



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Regional Directors; Director, Air Permits; Director, Air Compliance; Director, Data Analysis and Planning; Director, Enforcement; Air Permit Managers; Air Compliance Managers

CC: Richard F. Weeks, Chief Deputy
James J. Golden, Deputy Director for Program Development

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

SUBJECT: APG-150: Revised Air Permit Application Fee Guidance

DATE: July 1, 2012 (originally issued July 29, 2005)

Purpose:

This policy is intended to provide regional personnel with guidance in the implementation of Chapter 80, Article 10 "Permit Application Fees" and replaces the previous APG-150 guidance document. This guidance is not intended to cover every possible situation but should be applicable in most scenarios. Check with the regional air permit manager and/or the central office staff if a deviation from the guidance is considered to be necessary.

Background:

In July 2004, regulations were added to the Air Pollution Control regulations to charge application fees to a limited number of newly constructed major sources. In July 2012, this regulation was expanded to include most permit applications.

Applicability:

This guidance applies to air permit applications received on or after July 1, 2012. If a source has submitted an application before July 1, 2012, then the source is not subject to the revised permit application fees. This guidance applies to the following permit types:

1. Sources subject to Title V permitting requirements:
 - a. Major NSR permit (Articles 7, 8, 9)

- b. Major NSR permit amendment (Articles 7, 8, 9)
 - c. State major permit (Article 6)
 - d. Title V permit (Articles 1, 3)
 - e. Title V permit renewal (Articles 1, 3)
 - f. Title V permit modification (Articles 1, 3)
 - g. Minor NSR permit (Article 6)
 - h. Minor NSR amendment (Article 6)
 - i. State operating permit (Article 5)
 - j. State operating permit amendment (Article 5)
2. Sources subject to Synthetic Minor permitting requirements:
- a. Minor NSR permit (Article 6)
 - b. Minor NSR amendment (Article 6)
 - c. State operating permit (Article 5)
 - d. State operating permit amendment (Article 5)

Note: (1) The air permit application fee does not apply to administrative amendments or true minor sources. (2) At this time, there is not a fee associated with general permits for minor sources, except for the biomass pilot test facility general permit.

Definitions:

Administrative amendment – An administrative change to a permit issued pursuant to Article 1 (9 VAC 5-80-50 et seq.), Article 3 (9 VAC 5-80-360 et seq.), Article 5 (9 VAC 5-80-800 et seq.), Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.), or Article 9 (9 VAC 5-80-2000 et seq.) of 9 VAC 5 Chapter 80. Administrative amendments include, but are not limited to, the following:

- Corrections of typographical or any other error, defect or irregularity which does not substantially affect the permit,
- Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source,
- Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing

a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board.

Major new source review permit (Major NSR permit) – A permit issued pursuant to Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.), or Article 9 (9 VAC 5-80-2000 et seq.) of 9 VAC 5 Chapter 80. For purposes of fees, the Major NSR permit also includes exemption applications for new sources.

- An Article 7 permit is a preconstruction review permit (case-by-case Maximum Achievable Control Technology (MACT) determination) for the construction or reconstruction of any stationary source or emission unit that has the potential to emit, considering controls, 10 tons per year or more of any individual hazardous air pollutant (HAP) or 25 tons per year or more of any combination of HAPs and EPA has not promulgated a MACT standard or delisted the source category.
- An Article 8 permit is for a source (1) with the potential to emit over 250 tons per year of a single criteria pollutant OR (2) is in one of the listed source categories under [9 VAC 5-80-1615](#) and has the potential to emit over 100 tons per year of any criteria pollutant OR (3) with the potential to emit over 100,000 tons per year of CO₂ equivalent (CO₂e) (9 VAC 5-85 Part III). PSD permits are issued in areas that are in attainment of the National Ambient Air Quality Standards.
- An Article 9 permit is a preconstruction review permit for areas that are in nonattainment with a National Ambient Air Quality Standard (NAAQS). Nonattainment permits are required by any major new source that is being constructed in a nonattainment area and is major for the pollutant for which the area is in nonattainment. Nonattainment permitting requirements may also be triggered if an existing minor source makes a modification that results in the facility being major for the pollutant for which the area is in nonattainment. A major source is any source with potential to emit over 250 tons per year of a single criteria pollutant or is in one of the listed source categories under [9 VAC 5-80-2010](#) and the potential to emit over 100 tons per year of any criteria pollutant. However, if any area is in nonattainment for a specific pollutant, the major source threshold may be lower for that pollutant. For example, sources locating in the Northern Virginia Ozone Nonattainment Area which are part of the [Ozone Transport Region](#) would be a major source if they have the potential to emit more than 100 tons per year of NO_x and/or 50 tons per year of VOC regardless of source category. Nonattainment permits do not require an air quality analysis but require a source to control to the Lowest Achievable Emission Rate (LAER) and to obtain offsets.

