

**326 IAC 2-1.1-8 Time periods for determination on permit applications**

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11  
 Affected: IC 4-21.3; IC 13-15; IC 13-17

Sec. 8. (a) The department shall approve or deny an application received by the department within the following number of calendar days from receipt of such application:

- (1) Two hundred seventy (270) days for an application concerning an air pollution construction permit for a major source or major modification, modification approval, a significant permit revision under 326 IAC 2-6.1-6(i)(1)(A), 326 IAC 2-7-10.5(f)(1), or 326 IAC 2-8-11.1(f)(1)(A), or a federally enforceable state operating permit (FESOP) under 326 IAC 2-8. For FESOP applications submitted before July 1, 1995, the two hundred seventy (270) days shall commence July 1, 1995.
- (2) One hundred twenty (120) days for an application concerning an air pollution construction permit for a minor source required under 326 IAC 2-5.1-3 or a significant permit revision required under 326 IAC 2-6.1-6(i)(1)(B) through 6(i)(1)(K) *[sic]*, 326 IAC 2-7-10.5(f)(2) through 2-7-10.5(f)(10) *[sic]*, or 326 IAC 2-8-11.1(f)(1)(B) through 2-8-11.1(f)(1)(K) *[sic]*.
- (3) Sixty (60) days for an application concerning an air pollution registration required under 326 IAC 2-5.1-2 or a source specific operating agreement under 326 IAC 2-9.
- (4) Forty-five (45) days for an application concerning a minor permit revision described under 326 IAC 2-6.1-6(g), 326 IAC 2-7-10.5(d), or 326 IAC 2-8-11.1(d)(1).
- (5) Forty-five (45) days shall be added to the time period established in this subsection if the department determines that a public hearing should be held under 326 IAC 2-1.1-6 *[section 6 of this rule]*.

(b) The department shall approve or deny an application filed with the department within the time period described under subsection (a) unless:

- (1) the general assembly enacts a statute that imposes a new requirement on permit applications that makes it infeasible for the department to approve or deny the application within the applicable time period specified in subsection (a); or

(2) the department and an applicant, in regard to a particular permit application, agree in writing to extend the time period allowed under subsection (a).

(c) The time period described under subsection (a) shall begin and end as follows:

- (1) The time period begins on:
  - (A) the date an application and a required fee is received and stamped received by the department; or
  - (B) the date marked by the department on a certified mail return receipt accompanying an application and a required fee;
 whichever is earlier.

(2) The time period ends on the date that the department's decision to approve or deny an application is issued.

(d) The time period described under subsection (a) may be suspended if:

- (1) the department receives a written request from an applicant to suspend processing of the application so that an issue related to an application can be resolved or additional information concerning an application can be provided; or
- (2) the department mails a request for additional information to the applicant describing the reasons the application is not complete after determining that any of the following apply:
  - (A) An application does not contain all of the information or documents, required by rules adopted by the board, that the department needs to process the application.
  - (B) An application contains provisions that are not consistent with an applicable rule or law.
  - (C) An applicant fails to pay the required fee or submits a check that is not covered with sufficient funds.

(e) The time period described under subsection (a) shall be suspended on the day the applicant receives the department's request for additional information.

(f) The department may request, as part of a request for additional information, that an applicant conduct tests or sampling to provide information, consistent with requirements in rules adopted by the board, that is necessary for the department to process the application.

(g) The time period described under subsection (a) shall resume:

- (1) on the date the department receives, and stamps as received, the information or payment completing the application; or
  - (2) on the date marked on the certified mail return receipt that accompanied information or payment completing the application;
- whichever is earlier.

(h) If an applicant's response does not provide all infor-

mation requested in the request for additional information, the department shall notify the applicant within forty-five (45) calendar days after receiving the response. If the department finds an application to be incomplete after reviewing an applicant's response to a second or subsequent request for additional information, the department shall:

- (1) deny the application pursuant to subsection (j); or
- (2) choose to issue a further request for additional information;

however, the time period described in subsection (a) may not be suspended unless the applicant agrees in writing to defer processing of the application pending the applicant's response to the request for additional information.

(i) The department shall inform a source of the status of the department's review of the source's application or shall issue a request for additional information:

- (1) within thirty (30) calendar days of the day an application concerning an air pollution construction permit for a minor source or a minor modification was filed with the department; and
- (2) within forty-five (45) calendar days of the day an application concerning an air pollution construction permit for a major source or major modification was filed with the department.

This rule does not establish a time frame for responding to air registration applications filed with the department other than that listed in subsection (a).

