

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 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 permit 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.

December 12, 2012 Update

Two concerns were raised regarding the proposed language:

- 1) EPA voiced a concern that the option for a 1-year extension would violate Section 165 of the Clean Air Act that requires permit actions be taken within one year of an application being determined to be complete. With complete being defined as "... the application contains all the information necessary for processing the application." Therefore, the draft rule language has been amended to state that in the case of a mutually agreed upon extension of the processing of a permit application, the timeframe for the extension can be no longer than 1 year from the date the application is determined to be complete. The rule has been redrafted to make clear that the total timeframe from a completeness determination cannot exceed 1 year.

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) The department shall take final action to approve or deny a permit within 180 days of receipt of an application for a permit to install. 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 240 days of receipt. 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 application has been determined to be complete per R 336.2801(1). Permit processing period extensions shall be reported as a separate category under MCL 324.1311 and 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.

- 2) A concern was raised by a member of the AAC regarding the inconsistency between the proposed draft language in Rule 206 and the Part 18 rules, specifically Rule 1817 which identifies the timeline for processing a PSD permit. The concern was raised over use of the undefined term “technically complete” in Rule 1817. The draft language for Rule 1817 proposes to remove the term “technically complete” and defer to the term complete in a like manner as the recent EPA Guidance document ‘Timely Processing of PSD Permits ...’. Although not directly applicable since it applies to EPA and delegated states, it provides reference to the CAA and Part 51 where the term complete is defined.

In order to clarify the inconsistency between the revised Rule 206(2) and Rule 1817 the following draft language is proposed:

Proposed Draft Rule Language -

R 336.2817 Public participation.

Rule 1817. (1) The department shall notify all applicants within a specified time period as to the completeness of the application or any deficiency in the application or information submitted. If there is a deficiency, the application shall not be considered complete until the application contains all the information necessary for processing the application per R 336.2801(1).~~n the date of receipt of the application shall be the date on which the department received all required information.~~

(2) Per the timeframe identified in Rule 336.1206~~(2) Within 120 days after receipt of a technically complete application,~~ the department shall do all of the following:

(a) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(b) Make available in at least 1 location in each region in which the proposed major source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(c) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed major source would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the major source or major modification, and of the opportunity for comment at a public hearing as well as written public comment.

(d) Send a copy of the notice of public comment to the applicant, to the United States environmental protection agency, and to officials and agencies having cognizance over the location where the proposed construction would occur. The notice shall also be sent to any other state or local air pollution control agencies; the chief executives of the city and county where the major source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the major source or major modification.

(e) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the major source, alternatives to it, the control technology required, and other appropriate considerations.

(f) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing in making a final decision on the approvability of the application. The department shall make all comments available for public inspection in the same locations where the department made available preconstruction information relating to the proposed major source or major modification.

(g) ~~M~~Make a final determination whether construction should be approved, approved with conditions, or disapproved.

(h) Notify the applicant in writing of the final determination and make the notification available for public inspection at the same location where the department made available preconstruction information and public comments relating to the major source.

History: 2006 MR 23, Eff. December 4, 2006.

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