



Commonwealth of Virginia

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MEMORANDUM

TO: Regional Directors
Regional Air Permit Managers
Regional Air Compliance Managers
Central Office Air Managers

CC: Jeffery A. Steers, Director of Central Operations *JS*

FROM: Michael G. Dowd, Director, Air and Renewable Energy Division *MGD*

SUBJECT: APG-200A2- Title V Air Permits Guidance Manual, Chapter 2 – Permit Applications –Timely and Complete Review

DATE: February 19, 2020

Purpose:

The purpose of this document is to update the existing guidance related to determining when an Title V application (initial or renewal) is administratively complete pursuant to the Title V requirements of the federal Clean Air Act and Article 1 of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, 9VAC5 Chapter 80. The existing APG-200A - Title V Air Permits Guidance Manual was originally released in 1999 by the Virginia Department of Environmental Quality (DEQ) Office of Air Permit Programs (OAPP) and has been updated periodically.

Chapter 2 of the Title V Air Permits Guidance Manual discusses the “timely and complete” review of a Title V permit application for an initial permit or renewal of a permit. An application that is “timely and complete” qualifies the facility for an application shield in accordance with the federal Clean Air Act and Article 1 of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, 9VAC5 Chapter 80.

Each chapter and appendix of the existing Title V Air Permits Guidance Manual will be reviewed and updated as appropriate. The following updates have been made to the existing chapter:

Chapter 2:

- 1) Reformatted with ADA styles.
- 2) Revised chapter title and section headings.
- 3) Provided more discussion of the “timely and complete” review based on implementation experience.
- 4) Removed discussion that properly belongs in other chapters. This language will be retained in the current version of APG-200A until the respective chapter is updated.

Electronic Copy:

Once effective, an electronic copy of this guidance will be available on:

- The Virginia Regulatory Town Hall under the Department of Environmental Quality (<http://www.townhall.virginia.gov/L/gdocs.cfm?agencynumber=440>);

Contact Information:

Please contact Patrick Corbett at 804-698-4016 or patrick.corbett@deq.virginia.gov with any questions regarding the application of this guidance.

Certification:

As required by Subsection B of § 2.2-4002.1 of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in § 2.2-4101 of the Code of Virginia.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any alternative method. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Chapter 2 – Permit Applications – Timely and Complete Review

Introduction

The goal of this chapter is to provide permit writers a clear understanding of what it means for a Title V permit application to be “timely and complete.” Every source subject to Title V (Article 1, 9VAC5 Chapter 80, Part II) must submit an application for an initial Title V permit or its renewal. The Title V application, Form 805, currently located on the [Forms](#) page on DEQ’s external website, must be timely and complete within the guidelines of Article 1, and, as explained in this chapter, for a source to qualify for “application shield.”¹ The timeliness of an application depends on its due date, which in turn depends on the timing in 9VAC5-80-80C. As discussed in APG-202, the determination of the completeness of an application is a two-step process. The first step is referred to as “administratively complete” and is discussed in this Chapter. The second step is referred to as “technically complete,” meaning the permit writer has all necessary information to draft and issue a permit for public participation. Any reference to “complete” in this Chapter only refers to “administratively complete.”

Timely and Complete

For the purpose of Title V, a “timely and complete” application meets the following criteria:

1. To be considered “timely,” an applications must be submitted² in accordance with 9VAC5-80-80C as follows:
 - a. A first time Title V source must submit an application within 12 months after the source becomes subject³ to Article 1 (9VAC5-80-80 C.1).
 - b. A source with a Title V permit that receives a new or amended underlying permit (e.g., Article 6⁴) must submit an application for a Title V permit revision within 12

¹ There are two types of shields in the Title V regulation. One is the application shield described in 9VAC5-80-80 F and covered in this chapter. The other is permit shield described in 9VAC5-80-140.