Major NSR permit amendment – A change to a permit issued pursuant to Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.), or Article 9 (9 VAC 5-80-2000 et seq.) of 9 VAC 5 Chapter 80. Only minor amendments and significant amendments are included in this category. For purposes of fees, the Major NSR amendment also includes exemption applications for existing sources.

Minor new source review permit (Minor NSR permit) – A permit to construct and operate issued under Article 6 (9 VAC 5-80-1100 et seq.) of 9 VAC 5 Chapter 80. Minor NSR permits are 1) categorically required; or 2) issued to sources whose uncontrolled emission rate for a regulated criteria pollutant is above exemption thresholds and permitting allowables are below Title V

thresholds, and/or 3) issued to sources whose potential to emit for a toxic pollutant is above state toxic exemption thresholds and permitting allowables are below Title V thresholds. The minor NSR permit can be used to establish synthetic minor limits for avoidance of state major, PSD and/or Title V permits. For purposes of fees, the Minor NSR permit also includes exemption applications for new sources.

Minor NSR amendment - A change to a permit issued pursuant to Article 6 (9 VAC 5-80-1100 et seq.) of 9 VAC 5 Chapter 80. Only minor amendments and significant amendments are included in this category. For purposes of fees, the Minor NSR amendment also includes exemption applications for existing sources.

Sources subject to Synthetic Minor permitting requirements - Stationary sources whose potential to emit exceeds the Title V threshold (100 tons per year of a criteria pollutant, 10/25 tpy of HAPs, and/or 100,000 tpy CO₂e) but have taken federally enforceable limits, either through a state operating permit or a minor NSR permit, to avoid Title V permit applicability.

Sources subject to Title V permitting requirements – Stationary sources that have a potential to emit above the Title V thresholds or are otherwise applicable to the Title V permitting program.

State major permit – A permit to construct and operate issued under Article 6 (9 VAC 5-80-1100 et seq.) of 9 VAC 5 Chapter 80. State major permits are for facilities that have an allowable emission rate of more than 100 tons per year, but less than 250 tons per year, of any criteria pollutant and are not listed in the 28 categories under “major stationary source” as defined in [9 VAC 5-80-1615](#).

State operating permit (SOP) – A permit issued under Article 5 (9 VAC 5-80-800 et seq.) of 9 VAC 5 Chapter 80. SOPs are most often used by stationary sources to establish federally enforceable limits on potential to emit to avoid major New Source Review permitting (PSD and Nonattainment permits), Title V permitting, and/or major source MACT applicability. SOPs can also be used to combine multiple permits from a stationary source into one permit or to implement emissions trading requirements. The State Air Pollution Control Board, at its discretion, may also issue SOPs to cap the emissions of a stationary source or emissions unit causing or contributing to a violation of any air quality standard or to establish a source-specific emission standard or other requirement necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law.

SOP permit amendment - A change to a permit issued pursuant to Article 5 (9 VAC 5-80-800 et seq.) of 9 VAC 5 Chapter 80. Only minor amendments and significant amendments are included in this category.

Title V permit – A federal operating permit issued pursuant to Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of 9 VAC 5 Chapter 80. Facilities which (1) have the potential to emit of air pollutants above the major source thresholds, listed in [9 VAC 5-80-60](#) OR (2) are area sources of hazardous air pollutants, not explicitly exempted by EPA OR (3) have the potential to emit over 100,000 tons per year of CO₂ equivalent (CO₂e) (9 VAC 5-85 Part III), are required to obtain a Title V permit. For purposes of fees, the Title V permit also includes Acid Rain (Article 3) permit applications.

Title V permit modification - A change to a permit issued pursuant to Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of 9 VAC 5 Chapter 80. Only minor modifications and significant modifications are included in this category.