(j) The department may deny a permit application because the application is incomplete if an applicant:

- (1) fails to submit, within sixty (60) calendar days of receipt of a request for additional information, the requested information or a schedule for providing the requested information;
- (2) does not adhere to the schedule submitted under subdivision (1); or
- (3) fails to submit, within thirty (30) calendar days of receipt of a request for payment, a required fee or submits a check that is not covered with sufficient funds.

(k) The department may deny a permit application because it contains provisions that are not consistent with applicable rules or laws.

(l) A permit application fee for renewal of an operating permit or an annual fee for an operating permit is nonrefundable.

(m) If the department does not issue or deny a construction permit, registration, or permit revision within the time period specified under subsection (a), the department shall automatically refund the permit, registration, or permit revision application fee paid by the applicant, except as described in subsection (n)(2).

(n) Upon expiration of the specified time period in

subsection (a), the department shall do the following:

(1) Provide the applicant with a written determination of whether the time period specified under subsection (a) has expired.

(2) If the time period under subsection (a) has expired, the department shall refund the applicant's application fee within thirty (30) calendar days of the expiration of the time period specified in subsection (a). The department shall not refund the application fee if, within thirty (30) calendar days of the expiration of the time period specified in subsection (a), the department determines:

- (A) one (1) or more of the proposed emissions units is in operation without prior written authorization from the department; or
- (B) construction has commenced on one (1) or more of the emissions units without prior written authorization from the department.

(3) If the applicant is eligible for a refund of the application fee, the department shall do the following:

- (A) Continue to review the application.
- (B) Approve or deny the application as soon as practicable.
- (C) Not bill the applicant for additional charges related to the application.
- (D) Issue a schedule to the applicant for making a final determination on the pending application.

(o) The department shall present a report to the air pollution control board by October 15 of each calendar year, beginning in 1993. The report shall contain an evaluation of the actions taken by the department to improve the process of issuing air permits. The report shall include the following information for permits subject to the permit schedules in subsection (a) and for permit renewal applications:

- (1) The number of permit applications received and the number of permits issued or denied in the previous calendar year and the number of pending applications.
- (2) A description of the reduction or increase in the number of permit applications in the air permit program during the preceding calendar year.
- (3) The median review time spent on applications and renewals.
- (4) The number of public hearings requested and conducted.
- (5) The amount of air program permit fees collected and air program fee revenue spent during the preceding calendar year and the amount of fees refunded.
- (6) A discussion of possible increases or decreases in the operating costs of the department's air program permit and inspection activities.
- (7) A discussion of the measures that have been taken by the department to improve the operating efficiency of the air permit and inspection programs.
- (8) The amount of time the department spent conducting hearings on appeal and objections hearings under IC 4-21.5 regarding air permits.

(9) The number of requests for additional information issued by the department under subsection (d).

(10) A discussion of the department's operational goals for the air program in the next twelve (12) months. The goals shall include processing at least ninety-five percent (95%) of the permit applications within the time frames listed under subsection (a).

(p) The remedies provided in subsections (m) and (n) are not the only remedies available to a permit applicant. A permit applicant is not prohibited from seeking other remedies available at law or in equity. (*Air Pollution Control Board; 326 IAC 2-1.1-8; filed Nov 25, 1998, 12:13 p.m. 22 IR 993*)

**TITLE 326 AIR POLLUTION CONTROL BOARD**

LSA Document #98-95(AC)

Under IC 4-22-2-38, corrects the following typographical, clerical, or spelling errors in LSA Document #98-95(F), printed at 22 IR 978:

(18) In 326 IAC 2-1.1-6(b)(5)(B), on page 26 of the original document (22 IR 991), delete “, except for those modifications for which the source is requesting both preconstruction approval and operating permit revision”.

(19) In 326 IAC 2-1.1-8(a)(2), on page 31 of the original document (22 IR 993), delete “6(i)(1)(K)” and insert “326 IAC 2-6.1-6(i)(1)(J)”, delete “2-7-10.5(f)(10)” and insert “326 IAC 2-7-10.5(f)(9)”, delete “2-8-11.1(f)(1)(K)” and insert 326 IAC 2-8-11.1(f)(1)(J).

(20) In 326 IAC 2-1.1-8(a)(5), on page 31 of the original document (22 IR 993), delete “326 IAC 2-1.1-6” and insert “section 6 of this rule”.

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**Errata**

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*Filed with Secretary of State: May 12, 1999, 11:23 a.m.*

*Under IC 4-22-2-38(g)(2), this correction takes effect 45 days from date and time filed with the Secretary of State.*

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