² Submitted means the application is post-marked by the appropriate date. It is acceptable to utilize the date the information is received if that date does not affect the “timely” determination. Receipt of application fees has a different deadline, see “Permit Fees” on Page 3.

³ In general a source becomes subject to Title V based on the date the source has the potential to emit at major source levels. The potential to emit occurs when the source starts up and begins emitting a pollutant. There are exceptions to this approach depending on the source in question. For example, landfills become subject in accordance with the applicable NSPS/Chapter 40 rule.

⁴ The source is not obligated to submit a Title V application for modification within 12 months after commencing operation (as is a source subject to the requirements of the New Source Review program) for limits taken in a State Operating Permit (SOP). The source is responsible for incorporating the limits in the next Title V renewal application.

months of commencing operation on the permitted equipment⁵. The exception to this is if the new underlying permit has conditions that contravene current Title V permit conditions. An example of this scenario is a modification to an emission unit that increases the emissions on a short-term basis, such as an increase in a pound per hour limit. The source cannot modify the unit and comply with the lower emission limit in the Title V permit⁶. In this case, the source cannot take advantage of the newer emission limit until the Title V permit has been revised. However, if a source can operate and comply with the limitations in both permits, such as complying with the more stringent throughput of the two permits, the source does not have to receive a concurrent Title V permit revision⁷. (9VAC5-80-80 C.2). Further discussion regarding processing of permit actions with contravening Title V limits is contained in APG-214.

- c. For a Title V permit renewal, the owner must submit an application at least six months⁸ but no earlier than 18 months prior to the date of permit expiration (9VAC5-80-80 C.3).
2. To be deemed “complete,” the application must contain the information required pursuant to 9VAC5-80-90 and the appropriate fee must be paid 9VAC5-80 Article 10. For the purpose of the Title V, the initial determination of application completeness is aimed at getting information necessary to begin application processing, e.g., appropriate sections of the Title V permit application form have been filled in and submitted. This is sometimes referred to as being “administratively complete.” This is different than the application’s being “technically complete,” which means all necessary information to draft and notice the permit has been received.

Once an application is determined “timely and complete” the source qualifies for “application shield.” An application that is not timely does not qualify for application shield, regardless of completeness. The application shield provides protection to the source from enforcement action for operating with a Title V permit beyond its expiration date while the application is being processed. The application shield is discussed later in this chapter.

The permit writer may ask the source to submit additional information in the 60-day letter to make the application “technically complete” without affecting the timely and complete determination. This request should come with a specific deadline for the source to provide the information (see page 7 – Losing the application shield once it is in place).

⁵ The “timely and complete” determination discussed in this document only applies to the initial and renewal applications. Submittal of applications for revisions due to new or amended underlying permits is a separate requirement of the regulations.

⁶ Indicating that a unit can operate at a lower load does not assure compliance with the short-term rate unless the unit has a CEMS for that pollutant.

⁷ Where conditions in an SOP contravene requirements in a Title V permit, the Title V permit must be changed similarly.

⁸ For the purpose of this provision, an application would be due on January 12 for a permit that expired on July 12.

Completeness Review Overview

To determine if an application is administratively complete, the permit writer will need to review the Title V application step-by-step to ensure there is enough information to initiate review and preparation of the permit. The following discussion is provided for the permit writer’s use in this determination in coordination with APG-202.

Reviewing the Application

To determine if an application is administratively complete, the permit writer will need to review the Title V application step-by-step to ensure that the required information is contained in the application.

An Administratively Complete Worksheet for Title V applications is available and provides a list of items to review in order to determine completeness. This worksheet (current version attached) addresses the main components of application requirements, as described in 9VAC5-80-90 and this Chapter, and can be used to review the application for administrative completeness. In addition to this worksheet, page iii (Please Read Carefully) of Form 805 also describes the contents of a complete application with additional background information.

