

	<b>AIR QUALITY DIVISION POLICY AND PROCEDURE</b>		DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: May 1, 1996 Revised Date: February 14, 1997 Reformatted Date: January 29, 2014	Subject: Procedure For Implementation Of The Renewable Operating Permit Program Application Shield		Category:  <input type="checkbox"/> Internal/Administrative <input checked="" type="checkbox"/> External/Non-Interpretive <input type="checkbox"/> External/Interpretive
Program Name: Renewable Operating Permit (ROP) Program			
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### INTRODUCTION:

This policy and procedure defines the application shield, how it is applied, and the potential impacts that the loss or failure to obtain an application shield can have on a subject source. The procedure describes steps that Air Quality Division (AQD) staff will take to notify a subject source that they have failed to submit a timely and administratively complete application in accordance with Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and the federal Clean Air Act (CAA). It also describes the factors that will be considered by the AQD in determining an appropriate course of action for the failure to submit a timely and administratively complete application.

### AUTHORITY:

The Renewable Operating Permit (ROP) program, as embodied in PA 451 and Rules 210 through 218, provides for an "application shield" for subject sources.

An application shield is defined in Rule 210(1) which states, in part;

*"The ability to operate the process and process equipment at a stationary source while a timely and administratively complete application is being reviewed and acted upon by the department shall be referred to as the "application shield". The application shield provided by this subrule shall not apply if an application submittal is not timely pursuant to the applicable provision of subrules (4) to (9) of this rule or administratively complete pursuant to subrule (2) of this rule or an additional information request submittal is not timely or complete pursuant to subrule (3) of this rule."*

Subrules 210(4),(5) and (7) addressed initial ROP application due dates that are now obsolete. If an ROP application is submitted on or before the dates listed in subrule 210(6) for an initial ROP application or subrule 210(8) for a renewal ROP application and the application is deemed to be administratively complete, the application shield applies. This shield allows continued operation of the source (after the application has been received by the department, but before the permit is issued) without being in violation of Rule 210(1), which requires that:

*"A person shall not operate any process or process equipment located at a stationary source required to obtain a renewable operating permit under R 336.1211, except in compliance with all applicable terms and conditions of a renewable operating permit, unless a timely and*

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*administratively complete application has been received by the department in accordance with the following provisions of this rule."*

This shield remains in place as long as additional information requests are responded to in a timely and complete manner.

**POLICY:**

The Components of an Application Shield

There are three main components to the application shield: timely application submittal, administrative completeness, and technical completeness. Failure to meet a requirement of any of these components can result in the failure to obtain or retain an application shield for a subject source.

Meeting the application submittal deadline is the first step in obtaining an application shield. Rule 210 states that once a timely and administratively complete application is received, the AQD has a designated amount of time to act on the permit.

The administrative completeness component is the next step in the application shield determination. When an ROP application is submitted, the AQD has 60 days if submitted in paper form, or 15 days if submitted electronically, to determine if it is administratively complete. If the AQD fails to notify the source that the application lacks any of the necessary information, the application is automatically considered administratively complete. The AQD's notification identifies the deficiencies in the application and sets a deadline for response, which must not be later than the application submittal deadline date in order to obtain the application shield. If a complete response is made by the deadline, the application is administratively complete. At this point, an ROP-subject source that has submitted an application that is timely per Rule 210(6) or (8) and is administratively complete per Rule 210 (2)(a) obtains the application shield. **It is important to note that once this opportunity has passed, the application shield cannot be obtained.**

The technical completeness component refers to the loss of a source's application shield for failure to respond in a timely manner to an AQD request for additional information during the technical review of the application. The steps for staff to take to request the additional information are specified in Rule 210(3). When an application lacks necessary technical information, a permit reviewer will send a letter to the source, noting the technical information deficiency and requesting submittal of the necessary information by the specified deadline. Rule 210(3) allows the source 30 days to respond to the initial request, an opportunity to extend that deadline by an additional 30 days and, before the end of the 60 days, a final opportunity to explain their need for a further extension of the deadline. Failure to make a timely and complete response within the allotted deadline results in the automatic loss of the application shield.

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Implications of Late Application Submittals

The application shield allows continued operation of the source after the application has been received by the department until the initial or renewal ROP is issued.

