AQD and the applicant would minimize the number of permit denials due to unacceptable quality of the application.

The Clean Air Act specifies that major source permits must be granted or denied within one year after receipt of a complete application. We have asked the EPA whether extending the permit review period beyond one year with the mutual consent of the applicant and the AQD will be problematic.

### Recommendation

Amend Rule 206 to incorporate new timelines and extension provision, if EPA concurs.

**R 336.1206 Processing of applications for permits to install.**

Rule 206. (1) The department shall review an application for a permit to install for administrative completeness pursuant to R 336.1203(1) within 10 days of its receipt by the department. The department shall notify the applicant in writing regarding the receipt and completeness of the application.

(2) Except for permit to install applications subject to a public comment period pursuant to R 336.1205(1)(b) or section 5511(3) of the act, the department shall take final action to approve or deny a permit within ~~60-180~~ days of receipt of an application for a permit to install, of all information required pursuant to R 336.1203(1) and (2). The department shall take final action to approve or deny a permit to install subject to a public comment period pursuant to R 336.1205(1)(b) or section 5511(3) of the act within ~~120-240~~ days of receipt. of all information required pursuant to R 336.1203(1) and (2). ~~For the purpose of this subrule, the time between when the department requests additional information from an applicant and when the applicant actually provides that information shall not be included in the 60 day and 120 day time frames for final action by the department. If requested by the permit applicant, the department may extend the processing period beyond the applicable 180 or 240 day time limit. The processing period extension will require a formal agreement signed by both the applicant and the department. However, a processing period shall not be extended under this subsection to a date later than 1 year after the formal agreement is signed. Permit processing period extensions shall be reported as a separate category under MCL 324.5522 (9)(b).~~ The failure of the department to act on an application that includes all the information required pursuant to R 336.1203(1) and (2) within the time frames specified in this subrule may be considered a final permit action solely for the purpose of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department without additional delay.

*History: 1979 ACS 1, Eff. Jan. 19, 1980; 2003 MR 12, Eff. July 1, 2003.*

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