The majority of the process has been outlined below, using the sections of Form 805 as the guide:

1. **Permit Fees:** At the beginning of the completeness determination, the permit writer must ensure the appropriate fees have been paid. There are two types of fees that may be applicable to a Title V source: application fees and emissions fees.
 - a. An application without an application fee payment is considered an incomplete application (9VAC5-80-2290). An important distinction is the fee regulation states the fee must be “received” unlike the rest of the Title V permit application, which must be “submitted.” Therefore, a fee must be received by DEQ by the six month deadline prior to permit expiration. Fees are to be sent to Central Office (note the separate addresses for regular mail and overnight mail), however, a copy of the completed current year’s [Air Permit Application Fees](#) form should accompany the permit application sent to the Regional Office. Actual checks, or images of actual checks, should not be in the application; immediately consult the Air Permit Manager if this occurs. If the fee has not been paid, the permit writer should notify the Regional Air Permit Manager and work with the source to obtain the fee payment. Work on the permit should not occur until the fee has been received, as the application is considered incomplete at this point.
 - b. The emissions fee is an applicable requirement which appears in 9 VAC 5 Chapter 80, Part II, Article 2 and is covered in the General Conditions of each Title V permit. A source must provide information to assess emissions fees, which is covered by Page 12 of Form 805 (ANNUAL AIR POLLUTANT EMISSIONS). As an applicable requirement, failure to pay the emissions fee may result in a Notice of Violation and require a Compliance Plan in the permit.

- c. The status of an application fee can be checked in CEDs under the “Application Fees” tab under the specific permit application.
2. Responsible Official Signatures: Second to ensuring the fee has been paid, the permit writer should check to make sure the Document Certification Form (Form 805 page i) and the Compliance Certification (Form 805 Page 21) are completed with the appropriate Responsible Official (RO) signature. Without the signatures from the RO (as defined in 9VAC5-80-60 C), the application is incomplete.
3. Calculations: This is not a specific page in the application, but it is a requirement, and are typically included in the application package as an attachment. Calculations are used to support emission rates in tons/year, and include fuels, fuel use, raw materials, production rates, loading rates, work practices, hours of operation limitations, and operating schedules, as needed. The permit writer’s review should ensure the calculations upon which emission estimates and process rates are based, are provided. While the minute detail need not be checked at this point, the calculations should be logical and make sense to the permit writer. Emission factors can be based on generally available information (e.g., AP-42) rather than new studies or testing. However, it is not necessary to confirm and/or agree with every calculation in order to determine that an application is administratively complete.
4. Equipment list: A description of emissions units, including size, type, and rated capacity, is required on pages 3 thru 9 (Fuel-Burning Equipment and Stationary Combustion Engines; Processing, Manufacturing, Surface Coating, and Degreasing Operations; VOCs in Ink, Coating, Stain, and Adhesive Materials; HAPs in Ink, Coating, Stain, and Adhesive Materials; Liquid and/or Solid Waste Incinerators; Loading Racks and Oil-Water Separators; and Stack/Fugitive Emissions Parameters and Vent/Exhaust Data). The permit writer should evaluate whether a good-faith effort has been made by the source to include all emissions units that do not fit the definitions or listing of insignificant emissions units found in 9VAC5-80-710 and 9VAC5-80-720 at the facility. Ensure that all columns are filled out as best can be determined. If the facility cannot provide a manufacturer’s name and/or model number, the permit writer should consider the application complete as long as the equipment is adequately described.
5. Air Pollution Control Equipment: The table on page 10 (Air Pollution Control Equipment) provides for a list of emission units associated with pollution control equipment. The source has the choice of listing either the actual or design control efficiency; the source may also list the operating parameters for the equipment in lieu of the control efficiency on page 11 (Air Pollution Control Equipment – Supplemental Information). If the source was required to test the actual control efficiency of the device, then the tested actual efficiency must be included in the application. If the source is relying on test results to verify the actual control efficiency of a device, the permit writer must ensure these documents are available.
6. Annual Air Pollutant Emissions: The purpose for page 12 (Annual Air Pollutant Emissions) is to identify the actual annual emissions from the source. This information is used to assess permit fees, and also to allow compliance with public notification of emissions and fuel

used at the source. The source has the option to use the prior calendar year’s Emissions Inventory as the basis for annual emission rates and permit fees. If this is the case, the source should confirm the accuracy of the inventory. Note that some sources with hazardous air pollutant (HAP) emissions will need to supplement the emission inventory.

