

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Air Permits Division

Date: May 15, 2002

From: John Steib, Director

Subject: Extensions for Start of Construction

This memo addresses the Division's position regarding requirements for requests to extend the start of construction deadline of new source review permits and permit amendments.

Extensions are typically requested by applicants in cases where applicants have determined that the start of construction will not commence before the 18-month time frame allowed in 116.115(b)(2)(A)(2). The rule allows for one 18-month extension. The executive director's decision to extend the permit is not automatic; if the extension is not granted, the permit expires, and in order to pursue the project, the applicant must start the permit process over from the beginning.

We request that applicants submit the extension request via hard copy. If the applicant does not leave time for receipt of a hard copy request before the permit issuance 18-month anniversary, a fax request may be submitted before the permit expires if followed up with a hard copy.

Unlike the voiding of permit applications, which is addressed in 116.114(b), granting the extension does not require the applicant to submit a new application. This is because we are not voiding or re-authorizing the construction, we are providing the applicant an additional 18 months to begin construction, provided that the permit is still consistent with current permit practices.

Before recommendation for an extension is made, you will need to review the permit to make sure that it still meets current best available control technology (BACT) and that off-property impacts are still acceptable. Impacts may no longer be acceptable because of new modeling guidance or effects information since the original permit issuance. The decision to require new modeling should be made in consultation with Permits management. You should also review the Prevention of Significant Deterioration (PSD) and nonattainment new source review (NNSR) netting analyses, if applicable, to ensure that the project continues to meet federal permitting requirements. If the BACT review results in a need to update the controls, the requestor may, as appropriate, use either the Standard Permit for Pollution Control Projects or a permit amendment. In some cases, it may be necessary to grant the extension prior to the updating of the controls. If so, the approval of the extension should have a condition requiring the submission of a registration or permit amendment within 60 days of the date of the approval.

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Please be aware that when we grant an extension, this affects the contemporaneous period for PSD and NNSR. The netting window, which is tied to the start of construction and start of operation dates, moves forward in time in accordance with the new estimated construction and operation start dates.¹

For example, if the original start of construction for a project that triggered PSD netting was January 2002, the start of the netting window is January 1997. The window ends at the estimated start of operation, which in this case is a year later, or January 2003. If the applicant submits and we grant an extension to allow construction to begin on January 2003, the start of the netting window becomes January 1998, and the window now extends to the project's new estimated start of operation (January 2004).

As a general matter, you will need to re-evaluate the netting or offsets with respect to any new State Implementation Plan rules (Chapters 115 and 117) which may have been adopted since the original permit application became administratively complete. In practice, this is necessary in the Dallas/Fort Worth and Beaumont/Port Arthur ozone nonattainment areas, but not in the Houston/Galveston area. The new sources in Houston/Galveston were included in the attainment demonstration modeling, but new sources in Beaumont/Port Arthur and Dallas/Fort Worth were not.

If you have any questions or comments on this memo, please contact Ruben Herrera or Randy Hamilton in the Air Permits Division.

This memo supersedes the discussion of extensions contained in memos dated November 4, 1999 and April 26, 2000, from Kurt Kind to NSR Permit Reviewers.

¹In the federal rules, an extension is not required if construction has "commenced" within 18 months, where "commence" is defined to include the meaning that the owner or operator has entered into a binding contract for physical onsite construction. This difference is not relevant in Texas, because the state (TNRCC) has adopted its own rules to implement the federal PSD and NNSR program, and these rules do not recognize this distinction. The state PSD rules, at 30 TAC 116.160(b)(4), specifically exclude the federal PSD treatment of extensions. The general permit requirements at 30 TAC 116.115(b) apply to NNSR extensions because the state NNSR rules neither address extensions nor cross reference to the federal NNSR rules. These uniform extension requirements are a logical consequence of the TNRCC's single permit which combines state and federal NSR requirements.