Title V permit renewal – A renewal of a Title V permit pursuant to Article 1 (9 VAC 5-80-50 et seq.) of 9 VAC 5 Chapter 80. Title V permits are renewed every 5 years and a renewal application must be submitted to the regional office no sooner than 18 months and no later than 6 months prior to expiration of the Title V permit. For purposes of fees, the Title V permit renewal also includes Acid Rain (Article 3) permit renewal applications.

True minor source – A stationary source whose uncontrolled and potential to emit emissions are less than any major source threshold. These emissions are not constrained by an enforceable limit to keep it below the thresholds that trigger classification as a major stationary source pursuant to the Clean Air Act but are inherently constrained to less than major source thresholds.

Implementation:

1. When and where do the applicants submit their air permit application fee?

The permit applicant should submit their air permit application fee at the same time as the permit application.

- a. Fee: The Air Permit Application Fee Form and a check (or money order) payable to the "Treasurer of Virginia" must be sent directly to:

Department of Environmental Quality
Receipts Control
P.O. Box 1104
Richmond, VA 23218

- b. Application: The Air Permit Application should be sent to the appropriate regional office along with a copy of the Air Application Fee Form.

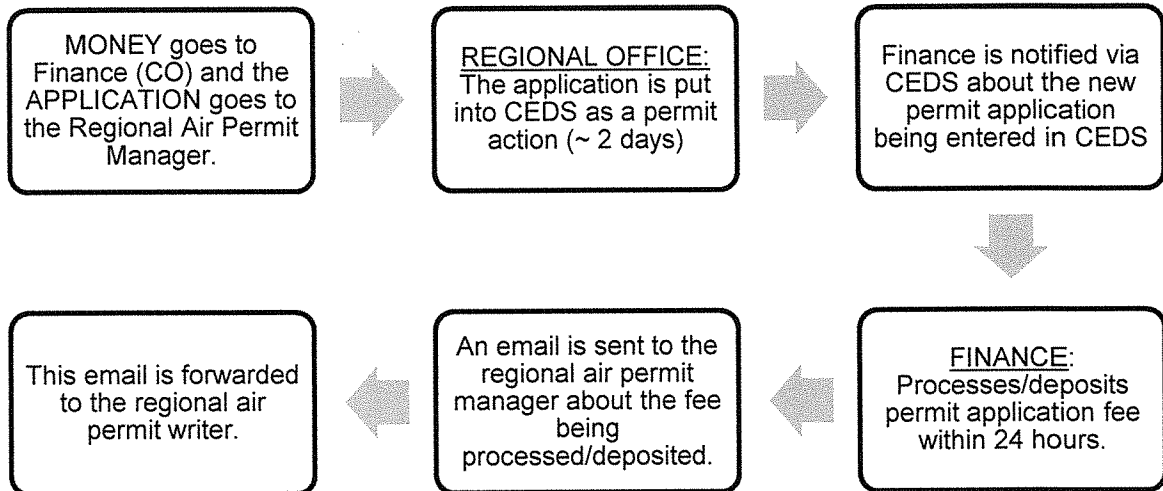
If the fee and the fee form are inadvertently submitted with the application to the regional office, they should be given to the regional office manager to be forwarded to the Receipts Control post office box listed above (not sent directly to the DEQ finance office).

2. Do I have to wait until the permit application fee is paid to consider the application complete?

Yes. Applications will not be considered complete if the proper fee is not paid and should not be processed until full payment is received. Review of the application may not proceed past the initial permit applicability determination (i.e. 30 or 60 day letter) until the proper permit application fee is received.

3. How do I know if the proper permit application fee has been submitted and deposited correctly to DEQ?

A system has been created in CEDS to “talk” between the regional offices and the finance office. See the flow chart below:



4. What is the proper action if the air permit application fee was not submitted with the permit application?

9 VAC 5-80-2290 B states that "review of the application will not proceed past an initial applicability determination (i.e. 30 or 60 day letter) until a permit application fee for the proper amount is received."