7. Pollutants for Which This Source is Major: The permit writer should ensure all criteria, hazardous air and any other regulated (e.g., NSPS or Title VI) air pollutants emitted by the facility are identified and listed on page 13 (Pollutants for Which the Source is Major). This table is used to indicate the pollutants for which a source is major for Title V based on potential to emit. The source should not list pollutants for which they are minor on this page. That information should appear on the latest Emission Inventory or on Page 12 of Form 805.
8. Applicable Requirements: Pages 14 through 16 (Applicable Requirements) of Form 805 ask the source to provide a concise description of all applicable requirements. These requirements make up the majority of the Title V permit.

Applicable requirements are those requirements included in a federal operating permit issued under Article 1 (or Article 3 for Acid Rain sources). Possible sources for applicable requirements include permit conditions from active NSR permit approvals; permit conditions from an active State Operating Permit (SOP); requirements incorporated into the State Implementation Plan (SIP); standards, limitations, or other requirements promulgated under a NSPS, NESHAPs, and/or MACT that apply to the source; standards, limitations, or other requirements from 40 CFR Part 64 (Compliance Assurance Monitoring (CAM)) as applicable; standards, limitations, or other requirements from 40 CFR Parts 72 through 78 for Acid Rain sources, and other applicable requirements in other sections of the CFR.

For each emission unit or work practice subject to an applicable requirement, ensure the source has cited the applicable regulatory or legal provision on the form. This could be a citation from a state regulation, a federal regulation, as well the reference to the underlying permit (date of permit approval issuance and condition number).

Applicable requirements also include monitoring methods and frequency of monitoring to ensure compliance. Determine if the application (page 15 – Applicable Requirements, page 2 of 3) has enough monitoring strategies in place to adequately ensure compliance with the requirements; also check to see if the source acknowledged the “Subject to CAM” column.

Page 16 (Applicable Requirements, page 3 of 3) of Form 805 focuses on recordkeeping, reporting, and periodic monitoring requirements applicable to the source and should be based on the requirements stated on the preceding pages. Recordkeeping allows the source to develop a record of compliance with applicable requirements. They are also the basis for making periodic progress or other reports to DEQ or EPA on the state of the source’s compliance. Recordkeeping and reporting requirements from underlying permits should be incorporated into this section as well as those from an applicable NSPS, NESHAPs, and/or MACT that is not delineated in an underlying permit.

9. Streamlining Applicable Requirements: The source has the option to “streamline” what would otherwise be duplicate, obsolete, less stringent, and/or irrelevant requirements. The advantage of this process is to simplify the permit for the source and DEQ. This process was initially outlined in EPA’s 1995 “[White Paper for Streamlined Development of Part 70 Permit Applications](#),” also referred to as White Paper I, and in more detail in 1996 with the “[White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program](#).” DEQ’s interpretation and implementation of both white papers ([APG-202](#)) can be found on Town Hall.

Examples of applicable requirements that may be proposed for deletion include NSR permit terms that contain requirements for initial construction or testing that are no longer relevant. In another scenario, where two or more requirements apply to a single emission unit, to propose that the more stringent of the requirements be used in the Title V permit is acceptable, assuming the description of how the most stringent requirement is stricter than those to be subsumed in it is sound, valid, and readily apparent. Excluding permit terms and other applicable requirements is not automatic on the part of DEQ – it is a case-by-case determination. **Streamlining does not affect administrative completeness** and is discussed in more detail in Chapter 3, Technical Review.