If an ROP-subject source that has an active ROP never receives or subsequently loses the application shield, they are allowed to continue to operate under their current ROP's permit shield until that ROP expires (or a renewal ROP is issued prior to the expiration date). If the renewal ROP is not issued prior to the expiration of the current ROP, or an initial ROP application does not obtain (or loses) an application shield, the source is faced with a decision to either continue to operate or cease operations until the AQD acts upon the ROP application. Operating the source would violate not only Rule 210 and Section 5506 of Act 451, but also Section 502 of the federal CAA. If the source continues to operate, the owner risks potential enforcement by the state, federal government, or citizens (under CAA Section 304). A state policy decision to enforce or not enforce Rule 210 does not eliminate the jeopardy an ROP-subject source faces by continuing to operate.

AQD Enforcement Approach

1. The AQD will continue outreach efforts with ROP-subject sources, informing them of application requirements and submittal deadlines while identifying the implications for failure to obtain and retain an application shield. The AQD will notify each applicant of any failure to obtain or retain an application shield and the possible implications of continued operation without the benefit of the application shield or permit shield.
2. The AQD will decide upon possible enforcement action on a case by case basis, taking into consideration the following factors:
  - a) What efforts the owner/operator has made to comply with the Rule 210(6) or (8) deadlines and Rule 210(2) administrative completeness process. The lack of either application submittal or response to additional information requests (as opposed to late submittal or responses) will be considered the more serious violation. Pursuant to Rule 210(1), any enforcement action will take into account the time period between the applicable deadline and when a person actually submits the required administratively complete application or additional information.
  - b) Whether there have been repeated instances of late and/or incomplete submittals associated with a specific ROP-subject source.
  - c) The presence of other air quality violations at the source.
  - d) Any timely and administratively complete permit applications which have been submitted to the AQD which would legally allow the source to "opt out" of the ROP program. If an opt-out Permit to Install (PTI) application is submitted, the

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amount of time between the submittal of a complete "opt out" PTI application and the ROP application deadline will also be weighed.

3. The AQD will treat violations equitably in keeping with the goal of equitable enforcement for all subject sources. Cases with similar circumstances will be treated in a similar manner with respect to any enforcement action taken by the state.
4. The state ROP rules do not provide that a late submittal enables one to obtain a belated application shield. However, applicants that fail to obtain or retain an application shield may seek to resolve the violation through a consent order and payment of a penalty. While the application shield would not be granted, this would end the violation time period, legally permit continued operation until the ROP is issued, and provide the applicant with some measure of "comfort" that such formal settlement of the violation would prevent or dissuade federal or citizen enforcement actions. The AQD will work with any source that requests such settlement in an attempt to reach a mutual agreement.

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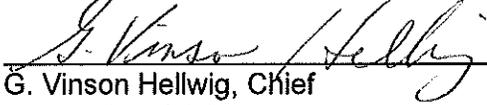
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**PROCEDURES:**

Responsibility	Action
District Staff	<p>Within 30 days after the application submittal deadline in Rule 210 (6) or (8), determine if any of the following situations apply to the source that has not submitted an ROP application as required:</p> <ul style="list-style-type: none"><li>a) An opt-out PTI has been issued.</li><li>b) Complete registration forms including summary tables under Rule 208a have been submitted. This registration process allows a source to accept 50 percent of all major source emission thresholds as legally enforceable limits, so no ROP is necessary. If the AQD later determines that the source does not meet the criteria for limiting its potential to emit pursuant to Rule 208a, the source will immediately be notified of non-compliance with Rule 210.</li><li>c) The source has permanently shut down.</li></ul>
District Staff and Field Operations Coordinator	<p>If none of the above situations exist, the District Staff will contact the Field Operations Coordinator. The Field Operations Coordinator, in consultation with the Division Chief, will confirm the District Staff's conclusion. The Field Coordinator will direct the District Staff to send a violation notice (VN) to the source stating that the source has failed to obtain the application shield and has 60 days to respond with a complete application. The letter will also describe the implications of operation without the application shield or permit shield.</p>
District Staff with Enforcement Staff	<p>Review the response to the VN to determine if the source has:</p> <ul style="list-style-type: none"><li>a) Demonstrated that no Rule 210 violation exists, or</li><li>b) Submitted a complete ROP application within the deadline established through the letter of violation</li></ul> <p>If a satisfactory response to the VN is not received, the case will be reviewed for escalated enforcement according to existing procedures. The review will consider the factors identified in this procedure as they pertain to the specific source and determine an appropriate course of enforcement action.</p>

DIVISION CHIEF APPROVAL:

  
G. Vinson Hellwig, Chief  
Air Quality Division