This requirement is intended to protect the permit application fee process from abuse, and is not intended to interfere with the regional office's authority to manage its workload. As long as (1) the applicability and amount of the permit application fee is not in dispute, and (2) the regional office is reasonably sure that the proper fee is being submitted concurrently with the review, then the regional office may use its discretion in expending man-hours to conduct permit application review beyond the initial applicability determination while awaiting the submission of the deficient application fee. If however, the fee deficiency is not corrected within 10 business days of the date of the deficiency letter, review should be suspended until the fee is received. This includes if an application has been submitted without any fee being received. Ten business days should provide sufficient time for the owner to correct the deficiency in addition to any mailing delays that may occur. In no case should the permit application review process ever proceed as far as sharing a draft permit with the source (or the public) without first resolving any outstanding permit application fee deficiencies.

If the permit application fee deficiency has not been corrected by the time the deadline contained in the initial applicability determination and deficiency notification letter has been reached, the regional office may be justified in returning the application to the applicant, thereby withdrawing the application from review.

5. Does a request for additional information require the applicant to pay the permit amendment fee?

No. Requesting additional information during the permitting process is routine and does not require a source to complete a new application form; therefore, no fee is required. This is also the case if the source provides additional information necessary to supplement the active application. In other words, if a source supplies additional information that does not require re-submitting an application form, no fee is required.

6. Under what circumstances does a source not have to pay the Title V Permit Modification fee?

If a source has a pending Title V Renewal application which the Agency has failed to issue within the normal 18 month timeframe, then a source may update their pending Title V Renewal application without paying the modification fee.

7. What is the proper action if there are changes in the permit type during the permitting process?

If the applicability status of the application changes after the initial applicability determination and if DEQ determines that the amount of the permit application fee submitted is insufficient for the new applicability status as a result of that change, then the permit review process should be suspended until the applicant submits the additional permit application fee amount.

- a. Higher level of review: When the required level of review changes, the application may become subject to additional fees. If the application is changed during the review process such that a higher level of review would be required, the applicant must submit the difference required before continuing with review of the permit application.
- b. Lower level of review: If the application is changed during the review process such that a lower level of review would be required, NO refund of the permit application fee will be due to the owner (primarily because man-hours may have been expended conducting some portion of the higher level of review). The regional office is not responsible for justifying "no refund" by accounting for work accomplished. The regulatory language of 9 VAC 5-80-2290 A is sufficient.

8. If it is determined the application is for an exemption, is the fee refunded?

No. The application fees were established taking into consideration the time required to process an exemption. Although a permit is not issued, staff time was required to make that determination; therefore, a fee applies.

9. What is the proper fee amount for exemptions?

The amount of the fee is dependent on what type of permit action is being avoided. For example, if the permit exemption was for a PSD source and netting was involved to determine the action is exempt, the fee for a PSD Amendment should be charged. Consider the exemption in terms of what type of permit action would have been required

if the action was not exempt. Taking a permit to avoid another type of permit (i.e. taking a minor NSR permit to avoid PSD) should not be classified as an exemption and the applicable fee would be the fee associated with the permit action, not avoided permit action.

10. If an NSR permit application and Title V permit application are submitted for concurrent processing, is a fee charged for both applications?

Yes. Although the timing for processing the applications is concurrent, it is two separate permit actions requiring two different permit applications.

11. What is the proper action if the source doesn't know which fee to send in with their application?

The source should pay the lowest amount for their facility type category (i.e. Title V vs. synthetic minor). For example, if the source has an existing permit and is subject to synthetic minor permitting requirements, they should submit the amount of the Minor NSR amendment within that category since it is the lowest amount.

12. What is the proper action if the air permit application fee was submitted in error?

In accordance with 9 VAC 5-80-2290 A, the permit application fees are non-refundable. However, this does not mean that the applicant should be penalized for an honest error that does not result in DEQ expending permitting resources. In two exceptional situations (and only these two), refunds may be appropriate:

- a. Inadvertent overpayment of the required permit application fee: When the applicant has inadvertently submitted a permit application fee in excess of the MAXIMUM amount that DEQ had determined was appropriate at any point during the review process, then the amount of the permit application fee in excess of that maximum amount may be refunded to the applicant. This only applies to errors made by DEQ or the applicant in calculating the permit application fee amount. This exception specifically does not apply to situations involving changes to the application that reduce the level of NSR review required. There is no obligation for DEQ to refund the permit application fee created by this exception. The determination of whether this exception is appropriate lies entirely within the DEQ's discretion and the DEQ regional office should consult with the OAPP before granting any refund.
- b. True Minor Source: True minor sources are not required to pay a fee application. If a true minor source submits an application fee with their application, that fee should be refunded.