10. Insignificant Emission Units / Activities: Insignificant activities require a three-part analysis as described in 9VAC5-80-710 A. Part 1 is to determine if the source has any emission units deemed insignificant because the emissions are considered to be of minimal or no air quality concern for the purpose of identifying the emission units in a permit application. These insignificant activities are listed in 9VAC5-80-720 A. There is no need to include “named insignificant activities” in the table on page 18 (Insignificant Emission Units/Activities) unless the source is unsure whether the activity or emission unit must be listed in order to aid in the determination of major status, applicable requirements, or fees.

Part 2 of the analysis for insignificant activities is for the source to identify emission units not listed in 9VAC5-80-720 A that are deemed insignificant for a particular regulated pollutant. Because the emissions level of the regulated pollutant is sufficiently small, it is considered of minimal or no air quality concern, for the purpose of quantifying the emissions in the permit application. However, the source must list emission units emitting at these insignificant emission levels, which are described in 9VAC5-80-720 B. These pollutants should be named in the table on page 18, but quantities of each (below the uncontrolled emission rates specified in the cited regulatory provision) need not be specified. (See 9VAC5-80-710 A.2.)

Part 3 of the analysis for insignificant emissions: The source must list emission units deemed insignificant by virtue of size or production rate (rated capacity), as described in 9VAC5-80-720 C. Here, the size or production rate that enables the unit to qualify as insignificant should be listed. (See 9VAC5-80-710 A.3.)

11. Compliance Certification and Plan: Pages 19 through 21 (Compliance Certification and Plan) of Form 805 requires the source to certify compliance or non-compliance with all applicable requirements. These pages must be submitted with every Title V permit

application. The pages provide a table of questions and answers that guide a source in determining if a compliance plan is required in the Title V permit. If this is the case, the compliance plan section should be completed. The permit writer can refer to the Inspections and Enforcement tabs in CEDS for a quick search on any outstanding compliance issues.

Article 1 (9VAC5-80-90) and Article 3 (9VAC5-80-440) require a plan and schedule for achieving compliance to the extent the source is out of compliance at the time of application submittal. The permit writer should verify for every instance of on-going non-compliance, the source has submitted a detailed schedule of remedial actions leading to compliance (page 20 of Form 805 addresses the Compliance Plan). The permit writer should also determine whether the compliance schedule is at least as stringent as any active consent order.

To certify the compliance status described in the Compliance Certification and Plan pages (pages 19 – 21 of Form 805), the RO’s signature is required on page 21.

Completeness: Permit Writer’s Response

DEQ’s review for administrative completeness is subject to a 60-day time constraint (9VAC5-80-80D). The 60-day review clock begins upon receipt of the application, regardless of when the application is due. Administrative handling of the application is determined by the Regional Office; however, the 60-day clock is unaffected by those steps.

Within 60 days of receipt of an application, DEQ should indicate to the source, in writing, whether the application is timely and complete. If 60 days pass without a determination from the permit writer, the application is automatically deemed administratively complete (9VAC5-80-80D.4) and, if the application was timely, the source qualifies for the application shield. Regardless of whether or not a 60-day letter is sent, the timely and complete date for any application is the date the last piece of information necessary for the administratively complete determination is submitted. It is acceptable to utilize the date the information is received if that date does not affect the “timely” determination.

Regardless of whether or not the permit writer sends the source a timely and complete letter within the 60-day period, additional information may be requested from the source at any time during the application review process. If the permit writer needs additional information from the source, the permit writer should request the information in writing, setting a reasonable date for response by the source. Regular conversation with the source is helpful in setting realistic deadlines and identifying what additional information is needed.

Application Shield

As stated earlier in this chapter, if a source submits a timely and complete application for a Title V permit, the source qualifies for the application shield. Application shield is a legal status conferred by 9VAC5-80-80 F.1 and F.5, and subject to loss under F.6. While the source qualifies for the application shield, operation without a Title V permit (for initial permit

issuance) or operation in accordance with a permit past the expiration date (for renewals) is not a violation.

1. Complete by default: If the Regional Office does not notify the source, in writing, whether a timely application is complete or not within 60 days of receipt of an application, the application is deemed complete and the source qualifies for the application shield.
2. Failing to qualify for the application shield: A source may fail to qualify for the application shield by submitting an application that is late and/or incomplete.
3. Losing the application shield once it is in place: A source under the application shield could lose the shield if the source fails to submit requested additional information needed to process the application by the deadline specified in writing by DEQ. Determining that an application shield has been lost may be a case decision subject to a specific administrative process. Conversations with the source facilitate setting a reasonable deadline for the submittal of information. The source may need to explain why providing the information in the time requested by the permit writer is unreasonably difficult, which may adjust the deadline if DEQ agrees with the assessment.

Confidentiality of Information

Issues of confidentiality do not impact the evaluation for an administratively complete application. However, it is something to be aware of during the permitting process. DEQ has developed a Confidential Guidance document (Appendix MM of [APG-350A](#)) that discusses permitting issues with respect to confidential information requests. In addition, page iv of Form 805(Confidential Information) describes what confidential information means for Title V permitting and how it should be handled by the source and DEQ during the permitting process.

**Administratively Complete Worksheet
(Title V Applications)**

Source / Facility Name:

Registration No:

CEDS Application No.:

Are any pages marked confidential (Y/N)? (See Form 805, page iv)

(If yes, the applicant must submit a written justification to meet the criteria under 9VAC5-170-60.C)

Type of Application (Mark One): Initial _____ Significant Mod. _____ Renewal _____

Permit Application Fee Paid (Y/N):

Application Information	Submitted with Application (Y/N)	Notes
1) Document Certification Form signed by a Responsible Official (Form 805, page i)		
2) General facility information provided (Form 805, pages 1 – 2)		
3) Equipment list of emissions units (including size, type and related capacity) (Form 805, pages 3 – 9)		
4) Calculations for emissions estimates and process rates (Form 805, pages 3-13 and Optional Pages 1 and 2, as applicable)		
5) Pollution control equipment listed with percent efficiency or operational parameters, if applicable (Form 805, page 10)		
6) Complete and most recent actual Annual Air Emissions estimate page? (Form 805, page 12)		
7) All emissions for which the source is major and all emissions of regulated air pollutants are listed (e.g., criteria, HAPs, and other regulated pollutants such as NSPS and Title VI pollutants) (Form 805, page 13; Note: Disregard GHG references on page 13)		
8) Provide information related to the emission of air pollutants sufficient to verify which requirements are applicable to source (e.g., NSPS, NESHAPS, MACT) (Form 805, pages 14 – 16)		
9) If the source contains pollutant specific emission units subject to CAM, a CAM Plan is required for each unit. (Form 805, page 15)		
10) Equipment list of insignificant emissions units / activities (Form 805, page 18)		
11) If any compliance certification questions on Form 805, page 19, are answered “No”, is compliance plan section filled out? (Form 805, pages 20 – 21)		
12) Acknowledgements are checked and Compliance Certification on page 21 is signed by the Responsible Official.		

Notes: The initial determination of application completeness is aimed at getting information necessary to begin application processing, e.g., appropriate sections of the Title V permit application form have been filled in and submitted, along with required attachments. Once a timely application is deemed

Administratively Complete Worksheet (Title V Applications)

administratively complete by DEQ, the source qualifies for an "application shield." See 9VAC5-80-80 for additional information on timely submittals and the application shield. The permit writer may continue to request additional information from the source after the application is deemed timely and complete.

This worksheet addresses the main components of application requirements as described in 9VAC5-80-90. Use this worksheet as a guide and use your best judgement to determine if the level of detail provided is sufficient to start the permit writing process.