13. If a refund is determined by DEQ to be appropriate, what is the refund process?

If a source requests a refund and it is determined by DEQ that one should be considered, either the Regional Air Permit Manager or the Regional Director should request the refund on behalf of the source. The request for refund should be sent to the Director of the Office of Air Permit Programs (OAPP) within 15 days of making the refund determination. If the OAPP Director approves the request, it will then be

forwarded to the Office of Financial Management who will issue the refund within 30 days. The request must contain the following information:

- a. Identification of the owner or source, and the payment. That will consist of either:
 - i. A copy of the processed permit application fee form, or
 - ii. Equivalent information that uniquely identifies the stationary source and the previously processed permit application fee payment, such as the "customer" and "receipt number" from finance office records.
- b. The reason for the refund. That reason must either be:
 - i. Inadvertent overpayment of the required permit application fee, or
 - ii. The permit application was for a true minor source.
- c. The amount to be refunded.
- d. DEQ's final decision concerning the application (issued or true minor status).
- e. Supporting documentation.

Examples:

1. Example: Avoided PSD by netting

Question: A source with an existing PSD permit submits an application to add equipment but can demonstrate by netting that PSD is not triggered. What type of fee should be charged?

Answer: The fee for a PSD amendment. Why? The fee is for the avoided permit type. If the source had not been able to use netting to avoid triggering PSD, a PSD significant amendment would have been required. The application was processed as if it would have been a significant amendment but because of the netting exercise, no permit amendment was required.

2. Example: Avoided PSD through Minor NSR Permitting

Question: A source with an existing PSD permit submits an application for a minor NSR permit to establish a limit to avoid PSD. What type of fee should be charged?

Answer: The fee for a minor NSR permit. Although the purpose of the minor NSR permit is to avoid PSD, the purpose of the application is to issue a minor NSR permit.

3. Example: Permit Withdrawal

Question: A source with an existing PSD permit submits an application to make a process change and believes they can net out of PSD. The application is processed and

staff determines the netting exercise does not get the source out of PSD applicability and therefore a permit is required. At that point, the source abandons the project and withdraws the permit application. Does the source get a refund?

Answer: No. The source submitted the application in good faith and significant staff time was spent processing the application.

4. Example: Incorporating Minor NSR into a State Operating Permit (SOP)

Question: A source requests a minor NSR permit for a new process and uses the same application to request the new minor NSR action be incorporated into their SOP. What fee should be charged?

Answer: Since the same application is being used for two permit actions, the highest fee amount should be charged. In this case, it would be the fee for an SOP amendment.

5. Example: NSR/Title V Concurrent Processing

Question: A source submits an application for an NSR action which must be incorporated into the Title V permit and requests concurrent processing. The source must submit both a Form 7 for the NSR change and a Form 805 for the Title V change. What fee should be charged?

Answer: The source must pay the fee for both the NSR action and the Title V action. Although the processing is concurrent, they are two different permit actions requiring two different permit applications.

6. Example: Correct Fee Amount #1

Question: A Title V source is applying for a permit but is not sure if they will be required to get a PSD, SOP, or Minor NSR permit. Which application fee amount should they submit with the application?

Answer: Whichever fee is lower, in this case the Title V Source Minor NSR fee. When unsure of the fee, assume the minimum amount and if the classification changes and a higher amount should have been submitted, then the source should be requested to submit the difference. The permit cannot be deemed complete until the correct fee amount has been received.

7. Example: Correct Fee Amount #2

Question: A Synthetic Minor Source is not sure what fee amount they should submit with their application. They're not sure if it will be an amendment to an existing permit or if they will need a new permit. Which application fee amount should they submit with the application?

Answer: The lowest fee, in this case the Synthetic Minor NSR Amendment fee. As stated in Example 6, when unsure of the fee, assume the minimum amount.

8. Example: True Minor Sources

Question: A source submits an application and a fee and it is determined the source is a true minor – PTE or Uncontrolled Emissions can never be over major source thresholds. Should the fee be refunded?

Answer: Yes. True minor sources are not required to pay application fees. The fee should be refunded following the guidance in this document.

Questions or comments on this guidance should be directed to the Office of Air Permit Programs.